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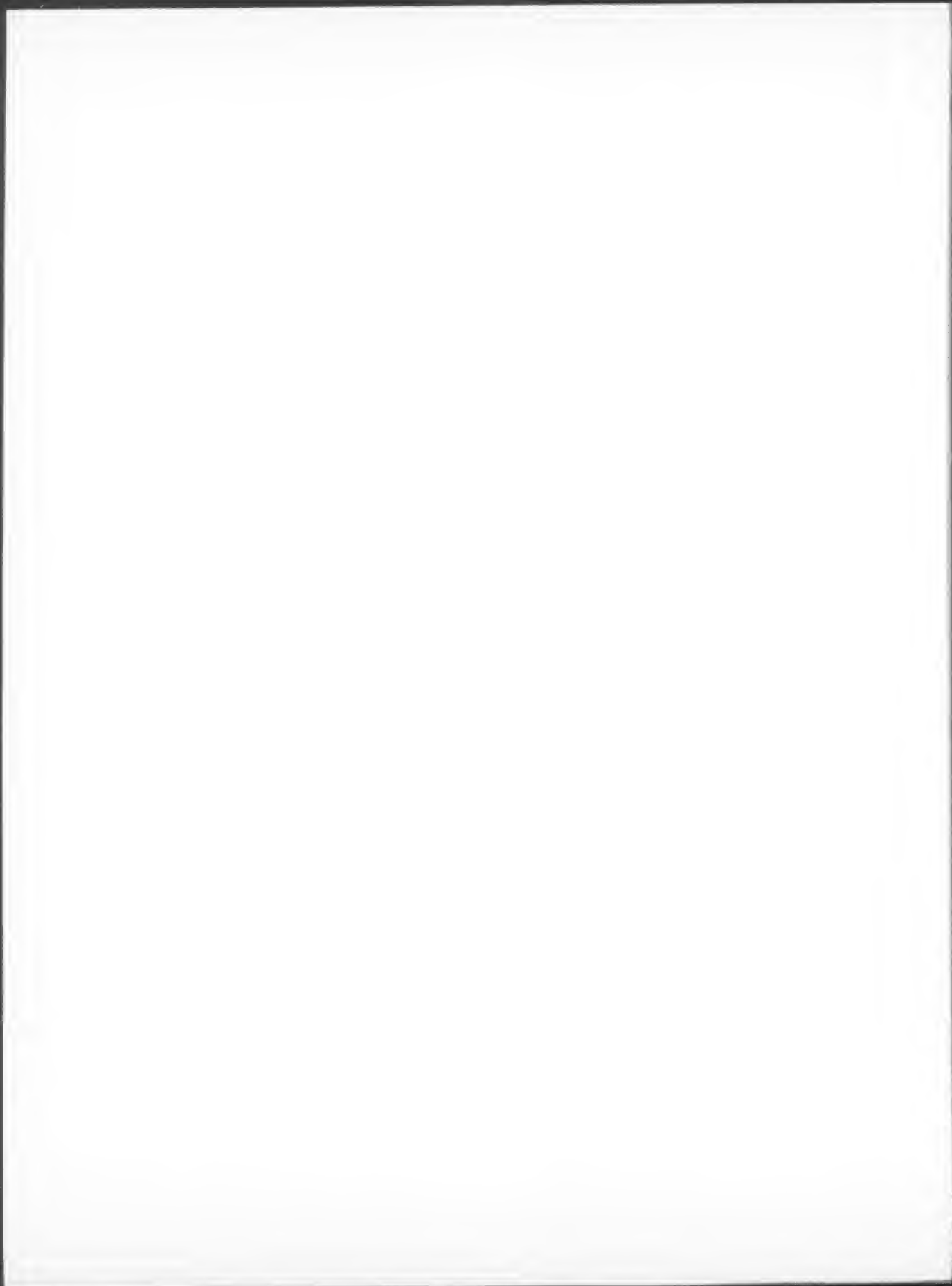
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Proclamation 6325 of August 21, 1991

The President

National Park Week, 1991

By the President of the United States of America

A Proclamation

The founding of our magnificent Yellowstone National Park in 1872 not only marked an important milestone in the history of American conservationism but also inspired a worldwide movement to set aside certain lands for the preservation of their unique scenic value and natural resources. Today more than 100 countries boast some 1,200 national parks or equivalent preserves.

To help protect the scenery, wildlife, and historic sites that are found throughout our National Park System, the Congress established the National Park Service on August 25, 1916. The National Park Service is responsible for managing the lands in its care "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." It is a noble and important task because our national parks are more than scenic preserves. As the renowned conservationist and civic leader, J. Horace McFarland, observed:

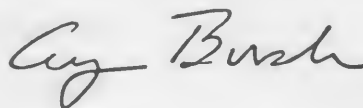
The parks are the Nation's pleasure grounds and the Nation's restoring places . . . [they] are an American idea; it is one thing we have that has not been imported . . . These great parks are, in the highest degree, as they stand today, a sheer expression of democracy.

Now celebrating its 75th anniversary, the National Park Service has helped to lead the way in protecting America's natural resources and cultural and historic treasures. The Service holds in trust for the American people such riches as the awe-inspiring vistas of the Grand Canyon, the sublime cliffs and forests of Yosemite, the hallowed ground of Gettysburg, the rugged beauty of Acadia, and the towering majesty of our Statue of Liberty. It is estimated that more than 250 million people from throughout the United States and around the world will visit these and other national parks this year.

The National Park Service will celebrate its 75th anniversary with programs designed to focus attention on the inestimable value of our national parks and on the need for their preservation. In recognition of this anniversary, the Congress, by Senate Joint Resolution 179, has designated the week beginning August 25, 1991, as "National Park Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of August 25 through August 31, 1991, as National Park Week. I invite all Americans, as well as our friends around the world, to participate in events commemorating the 75th anniversary of the National Park Service.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of August, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

A handwritten signature in cursive script, reading "George H. W. Bush". The signature is written in dark ink on a light-colored background.

[FR Doc. 91-20586

Filed 8-22-91: 4:39 pm]

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Rules and Regulations

Federal Register

Vol. 56, No. 165

Monday, August 26, 1991

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-91-006]

RIN 0581-AA19

Tobacco Fees and Charges for Permissive Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for the voluntary inspection and certification of tobacco upon request. This action increases the fees and charges currently in force for permissive grading of quota and nonquota tobacco to reflect the increased costs of operating the program. Under the Act, fees collected must cover, as nearly as practicable, the Department's costs for performing the inspection service, including administrative and supervisory costs. This increase does not affect the fee for the mandatory inspection of tobacco sold at designated auction markets or permissive export certification.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, Room 502, Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice was given (56 FR 22665-22666, Thursday, May 16, 1991) that the Department proposed to amend the regulations governing the permissive inspection of tobacco to increase the fees and charges for inspection and certification services to those requesting the services.

Interested parties were given an opportunity to comment on the proposed rule. No comments were received. The Department is making final the regulations appearing in the proposed rule.

Permissive inspections as authorized under the Tobacco Inspection Act, are made available to interested parties on a fee basis sufficient to cover the costs, as nearly as practicable, of the services provided, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current hourly fee schedule for domestic permissive inspection has been in effect since December 18, 1989, as published in the Federal Register (54 FR 47755) on November 17, 1989.

The Department conducts an annual review of the financial status of this program to determine whether the fee is sufficient. As a result of this review, it was determined that at the current fees insufficient revenue is generated to meet the costs of the program and to maintain an adequate reserve fund. The major factors causing the need for additional funds are increases in Government salaries and benefits, travel allowances and overall administrative costs since 1989. Therefore, the Department is increasing the base hourly rate of \$29.45 to \$32.40, the overtime rate of \$35.15 to \$38.70, and the Sunday and holiday rate of \$44.95 to \$48.45. These fees will cover expenses and maintain a reserve that would meet any reasonable contingency.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small businesses. Few of the entities which would be affected by this rule are small business. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last 3 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 Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, for the reasons set forth in the preamble the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

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

Authority: 7 U.S.C. 511m and 511r.

2. Section 29.123(b) is revised to read as follows:

§ 29.123 Fees and charges.

(b) *Domestic permissive inspection and certification.* Fees and charges for inspection at redrying plants and receiving points shall comprise the cost of salaries, travel, per diem, and related expenses to cover the cost of performing the service. Fees shall be for the actual time required to render the service calculated to the nearest 30-minute period. The hourly rate shall be \$32.40. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be \$38.70. The rate of \$48.45 shall be charged for work performed on Sundays and

holidays. These same fees or charges shall be applicable for hogshead, bale, cases, or sample inspections.

Subpart F—Policy Statement and Regulations Governing the Identification and Certification of Nonquota Tobacco Produced and Marketed in a Quota Area

3. The authority citation for subpart F continues to read as follows:

Authority: Pub. L. 97-98, 95 Stat. 1266, as amended (7 U.S.C. 1314f).

4. Section 29.9251 is revised to read as follows:

§ 29.9251 Fees and charges.

Fees and charges for inspection and certification services shall comprise the cost of salaries, travel, per diem, and related expenses to cover the costs of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The hourly rate shall be \$32.40. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be \$38.70. The rate of \$48.45 shall be charged for work performed on Sundays and holidays.

Dated: August 15, 1991.

L.P. Massaro,

Acting Administrator.

[FR Doc. 91-20253 Filed 8-23-91; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150-AD61

Fitness-for-Duty-Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing fitness-for-duty programs that are applicable to licensees who are authorized to construct or operate nuclear power reactors. The final rule is necessary to clarify the NRC's intent concerning the unacceptability of taking action against an individual that is based solely on the preliminary results of a drug screening test and to permit, under certain conditions, employment actions, up to and including the action of temporary removal of an individual from unescorted access or from normal

duties, based on an unconfirmed positive result from an initial screening test for marijuana or cocaine.

EFFECTIVE DATE: September 25, 1991, except for the information collection requirements contained in §§ 26.24(d)(2)(iv), and 26.71(d). These information collection requirements will become effective upon the Office of Management and Budget (OMB) approval. The NRC will publish a notice of the effective date in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Eugene McPeck, Reactor Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-3210.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1990, the Commission published in the *Federal Register* (55 FR 35648) proposed amendments to its fitness-for-duty regulations applicable to licensees authorized to construct or operate nuclear power reactors. The proposed amendments sought to clarify the Commission's intent about the unacceptability of taking actions against an individual that are based solely on unconfirmed preliminary drug test results.

Interested parties were invited to submit comments on the proposed amendments within 60 days after their publication in the *Federal Register*. The staff received a total of 32 comment letters in response to the Notice of Proposed Rulemaking (NPRM). Upon consideration of the comments received, the NRC is modifying the proposed regulation as discussed in the Statement of Considerations.

Comments on the Proposed Rule and Responses

Comments were received from the general public, two Congressmen, workers in nuclear power plants, the international headquarters of two unions, the Nuclear Management and Resources Council (NUMARC), 21 power reactor licensees, two contractor organizations, one law firm, and a professional society.

1. Comments Concerning the Balance Between Safety and Individual Rights

Comments Opposing the Proposed Amendment

NUMARC and 19 licensees believe that the current rule is adequate and that the proposed amendment should not be adopted. The central argument for their opposition to the proposed

amendment was that the public health and safety would be best protected by a practice where an individual with a positive result for certain illegal substances from a preliminary initial screening test can be placed in a nonwork pay status, pending confirmation of the test result.

Comments Supporting the Proposed Amendment

The NRC received comments from Congressmen Dingell and Bliley, two licensees, two contractor organizations, two unions, employees of licensees, private citizens, and a professional society that supported the proposed amendment to 10 CFR part 26. These commenters agreed that no action should be taken against an individual that is based on a preliminary screening test result unless the individual exhibits other signs of impairment or indications that he or she might pose a safety hazard. Their central argument was that the proposed rule will provide a degree of fairness to an individual whose initial test result may indeed prove in error, thereby furthering the protection of worker's rights. One licensee indicated that the delay in the revocation of unescorted access until the Medical Review Officer (MRO) has reviewed the confirmed laboratory test results has not affected the reliability or safety of its plants.

NRC Response

The arguments for and against the amendment to the rule center on the proper balance between safeguarding an individual's rights and protecting public health and safety. This is the same basic issue that was considered during the development of 10 CFR part 26.

The Commission believes that taking employment actions, up to and including the actions of temporarily removing an employee from normal duties or temporarily suspending a person's access to a site, based on a presumptive positive result from an initial screening test has validity from a safety perspective when there is high confidence that the initial results will be confirmed, and when measures are taken to ensure that the individual's rights are protected in those few instances when the preliminary test results are not confirmed. The confirmation rate after the initial screening tests varies substantially among the drugs that are the subject of the screening tests. A large fraction of presumptive positive results from initial screening tests for certain drugs are subsequently confirmed as positive. From a safety perspective, actions that

are based on the results of these initial screening tests could result in an earlier removal from normal duties or an earlier suspension of access to a site for individuals who are later determined by the confirmation test as having used drugs.

Some of those who favored administrative actions that are based on the results of initial screening tests also commented that such a practice and procedure needed to be handled carefully. The Commission agrees that carefully prepared and implemented procedures are needed to protect the reputations and careers of individuals whose test results are not confirmed. As a minimum, the Commission believes those procedures must ensure that there is no record or disclosure linking the tested person to a positive screening test result when the screening is not confirmed. As pointed out by commenters, the administrative action is obvious to fellow workers. However, the Commission believes that there is a limited set of circumstances when the safety benefit from administrative action against workers who test positive on the screening test outweighs the potential impact on an individual.

In developing the fitness-for-duty (FFD) rule, the Commission tried to achieve a proper balance between safeguarding an individual's reputation and right of privacy and its responsibility to protect public health and safety. The Commission carefully considered how to achieve this balance during the rule's development and requested comments on the issue (see 53 FR 36796; September 22, 1988). Prohibition against disclosure to licensee management of presumptive positive results of preliminary testing¹ was one measure adopted by the Commission for the purpose of protecting individual rights. The Commission believes that the proper balance will be maintained by placing substantial conditions and limitations on the exercise of management prerogatives in the face of unconfirmed positive screening test results.

From a broad perspective, FFD testing is only one element of many elements included in licensee programs (e.g., quality assurance, quality control, training, and access authorization) that addresses reactor safety from the standpoint of assurance that both equipment and people will perform their functions as intended. These programs, taken as a whole, provide an integrated approach to ensure that individual actions do not adversely affect safe

plant operations. The FFD rule includes a number of specific elements to ensure that nuclear power plant workers are fit to perform their assigned tasks. For example, the requirements for the training of supervisors in behavioral observation is an element which, although not adequate to detect impairment in all cases, adds to the likelihood that individuals who obviously are impaired will be recognized and removed from activities that can affect safety. In this regard, 10 CFR 26.27(b)(1) requires that impaired workers or those whose fitness may be questionable be removed until determined fit to safely and competently perform duties.

The purpose of testing is not only to make impairment on the job less likely but to ensure a trustworthy and highly reliable workforce and increase the assurance that workers will act properly in stressful situations resulting from "off-normal" events. The Commission believes that the benefits of removing individuals a few days earlier, except in limited circumstances, may have been over-emphasized by commenters opposed to the rule. First, as stated at (53 FR 36798), a positive result from a urine test does not establish that an individual is currently impaired, only that the individual may have drugs present in his or her system and, therefore, may not be reliable. Information that a person may not be reliable indicates a less immediate safety risk than a determination of impairment would imply. Second, as stated in the final rule on July 7, 1989, (54 FR 24470), the existence of drug problems in the workplace cannot be entirely eliminated and an undetected presence of drugs will exist no matter how thorough the program. This undetected presence of drugs implies that a constant, but small, safety risk exists even under the best program. Other aspects of the Commission's regulations, including design margins, redundancy of accident mitigation systems, quality assurance, and training supervisors in behavioral observation provide reasonable assurance of safe plant operations. Third, those sites without onsite testing regularly experience the delays in receipt of test results sought to be avoided by the commenters opposed to the amendment. Fourth, anecdotal evidence indicates that, generally, individuals who abuse drugs have unrealistic hopes of not exceeding the cutoff levels until confronted with the confirmed positive results. Malevolent acts in anticipation of positive test results are therefore unlikely. The NRC is not aware of any

instances of malevolent action by such individuals during the first year of testing under the FFD rule. Considering these factors, the Commission concludes that the increment of risk in clearly prohibiting employment action except in narrowly limited circumstances is negligible. The Commission also concludes that employment action against individuals under the narrowly limited circumstances defined herein should be left as a management prerogative of individual utilities and not made mandatory.

The Commission, therefore, considers that the rule, as modified as a result of further consideration of the issues raised during the comment period, would continue to achieve the Commission's original objective and would strike a fair balance between individual rights and the protection of public health and safety.

In certain unusual circumstances, 10 CFR 26.24(e) may require the reporting of test results to management by the Medical Review Officer (MRO) before confirmed positive results are received. The MRO should be informed of the presumptive positive results of onsite initial screening tests if the Health and Human Services (HHS)-certified laboratory has not reported within the expected time as provided in § 2.7(g)(1) of appendix A to 10 CFR part 26. If the MRO cannot complete the review within the 10-day period because of the unavailability of HHS-certified laboratory test results or unavailability of the individual, the report to management should be based on available information.

Any individual who is impaired or whose fitness for duty may be questionable because of a basis other than the result of a drug test must be removed from unescorted status under the provisions of 10 CFR part 26.27(b)(1).

2. Comments Concerning the Reliability of Initial Screening Tests

Some of the commenters provided some statistical data in support of their position. One commenter recommended that the NRC obtain statistical evidence to support the rulemaking.

One licensee reported that approximately 66 percent of its presumptive positive initial screening tests are not confirmed. The Tennessee Valley Authority (TVA) commented that its drug testing data indicated a high confirmation rate for the illegal substances of marijuana and cocaine.

For the period from October 13, 1987, through September 30, 1990, TVA reported that positive results for 85 percent of the marijuana and 89 percent

¹ See § 2.7(g)(2) of appendix A to 10 CFR part 26.

of the cocaine preliminary initial screening tests for its nuclear power random testing program were confirmed by gas chromatography/mass spectrometry (GC/MS) tests done at an HHS-certified laboratory. TVA contended that the high confirmation rate from their onsite immunoassay screening tests justified the use of these results to take action against an individual.

A law firm representing a licensee stated that the proposed rule failed to provide an adequate basis for the contemplated revision to 10 CFR 26.24(d). The law firm noted that the NRC apparently dismissed the distinction between the reliability of preliminary drug tests for marijuana and cocaine and the reliability of such tests for opiates and amphetamines when it promulgated the final fitness-for-duty regulation (54 FR 24468). The law firm contended that the NRC blurred the distinction between the drugs and emphasized a general policy equally applicable to all four categories of substances, thus deciding in favor of individual rights at the preliminary test stage.

The law firm recommended that the NRC not proceed with the proposed amendment until it has supplemented the rulemaking record with statistical evidence on the incidents in the nuclear power industry since January 3, 1990, of erroneous positive results from preliminary drug tests for marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol. The law firm urged the NRC to hold the amendment in abeyance pending such consideration, further notice, and opportunity to comment.

NRC Response

The Commission recognizes that the immunoassay process used for onsite preliminary screening tests (as well as the initial screening at the HHS-certified laboratory) will result in presumptive positives due to the consumption of certain food products and over-the-counter drugs. Also, the Commission is aware that the immunoassay is a more reliable predictor for marijuana and cocaine than for other drugs.

The National Institute on Drug Abuse (NIDA) has confirmed that data provided by TVA is fairly consistent with that reported by HHS-certified laboratories except that the TVA confirmation rate for amphetamines is much lower. NIDA believes that this may be caused by the use of over-the-counter stimulants, commonly associated with long hours and shift work. Such use is usually declared acceptable by the MRO. The

Commission collected data from several licensees where onsite testing is conducted to compare those results to the results of GC/MS confirmation testing and MRO-confirmed positives. The licensees were geographically diverse and the data collected does provide an overview of onsite screening tests conducted by these licensees. The degree of agreement between prescreening tests and HHS GC/MS confirmatory tests varies widely by drug type. Using NIDA-established cut-off levels, presumptive positives for cocaine are confirmed by the laboratories almost 90% of the time. For delta-9-tetrahydrocannabinol-9-carboxylic acid (THC), the confirmation rate was 88.5%. These statistics support the acceptability of temporarily taking employment action, up to the point of suspending an individual from unescorted access, based on an unconfirmed positive test result from a drug test for marijuana or cocaine.

Provided licensees maintain a high confirmation rate (85% or higher) for those two illegal drugs, the Commission concludes that employment action up to and including temporary removal from unescorted access or normal work duties is acceptable if measures are taken to limit the negative impact on those individuals (fewer than one out of five) whose onsite positive test results for these two drugs are not confirmed.

3. Comments Concerning Fairness and Individual Rights

Although NUMARC and several licensees opposed the proposed amendment, they pointed out that presumptive positive results from initial screening tests could be caused by the consumption of ordinary food products and over-the-counter medications. NUMARC therefore recommended that licensees be allowed to take precautionary, nondisciplinary action to remove a worker from unescorted access only when the results of initial screening tests are presumptively positive for illegal, nonmedical drugs, specifically cocaine, phencyclidine (PCP), and marijuana.

One licensee disagreed with NUMARC's recommendation and said that removal procedures, no matter how carefully written and implemented, could not adequately prevent tainting an innocent individual's reputation. Several licensees, including two that opposed the amendment, indicated that the program needed to be sensitive to the potential effect on the individual and must include measures to ensure that the individual's reputation and career were not adversely affected. Also, a major contractor commented that

unwarranted removal or temporary suspension had serious detrimental consequences to the individual's reputation and results in other adverse effects on employment. For example, the job duration and urgency of the work may require that a temporarily suspended worker be removed from the job site and be replaced. The contractor concluded that the proposed amendment would provide a reasonable balance between safety and an individual's rights.

Representatives of two international unions having tens of thousands of members working at licensed facilities that are affected by 10 CFR part 26 provided comments that supported the proposed amendment to the fitness-for-duty rule. These unions believe that the proposed rule would provide a degree of fairness to an individual whose result from an initial test may indeed prove erroneous. By prohibiting action on an unconfirmed positive result of an initial screening test, the proposed rulemaking would provide further protection of a worker's reputation and privacy. Other comments from individuals were received that shared this support for the proposed amendment. An individual provided an example where he considered that actions taken with respect to one individual based on an unconfirmed positive result from a test had resulted in damage to that individual's reputation. Another individual stated that the proposed amendment was a step in the right direction and that further actions to protect the individual should be pursued.

The Professional Reactor Operator Society, which represents 890 members, supported the proposed amendment to 10 CFR 26.24(d). The society contended that the rule allowing administrative action on a positive result from a preliminary screening test is an illustration of the philosophy of being guilty until proven innocent and that this philosophy further alienates a highly dedicated and professional workforce that is increasingly sensitive to unwarranted personal attack. The society contended that the current rule has a great potential for "ratchet-prone rule interpreters" to damage an individual's reputation and self-esteem that has contributed greatly to the decline in the number of experienced nuclear professionals and indicates that the nuclear industry is becoming less desirable as a profession for future generations.

NRC Response

The Commission believes that its amendment to 10 CFR 26.24(d) will continue to provide the proper balance between individual rights and the need to protect public health and safety. The Commission has limited licensees' option to take administrative action against employees on the basis of unconfirmed positive screening test results to two illegal drugs provided that the specific reporting location confirmation rate remains high for the drugs in question. In addition, for such administrative actions against the employees, the Commission is providing the following ameliorating actions to minimize the impact on those individuals whose onsite test is not confirmed:

- The option to take action for unconfirmed positive screening test results will be limited to marijuana and/or cocaine and will be confined to those licensees with screening test protocols and controls which provide high levels of accuracy or reliability of 85% or higher;

- Any person removed from his or her position on the basis of an unconfirmed positive screening test must be retained in a pay status pending the results of the test confirmation process;

- No personnel or other record containing information linking the employee to the positive screening test result may be retained when the screening test result is not confirmed;

- Disclosure of a temporary removal or suspension based on a test result not later confirmed is prohibited; and

- Measures are provided to assure that disclosures of unconfirmed tests are not required by the tested individual.

If all locations now using onsite testing adopted the policy permitted by this rule, about 50 individuals per year could be temporarily suspended after random tests and later restored (assuming 90% confirmation for cocaine and 85% for marijuana). However, about 350 individuals per year who are later confirmed positive would be subject to earlier administrative action. A provision has been added to the final rule to assure that data on the number of occasions that this rule provision is exercised, and that the management actions, including appeals, are reported to the Commission as well as information which will allow the Commission to monitor confirmation rates from onsite and HHS-certified laboratory screening processes.

4. Comments Concerning MRO Reviews

Several commenters, including Congressmen Dingell and Bliley and

NUMARC, emphasized the importance of the MRO review in the testing process. NUMARC and several licensees indicated that no disciplinary action should be taken until the MRO's evaluation is completed. Comments from Congressmen Dingell and Bliley indicated that there is a need to clarify the function of the MRO to assess all information associated with the test and determine whether an alternative medical explanation can account for a drug test result.

NRC Response

The Commission recognizes the importance of the MRO review for alternative medical explanations which frequently occur because of dietary habits or the legitimate use of prescription drugs. However, the language of the proposed amendment left this unclear by referring only to the unconfirmed results of an "initial screening test," whereas a positive result reported by an HHS-certified laboratory is also "unconfirmed" until the MRO reviews the result for alternative medical explanations and declares the result a "confirmed positive" or "negative" (except for alcohol). See 10 CFR 26.3, Definitions. Therefore, in response to these comments, the text of the proposed amendment is revised in the final rule to replace the reference to "initial screening test" with "any drug test other than for marijuana (THC) or cocaine." The final rule prohibits disclosure of any temporary suspension which is not confirmed by both a positive result of a GC/MS procedure at an HHS-certified laboratory and an MRO determination that there is no alternative medical explanation.

5. Comments Concerning Detection of Impairment

Two licensees contended that "other evidence" may be difficult to develop because impairment caused by drugs is difficult to detect through behavioral observation.

NRC Response

This issue was discussed extensively during development of the current rule at 53 FR 36797-36804, 53 FR 36807, 54 FR 24469, chapters 4 and 5 of NUREG/CR 5227, and chapter 4 of NUREG/CR 5227, Supplement 1.² In summary, the NRC

² Copies of NUREG/CR-5227 and NUREG/CR-5227, Supplement 1, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the

agrees that behavioral observation alone is not adequate to detect drug use or impairment. However, it can make an important contribution to workplace safety by removing individuals whose behavior gives rise to questions as to their reliability.

6. Comments Concerning Onsite Testing

A licensee that supported the proposed amendment stated that permitting temporary removal of an individual based upon unconfirmed test results would put its existing program in jeopardy and could result also in the loss of the onsite testing option. This licensee reported that delays in granting access caused by the loss of pre-access onsite drug testing could cost it approximately \$15 million annually.

NRC Response

The Commission recognizes that the onsite testing option permits a licensee to develop an efficient process for putting a new person to work, especially during outages. The Commission believes that the final rule change, which, in certain circumstances, permits temporary administrative action against an individual on the basis of unconfirmed onsite positive screening test results for marijuana and/or cocaine, is soundly based and does not place the onsite testing option in jeopardy. This provision is not mandatory and licensees need not adopt a policy of taking temporary administrative action based on unconfirmed onsite positives.

7. Comment Concerning Work/Pay Status

One commenter recommended that the rule should protect an employee's right to receive pay during the interim period between suspension and the completion of the confirmatory testing.

NRC Response

The Commission agrees. The rule requires that there not be any loss of compensation or benefits during the period of any temporary administrative action.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, the NRC has not prepared an environmental impact statement nor an environmental assessment for this final rule.

NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB) under approval number 3150-0146. The amended information collection requirements contained in the final rule will not become effective until after they are approved by the OMB. Notice of OMB approval will be published in the Federal Register.

Regulatory Analysis

The regulations in 10 CFR part 26 establish requirements for licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program.

This final amendment to 10 CFR part 26 clarifies the Commission's previous position that no action should be taken against an individual that is based solely on an unconfirmed positive result from an initial screening test and to permit, under certain conditions, temporary administrative action, up to removal of an individual from unescorted access or from normal duties, based on an unconfirmed positive result from an initial screening test for marijuana or cocaine.

It is estimated that if all locations now using onsite testing adopted the policy permitted by this rule, about 50 individuals per year could be temporarily suspended after random tests and later restored (assuming 90% confirmation for cocaine and 85% for marijuana). However, about 350 individuals per year who are later confirmed positive would be subject to earlier administrative action.

Regulatory Flexibility Act Certification

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

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule. This is a minor modification to a final rule, already published, for which a backfit analysis

was already performed. The indirect costs to workers in this matter was covered by the responses in the final rule to public comments on the backfit analysis in paragraph 19.2.15 at 54 FR 24492.

The final rule also includes minor modifications to the existing requirement to collect and report program performance data, for which a backfit analysis was performed in conjunction with the promulgation of part 26. A negligible incremental burden would result by reporting to the NRC data (i) that licensees are currently required to collect under the existing rule (section 2.7(g) of appendix A) and which NRC needs reported to evaluate the levels of accuracy and reliability achievable through initial screening tests, (ii) on the number of occasions that individuals are removed based upon presumptive positive screening test results under the provisions of this rule change, and (iii) to assure that appeals and their resolution are included in the summary of management actions required to be reported under the existing rule. These minor reporting requirements are reasonably within the scope of the backfit analysis and do not alter its conclusions.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements, and Sanctions.

For the reasons stated in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 26.

PART 26—FITNESS-FOR-DUTY PROGRAMS

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

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 937, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 68 Stat. 1242, 1244, 1245, as amended (42 U.S.C. 5041, 5042, 5046).

For the purposes of sec. 223, 66 Stat. 956, as amended (42 U.S.C. 2273); secs. 26.20, 26.21, 26.22, 26.23, 26.24, 26.25, 26.27, 26.28, 26.29 and 26.80 are issued under sec. 161 (b) and (i), 68 Stat. 948, and 949, as amended (42 U.S.C. 2201 (b) and (i)); secs. 26.70, 26.71, and 26.73 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(e)).

2. In section 26.24, paragraph (d) is revised to read as follows:

§ 26.24 Chemical testing.

(d)(1) Licensees may conduct initial screening tests of an aliquot before forwarding selected specimens to a laboratory certified by the Department of Health and Human Services (HHS), provided the licensee's staff possesses the necessary training and skills for the tasks assigned, the staff's qualifications are documented, and adequate quality controls for the testing are implemented. Quality control procedures for initial screening tests by a licensee's testing facility must include the processing of blind performance test specimens and the submission to the HHS-certified laboratory of a sampling of specimens initially tested as negative. Except for the purposes discussed below, access to the results of preliminary tests must be limited to the licensee's testing staff, the Medical Review Officer (MRO), the Fitness-for-Duty Program Manager, and the employee assistance program staff, when appropriate.

(2) No individual may be removed or temporarily suspended from unescorted access or be subjected to other administrative action based solely on an unconfirmed positive result from any drug test, other than for marijuana (THC) or cocaine, unless other evidence indicates that the individual is impaired or might otherwise pose a safety hazard. With respect to onsite initial screening tests for marijuana (THC) and cocaine, licensee management may be informed and licensees may temporarily suspend individuals from unescorted access or from normal duties or take lesser administrative actions against the individual based on an unconfirmed presumptive positive result provided the licensee complies with the following conditions:

(i) For the drug for which action will be taken, at least 85 percent of the specimens which were determined to be presumptively positive as a result of preliminary onsite screening tests during the last 6-month data reporting period submitted to the Commission under § 26.71(d) were subsequently reported as positive by the HHS-certified laboratory as the result of a GC/MS confirmatory test.

(ii) There is no loss of compensation or benefits to the tested person during the period of temporary administrative action.

(iii) Immediately upon receipt of a negative report from the HHS-certified laboratory, any matter which could link the individual to a temporary suspension is eliminated from the tested individual's personnel record or other records.

(iv) No disclosure of the temporary removal or suspension of, or other administrative action against, an individual whose test is not subsequently confirmed as positive by the MRO may be made in response to a suitable inquiry conducted under the provisions of § 26.27(a), a background investigation conducted under the provisions of § 73.56, or to any other inquiry or investigation. For the purpose of assuring that no records have been retained, access to the system of files and records must be provided to licensee personnel conducting appeal reviews, inquiries into an allegation, or audits under the provisions of § 26.80, or to an NRC inspector or other Federal officials. The tested individual must be provided a statement that the records in paragraph (d)(2)(iii) of this section have not been retained and must be informed in writing that the temporary removal or suspension or other administrative action that was taken will not be disclosed, and need not be disclosed by the individual, in response to requests for information concerning removals, suspensions, administrative actions or history of substance abuse.

3. In § 26.71, paragraph (d) is revised to read as follows:

§ 26.71 Recordkeeping requirements.

(d) Collect and compile fitness-for-duty program performance data on a standard form and submit this data to the Commission within 60 days of the end of each 6-month reporting period (January-June and July-December). The data for each site (corporate and other support staff locations may be separately consolidated) must include: random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by population, process stage (i.e., onsite screening, laboratory screening, confirmatory tests, and MRO determinations), and type of test (i.e., prebadging, random, for-cause, etc.); substances identified; the number of temporary suspensions or other administrative actions taken against individuals based on onsite presumptive positives for marijuana (THC) and for cocaine; summary of management actions, including appeals and their resolutions; and a list of events reported. The data must be analyzed and appropriate actions taken to correct program weaknesses. The data and analysis must be retained for 3 years.

4. In section 2.7 of appendix A to part 26, paragraph (g)(2) is revised to read as follows:

Appendix A to Part 26—Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs

2.7 Laboratory and Testing Facility Analysis Procedures.

(g) "Regarding Results."

(2) The HHS-certified laboratory and any licensee testing facility shall report as negative all specimens, except suspect specimens being analyzed under special processing, which are negative on the initial test or negative on the confirmatory test. Specimens testing positive on the confirmatory analysis shall be reported positive for a specific substance. Except as provided in § 26.24(d), presumptive positive results of preliminary testing at the licensee's testing facility will not be reported to licensee management.

Dated at Rockville, Maryland, this 19th day of August, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-20241 Filed 8-23-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-57-AD; Amendment 39-8014; AD 91-18-11]

Airworthiness Directives; Beech 100 and 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech 100 and 200 series airplanes. This action requires a one-time inspection and modification of the aft cowling doors of both engine nacelles. There have been 11 reports of aft cowling doors separating from the airplane. The separated engine cowling doors in some instances have struck the fuselage, wing, empennage, cabin windows, and other parts of the airplane, which caused depressurization, fuel leaks, and/or structural damage. The actions specified by this AD are intended to prevent separation of an aft cowling door that could result in occupant injury if

decompression or structural damage occurs.

DATES: Effective September 3, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 1991.

Comments for inclusion in the Rules Docket must be received on or before November 15, 1991.

ADDRESSES: Beech Mandatory Service Bulletin No. 2416, dated July 1991, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91-CE-57-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64108.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION: There have been 11 reports of aft cowling doors separating from certain Beech 100 and 200 series airplanes. The separated engine cowling doors in some instances have struck the fuselage, wing, empennage, cabin windows, and other parts of the airplane. This has caused depressurization, fuel leaks, and/or structural damage to the airplane. Structural damage has included the leading edge of the vertical stabilizer, the leading edge of the horizontal stabilizer, the elevator, and the elevator trim tab. These 11 incidents resulted in complete separations of an aft cowling door from the airplane.

The manufacturer, Beech, has issued Mandatory Service Bulletin (SB) No. 2416, dated July 1991, which specifies procedures for inspecting and modifying the aft cowling doors of both engine nacelles on certain Beech 100 and 200 series airplanes. After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that the inspection and modification specified in the above service bulletin must be accomplished in order to continue to assure the airworthiness of the affected airplanes.

Since the condition described is likely to exist or develop in certain other Beech 100 and 200 series airplanes of the same type design, an airworthiness directive is being issued that specifies

actions that will prevent separation of an aft cowling door that could result in occupant injury if decompression or structural damage occurs. The action requires a one-time inspection of the aft cowling door stiffeners for cracking, and repair or replacement if found cracked, and a modification to the aft cowling doors of both engine nacelles. The actions are to be done in accordance with the instructions in Beech Mandatory SB 2416, dated July 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

AD 91-18-11 Beech: Amendment 39-8014; Docket No. 91-CE-57-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Numbers
200 and B200	BB-2 and BB-6 through BB-1404
200C and B200C	BL-1 through BL-72 and BL-124 through BL-137
200CT and B200CT	BN-1 through BN-4
200T and B200T	BT-1 through BT-33
A100-1 (U-21J)	BB-3, BB-4, and BB-5
A200 (C-12A)	BC-1 through BC-75
A200 (C-12C)	BD-1 through BD-30
A200C (UC-12B)	BJ-1 through BJ-66
A200CT (C-12D)	BP-1, BP-22, and BP-24 through BP-51
A200CT (FWC-12D)	BP-7 through BP-11
A200CT (RC-12D)	GR-1 through GR-13
A200CT (C-12F)	BP-52 through BP-71
A200CT (RC-12G)	FC-1, FC-2, and FC-3
A200CT (RC-12H)	GR-14 through GR-19
B200C (C-12F)	BL-73 through BL-112 and BL-118 through BL-123
B200C (UC-12F)	BU-1 through BU-10
B200C (RC-12F)	BU-11 and BU-12
B200C (UC-12M)	FC-1, FC-2, and FC-3
B200C (RC-12M)	BV-11 and BV-12

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent separation of the aft cowling doors that could result in occupant injury if decompression or structural damage occurs, accomplish the following:

(a) Inspect and modify the aft engine cowling doors of both engine nacelles in accordance with Accomplishment Instructions 1. through 6. of Beech Mandatory Service Bulletin No. 2416, dated July 1991.

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

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

(d) The inspections and modifications required by this AD shall be done in accordance with Beech Mandatory Service Bulletin No. 2416, dated July 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW, room 8401, Washington, DC. This amendment becomes effective on September 3, 1991.

Issued in Kansas City, Missouri, on August 8, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-20376 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-155-AD; Amdt. 39-8016; AD 91-15-51]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91-15-51, which was previously made effective as to all known U.S. owners and operators

of de Havilland Model DHC-8-100 series airplanes by individual telegrams. This AD requires a one-time inspection of the main landing gear (MLG) actuator attachment bolts to detect loose bolts, and replacement of the bolts, if necessary. This action is prompted by a report of in-flight loss of all hydraulic power on a de Havilland Model DHC-8-100 series airplane. This condition, if not corrected, could result in severely reduced controllability of the airplane.

EFFECTIVE DATES: Effective September 9, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD 91-15-51, issued July 19, 1991, which contained this amendment.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: On July 19, 1991, the FAA issued telegraphic AD 91-15-51, applicable to all de Havilland Model DHC-8-100 series airplanes, which requires a one-time inspection of the MLG actuator attachment bolts to detect loose bolts, and replacement of the bolts, if necessary. That action was prompted by a recent report of in-flight loss of all hydraulic power on a de Havilland Model DHC-8-100 series airplane. Following landing, investigation revealed that a failed bolt caused the bracket supporting an MLG retract actuator to come loose, allowing unrestricted actuator movement, and resulting in damage to adjacent hydraulic lines. This condition, if not corrected, could result in severely reduced controllability of the airplane.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, this airworthiness directive is issued to require a one-time inspection of the MLG actuator attachment bolts to detect loose bolts, and replacement of the bolts, if necessary.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on July 19, 1991, to all known U.S. owners and

operators of de Havilland Model DHC-8-100 series airplanes. These conditions still exist, and the AD is hereby published in the *Federal Register* as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-15-51. Boeing of Canada, Ltd., de Havilland Division: Amendment 39-8016. Docket No. 91-NM-155-AD.

Applicability: Model DHC-8-100 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent severely reduced controllability of the airplane, accomplish the following:

(a) Within 24 hours after the effective date of this AD, inspect the three actuator attachment bolts on each of the right-hand and left-hand main landing gears to detect loose bolts by applying a torque of not less than 10 foot-pounds to each bolt.

(b) Replace loose bolts with new bolts of the same part number prior to further flight.

(c) Report findings, positive or negative, to the Manager, New York Aircraft Certification Office, ANE-170, FAA, Engine and Propeller Directorate. Information collection requirements contained in this regulation 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) and have been assigned OMB Control Number 2120-0056.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, Engine and Propeller Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

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

This amendment (39-8016, AD 91-15-51) becomes effective September 9, 1991, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD 91-15-51, issued July 19, 1991, which contained this amendment.

Issued in Renton, Washington, on August 12, 1991.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 91-20375 Filed 8-23-91; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 26613; Amdt. No. 365]

IFR Altitudes: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory

actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft under IFR on a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight

safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC, on August 16, 1991.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 365 EFFECTIVE DATE, SEPTEMBER 19, 1991

FROM	TO	MEA	FROM	TO	MEA
§			§95.6213 VOR FEDERAL AIRWAY 213 IS AMENDED TO READ IN PART		
§95.1001 DIRECT ROUTES-U.S.95.48 GREEN FEDERAL AIRWAY 8 IS AMENDED TO READ IN PART			WILMINGTON, NC VORTAC	HELNA, NC FIX	*5000
CAMPBELL LAKE, AK NDB	GLENNALLEN, AK NDB	10200	*1500 - MOCA		
GLENNALLEN, AK NDB	NABESNA, AK NDB	10000	HELNA, NC FIX	WALLO, NC FIX	*5000
			*1500 - MOCA		
			TAR RIVER, NC VORTAC	GUMBE, NC FIX	2000
			GUMBE, NC FIX	HOPEWELL, VA VORTAC	*2000
			*1500 - MOCA		
§95.6035 VOR FEDERAL AIRWAY 35 IS AMENDED TO READ IN PART			§95.6220 VOR FEDERAL AIRWAY 220 IS AMENDED TO READ IN PART		
DORMY, FL FIX	DEEDS, FL FIX	**5000	MCJEF, NE FIX	MC COOK, NE VOR/DME	*7500
*4000 - MRA			*5000 - MOCA		
**1300 - MOCA					
DEEDS, FL FIX	*GENER. FL FIX	2200			
*4000 - MRA					
GENER. FL FIX	LEE COUNTY, FL VORTAC	2200			
§95.6044 VOR FEDERAL AIRWAY 44 IS AMENDED TO READ IN PART			§95.6231 VOR FEDERAL AIRWAY 231 IS AMENDED TO READ IN PART		
BALTIMORE, MD VORTAC	PALEO, MD FIX	2200	ARLEE, MT FIX	*JESSY, MT FIX	**11000
PALEO, MD FIX	CANNY, DE FIX	7000	*13000 - MCA JESSY FIX, N BND		
CANNY, DE FIX	SEA ISLE, NJ VORTAC	6000	**9200 - MOCA		
			JESSY, MT FIX	*SKOTT, MT FIX	**13000
			*12000 - MRA		
			**8700 - MOCA		
			SKOTT, MT FIX	KALISPELL, MT VOR/DME	
				N BND	*8500
				S BND	*10000
			*6900 - MOCA		
§95.6070 VOR FEDERAL AIRWAY 70 IS AMENDED TO READ IN PART			§95.6263 VOR FEDERAL AIRWAY 263 IS AMENDED BY ADDING		
WILMINGTON, NC VORTAC	GOLLA, NC FIX	*5000	CORONA, NM VORTAC	ENCIA, NM FIX	9700
*1500 - MOCA			ENCIA, NM FIX	ALBUQUERQUE, NM	8000
GOLLA, NC FIX	BEULA, NC FIX	*5000		VORTAC	
*1500 - MOCA					
BEULA, NC FIX	KINSTON, NC VORTAC	*2000			
*1500 - MOCA					
§95.6085 VOR FEDERAL AIRWAY 85 IS AMENDED TO READ IN PART			§95.6289 VOR FEDERAL AIRWAY 289 IS AMENDED TO READ IN PART		
MUDDY MOUNTAIN, WY VORTAC	RIVERTON, WY VOR/DME	8500	MULBY, AR FIX	HARRISON, AR VOR/DME	4000
§95.6093 VOR FEDERAL AIRWAY 93 IS AMENDED TO READ IN PART			§95.6343 VOR FEDERAL AIRWAY 343 IS AMENDED TO READ IN PART		
GRACO, MD FIX	PALEO, MD FIX	2200	*DUBOIS, ID VORTAC	RANEY, MT FIX	**15000
PALEO, MD FIX	BALTIMORE, MD VORTAC	2200	*8500 - MCA DUBOIS VORTAC, N BND		
			**13200 - MOCA		
			BOZEMAN, MT VOR/DME	THESE, MT FIX	8000
			THESE, MT FIX	DRUMMOND, MT VOR	10800
§95.6145 VOR FEDERAL AIRWAY 145 IS AMENDED TO READ IN PART					
WATERTOWN, NY VORTAC	U.S. CANADIAN BORDER	*3000			
*1700 - MOCA					

FROM TO MEA FROM TO
§95.6423 VOR FEDERAL AIRWAY 423
IS AMENDED TO READ IN PART

§95.6573 VOR FEDERAL AIRWAY 573
IS AMENDED TO READ IN PART

WATERTOWN, NY VORTAC U.S. CANADIAN BORDER *3000
*1800 - MOCA

PIKES, AR FIX MARKI, AR FIX
*2100 - MOCA

§95.6527 VOR FEDERAL AIRWAY 527
IS AMENDED TO READ IN PART

CASKS, AR FIX RAZORBACK, AR VORTAC 4000

FROM	TO	MEA	MAA
§95.7063 JET ROUTE NO. 63			
IS AMENDED BY ADDING			
SYRACUSE, NY VORTAC	U.S. CANADIAN BORDER	18000	45000
U.S. CANADIAN BORDER	AU SABLE, MI VORTAC	18000	45000
AU SABLE, MI VORTAC	TRAVERSE CITY, MI VORTAC	18000	45000
§95.7121 JET ROUTE NO. 121			
IS AMENDED TO READ IN PART			
CHARLESTON, SC VORTAC	KINSTON, NC VORTAC	18000	45000
KINSTON, NC VORTAC	NORFOLK, VA VORTAC	18000	45000
§95.7151 JET ROUTE NO. 151			
IS AMENDED BY ADDING			
CROSS CITY, FL VORTAC	VULCAN, AL VORTAC	26000	45000
§95.7522 JET ROUTE NO. 522			
IS AMENDED TO READ IN PART			
TRAVERSE CITY, MI VORTAC	AU SABLE, MI VORTAC	18000	45000
AU SABLE, MI VORTAC	U.S. CANADIAN BORDER	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-343			
IS AMENDED TO READ IN PART			
DUBOIS, ID VORTAC	BOZEMAN, MT VOR/DME	60	DUBOIS
V-531			
IS AMENDED TO READ IN PART			
POINT HOPE, AK NDB	KOTZEBUE, AK VOR/DME	15	POINT HOPE

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT

CHANGEOVER POINTS

FROM

TO

DISTANCE

FROM

J-121

IS AMENDED BY ADDING

CHARLESTON, SC VORTAC

KINSTON, NC VORTAC

128

CHARLESTON

[FR Doc. 91-20377 Filed 8-23-91; 8:45 am]

BILLING CODE 4810-13-C

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of Assistant Secretary for
Community Planning and
Development**

24 CFR Part 570

[Docket No. R-91-1548; FR-3049-F-01]

RIN 2501-AA96

**Technical Assistance Special Purpose
Grants**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the Community Development Block Grant program provisions in 24 CFR part 570 governing technical assistance awards (§ 570.402) and formula miscalculation grants (§ 570.406). The purpose of this rule is to complete the implementation of changes in CDBG program authorities provided for in section 105 of the Department of Housing and Urban Development Reform Act of 1989. Previous publications associated with the implementation of section 105 are noted in the Background section of the preamble.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Lyn T. Whitcomb, Director, Technical Assistance Division, Office of Technical Assistance, Office of Community Planning and Development, voice (202) 708-2090, TDD (202) 708-2565. (These are not toll free numbers).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The procurement and assistance requirements for the Technical Assistance Program have been approved under OMB Control Numbers 2535-0091 and 2535-0084, respectively.

Background

On December 11, 1989, HUD published a proposed rule (54 FR 50953) to amend the Technical assistance awards program regulations at 24 CFR 570.402, authorized by section 107 of title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5307. On August 8, 1990, HUD republished the entire proposed § 570.402 rule (55 FR 32356), revised to incorporate amendments

regarding certain publication requirements for technical assistance recipients made to the program by section 105(b)(5) of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, approved December 15, 1989. The August 8, 1990, publication also included several other rule-amendment proposals implementing additional amendments made to section 107 by section 105 of the Reform Act, including, primarily, the addition of the new grants program for Historically Black Colleges and Universities. These latter amendments have been published separately as a final rule on April 24, 1991 (56 FR 18966). Today's final rule consists of § 570.402 Technical assistance awards, and § 570.406, Formula miscalculation grants, which were not included in the April 24, 1991 final rule publication.

Public Comments on § 570.402, Technical Assistance Awards

Comments on the technical assistance rule were received from ten commenters. Of these, eight were colleges and universities which also submitted comments on the simultaneously published proposed rule on grants for Historically Black Colleges and Universities. (See Background.) The other commenters were a State agency and a former HUD official.

Unsolicited Proposals

A commenter suggested setting a time limit on unsolicited applications and batching them for selection on a competitive basis. The Department agrees that awards should be made on a competitive basis. It finds the unsolicited proposal process to be inconsistent with this policy, and has eliminated the entire unsolicited proposal process from the final regulation.

Funding Priorities

A commenter suggested that the list of seven specific priorities for funding applications in § 570.402(d) of the proposed rule does not reflect the basic rationale for the provision of technical assistance, namely, improving the capacity of CDBG recipients in the most effective use of CDBG funds. This relationship to the CDBG program is expressed in the introductory "purpose" paragraph of § 570.402(a). Furthermore, the definition of technical assistance in § 570.402(b)(2) makes the required relationship to the CDBG program inherent in any technical assistance eligible for funding. However, in view of the elimination of the unsolicited

proposal process from the rule, the regulation has been revised to eliminate the list of specific priorities, since for solicited applications HUD will publish in a Notice of Funding Availability (NOFA) the specific purpose for which a particular funding competition is providing funds.

Agreements With Other Federal Agencies

A commenter mentioned that the development of funding arrangements with other Federal agencies would be difficult to infer from the proposed rule. In response to this comment, the use of agreements with other Federal agencies as a permissible means of providing technical assistance funding has been expressly added to the final regulation in § 570.402(a)(3).

Technical Assistance for Additional Programs

A commenter suggested that the required nexus between technical assistance and the CDBG program should be broadened to include all programs funded by HUD. The provision of technical assistance under this regulation is statutorily limited to the purposes of the CDBG and Urban Homesteading programs and for that reason implementation of the commenter's suggestion cannot be considered.

Letters of Designation

Two commenters submitted recommendations regarding the requirement, in § 570.402(c), for letters of designation from the chief executive officers of the units of general local government to receive technical assistance from a public or private nonprofit or for-profit group. One of the commenters suggested that letters of designation from agency or department heads be permitted because chief executive officers are too inaccessible and have inadequate knowledge of community needs, or preferably, that the designation requirement not be imposed at all, so that the recipients of technical assistance grants can decide where the assistance is most needed. The designation requirement, which is also in the current regulation, only applies where nonprofit or for-profit organizations are the recipients of technical assistance funds. Since the authority to fund these organizations under the provisions of section 107 is to assist States and local governments in planning and operating the CDBG program, the requirement is to assure

that the technical assistance is being provided by an organization and for a purpose to which the State or local government consents. The Department believes the requirement is appropriate to implement the statutory authority for funding such organizations.

A State agency objected to the requirement that letters of designation must be submitted at the time of application for funding, since it necessitates the pre-selection of communities to be assisted long before precise needs effectively can be identified. In response to the comment, it should be noted that the requirement for the designation does not apply to government applicants for funding, but only to public or private nonprofit or for-profit groups. However, since the timing requirement for submission of the designation with the funding application only applied to unsolicited proposals under § 570.402(g)(3)(vi), and since the final rule has been changed to eliminate funding of unsolicited proposals, the requirement that letters of designation be submitted with such proposals concomitantly has been eliminated. In the case of solicited applications, the NOFA will set forth any requirements for the submission of designations with the application by applicants which are public or private nonprofit or for-profit groups. Where the NOFA does not require the application to identify the units of government for which the technical assistance is to be provided, the applicants will be required, after receiving HUD funding approval, to select the units of government for which they will provide technical assistance pursuant to § 570.402(j). States, units of government or Indian tribes that are so selected will make any required designations at that time.

Nonprofit-Community-Groups as Recipients

A commenter suggested that the regulation be made more specific in designating nonprofit community groups and organizations as eligible recipients of technical assistance. Technical assistance may be provided to such groups and organizations to increase the effectiveness of local governments in planning, developing or administering their CDBG or Urban Homesteading programs. In such cases, the technical assistance is provided to assist eligible groups and organizations to participate more effectively in the programs. Section 570.402(j) has been revised to clarify this.

Eligible Activities

Several commenters requested that the listing of eligible activities be

broadened to include the following additional activities: Training "tangential" to affordable housing, such as infrastructure requirements, growth management and developing alternative sources of revenue; data collection and analysis activities; research affecting local empowerment and job creation; community development education programs on matters such as lead-based paint poisoning, mortgage default counseling and legal services for the elderly regarding home improvement fraud; and the provision of technical assistance to eligible nonprofit subrecipients in how to obtain CDBG funding from local governments and States.

Some of the suggested activities can be eligible under the regulation if carried out in the proper CDBG or Urban Homesteading program context. The statute authorizes funding "for the purpose of" those programs, and defines technical assistance as facilitating skills and knowledge in planning, developing, administering and assessing program activities. The regulation, which reflects this required nexus in § 570.402(a)(2), therefore provides that technical assistance in other areas is ineligible for funding, even though it may also provide a tangential or incidental benefit or effect with respect to planning or carrying out CDBG program activities. The suggested activity of providing technical assistance in developing alternative resources is an example of such an ineligible activity. While alternative resources are beneficial to the CDBG program by conserving CDBG funds for activities which might otherwise not be funded, the program does not have a local share requirement, and the skills and knowledge would not be in planning or developing the CDBG program or activities.

Technical assistance tangential to affordable housing, such as infrastructure requirements and growth management, would be eligible if the skills and knowledge are in areas of public facilities or improvements, or planning, management and capacity building activities, which the local government expects to carry out with CDBG assistance. In this connection, HUD may require commitment letters from local governments, stating their intention to use CDBG funds to carry out activities for which technical assistance is to be provided.

The collection and analysis of data would not generally be an eligible technical assistance activity unless it were done directly for the purpose of improving a locality's CDBG program. The fact that general information to be

obtained could also be of use to the CDBG program is insufficient to make the activity eligible. It should be noted that technical assistance is essentially the transfer of expert knowledge possessed by the provider to a CDBG participant. HUD will not, therefore, pay for the cost of establishing the provider's technical assistance capacity, including the cost of acquiring the skills and knowledge to be provided. For this reason, as well as the lack of a sufficient nexus to the CDBG program, the suggestion to make research affecting local empowerment and job creation eligible has not been adopted, and research continues to be listed as an ineligible activity in the regulation.

The suggested activity of community development education programs on such matters as lead-based paint poisoning, mortgage default counseling and legal services to the elderly regarding home improvement fraud, is not eligible because it would constitute simply the carrying out of a public service activity eligible under the CDBG program. While technical assistance can be used to provide expert assistance on how to plan or carry out CDBG activities effectively, including by demonstration of the needed skills and knowledge, funding is not eligible for the operation of the CDBG program by the carrying out of actual program activities. The regulation therefore continues to list this as an ineligible technical assistance activity.

The suggested activity of assisting nonprofit subrecipients in how to obtain CDBG funding is expressly mentioned in § 570.402(a)(2) as meeting the CDBG nexus requirement and is already eligible.

Published Criteria for Selection of Recipients

Three commenters expressed views on the requirement for publication of the criteria to be used by technical assistance providers in selecting recipients of the technical assistance. One commenter was concerned whether the cost of the publication would be included in calculating the provider's budget. Where the publication is required, the cost will be an eligible part of the budget. Another commenter stated that the requirement would prevent revisions to the technical assistance services being provided to designated communities. The point intended to be made by the commenter is not clear. Where the recipient of the technical assistance is already designated at the time of the funding approval, the publication requirement does not apply; and where a recipient of

the technical assistance was selected under the published criteria, no distinction is made where revisions are requested to the HUD approved technical assistance services. In both instances, the technical assistance provider must obtain written HUD approval to amend the work tasks described in the funding award. A third commenter stated that the technical assistance providers should participate in the formulation of the criteria and procedures made applicable to selection of recipients of technical assistance through the publication process. While the criteria for selecting recipients of technical assistance will generally depend on the HUD technical assistance objectives announced in the NOFA, the Department will consider, in prescribing the terms of the funding award as provided in § 570.402(j), the criteria proposed by the applicant for technical assistance funding.

Public Comments on § 570.406, Formula Miscalculation Grants

No comments were received on the proposed rule for formula miscalculation grants, and the final rule makes no changes to the proposed rule.

Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, Federalism, has determined that the policies proposed in this proposed rule would not have Federalism implications when implemented and, thus, are not subject to review under the Order. Nothing in the rule implies any preemption of State or local law, not does any provision of the rule disturb the existing relationship between the Federal government and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, has determined that this rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

NEPA

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30

p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12291

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities, inasmuch as the entities funded under this program will be relatively few in number. Consequently, HUD does not believe that a significant number of small entities will be affected by this program. The application requirements associated with funding under the program have been kept to the minimum necessary for administration of grant funds, and the Department does not believe it is necessary or appropriate to alter these requirements as they apply to small entities who may be prospective grantees.

Semiannual Agenda of Regulations

This rule was listed as item number 1350 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360), under Executive Order 12291 and the Regulatory Flexibility Act.

The Technical Assistance Special Purpose Grants is listed in the Catalog of Federal Domestic Assistance under number 14.227.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: Housing and community development, Technical Assistance, Small cities, Housing.

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—[AMENDED]

1. The authority citation for 24 CFR part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. 24 CFR part 570 is amended by revising the heading and the section headings to subpart E (§§ 570.400-570.415) to read as follows:

Subpart E—Special Purpose Grants

Sec.
570.400 General
570.402 Technical assistance awards.
570.403 New communities.
570.404 Historically Black colleges and universities program.
570.405 The insular areas.
570.406 Formula miscalculation grants.
570.410 Special projects program.
570.415 Community development work study program.

3. Section 570.402 is revised to read as follows:

§ 570.402 Technical assistance awards.

(a) *General.* (1) The purpose of the Community Development Technical Assistance Program is to increase the effectiveness with which States, units of general local government, and Indian tribes plan, develop, and administer assistance under Title I and section 810 of the Act. Title I programs are the Entitlement Program (24 CFR part 570, subpart D); the section 108 Loan Guarantee Program (24 CFR part 570, subpart M); the Urban Development Action Grant Program (24 CFR part 570, subpart G); the HUD-administered Small Cities Program (24 CFR part 570, subpart F); the State-administered Program for Non-Entitlement Communities (24 CFR part 570, subpart I); the grants for Indian Tribes program (24 CFR part 571); and the Special Purpose Grants for Insular Areas, Community Development Work Study and Historically Black Colleges and Universities (24 CFR part 570, subpart E). The section 810 program is the Urban Homesteading Program (24 CFR part 590).

(2) Funding under this section is awarded for the provision of technical expertise in planning, managing or carrying out such programs including the activities being or to be assisted thereunder and other actions being or to be undertaken for the purpose of the program, such as increasing the effectiveness of public service and other activities in addressing identified needs, meeting applicable program requirements (e.g., citizen participation, nondiscrimination, OMB Circulars), increasing program management or capacity building skills, attracting business or industry to CDBG assisted economic development sites or projects, assisting eligible CDBG subrecipients

such as neighborhood nonprofits or small cities in how to obtain CDBG funding from cities and States. The provision of technical expertise in other areas which may have some tangential benefit or effect on a program is insufficient to qualify for funding.

(3) Awards may be made pursuant to HUD solicitations for assistance applications or procurement contract proposals issued in the form of a publicly available document which invites the submission of applications or proposals within a prescribed period of time. HUD may also enter into agreements with other Federal agencies for awarding the technical assistance funds:

(i) Where the Secretary determines that such funding procedures will achieve a particular technical assistance objective more effectively and the criteria for making the awards will be consistent with this section, or

(ii) The transfer of funds to the other Federal agency for use under the terms of the agreement is specifically authorized by law. The Department will not accept or fund unsolicited proposals.

(b) *Definitions.* (1) *Areawide planning organization (APO)* means an organization authorized by law or local agreement to undertake planning and other activities for a metropolitan or non-metropolitan area.

(2) *Technical assistance* means the facilitating of skills and knowledge in planning, developing and administering activities under Title I and section 810 of the Act in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under Title I.

(c) *Eligible applicants.* Eligible applicants for award of technical assistance funding are:

(1) States, units of general local government, APOs, and Indian Tribes; and

(2) Public and private non-profit or for-profit groups, including educational institutions, qualified to provide technical assistance to assist such governmental units to carry out the Title I or Urban Homesteading programs. An applicant group must be designated as a technical assistance provider to a unit of government's Title I program or Urban Homesteading program by the chief executive officer of each unit to be assisted, unless the assistance is limited to conferences/workshops attended by more than one unit of government.

(d) *Eligible Activities.* Activities eligible for technical assistance funding include:

(1) The provision of technical or advisory services;

(2) The design and operation of training projects, such as workshops, seminars, or conferences;

(3) The development and distribution of technical materials and information; and

(4) Other methods of demonstrating and making available skills, information and knowledge to assist States, units of general local government, or Indian Tribes in planning, developing, administering or assessing assistance under Title I and Urban Homesteading programs in which they are participating or seeking to participate.

(e) *Ineligible activities.* Activities for which costs are ineligible under this section include:

(1) In the case of technical assistance for States, the cost of carrying out the administration of the State CDBG program for non-entitlement communities;

(2) The cost of carrying out the activities authorized under the Title I and Urban Homesteading programs, such as the provision of public services, construction, rehabilitation, planning and administration, for which the technical assistance is to be provided;

(3) The cost of acquiring or developing the specialized skills or knowledge to be provided by a group funded under this section;

(4) Research activities;

(5) The cost of identifying units of governments needing assistance (except that the cost of selecting recipients of technical assistance under the provisions of paragraph (k) is eligible); or

(6) Activities designed primarily to benefit HUD, or to assist HUD in carrying out the Department's responsibilities; such as research, policy analysis of proposed legislation, training or travel of HUD staff, or development and review of reports to the Congress.

(f) *Criteria for competitive selection.* In determining whether to fund competitive applications or proposals under this section, the Department will use the following criteria:

(1) *For solicited assistance applications.* The Department will use two types of criteria for reviewing and selecting competitive assistance applications solicited by HUD:

(i) *Evaluation Criteria:* These criteria will be used to rank applications according to weights which may vary with each competition:

(A) Probable effectiveness of the application in meeting needs of localities and accomplishing project objectives;

(B) Soundness and cost-effectiveness of the proposed approach;

(C) Capacity of the applicant to carry out the proposed activities in a timely and effective fashion;

(D) The extent to which the results may be transferable or applicable to other title I or Urban Homesteading program participants.

(ii) *Program Policy Criteria:* These factors may be used by the selecting official to select a range of projects that would best serve program objectives for a particular competition:

(A) Geographic distribution;

(B) Diversity of types and sizes of applicant entities; and

(C) Diversity of methods, approaches, or kinds of projects.

The Department will publish a Notice of Fund Availability (NOFA) in the Federal Register for each competition indicating the objective of the technical assistance, the amount of funding available, the application procedures, including the eligible applicants and activities to be funded, any special conditions applicable to the solicitation, including any requirements for a matching share or for commitments for CDBG or other title I funding to carry out eligible activities for which the technical assistance is to be provided, the maximum points to be awarded each evaluation criterion for the purpose of ranking applications, and any special factors to be considered in assigning the points to each evaluation criterion. The Notice will also indicate which program policy factors will be used, the impact of those factors on the selection process, the justification for their use and, if appropriate, the relative priority of each program policy factor.

(2) *For competitive procurement contract bids/proposals.* The Department's criteria for review and selection of solicited bids/proposals for procurement contracts will be described in its public announcement of the availability of an Invitation for Bids (IFB) or a Request for Proposals (RFP). The public notice, solicitation and award of procurement contracts, when used to acquire technical assistance, shall be procured in accordance with the Federal Acquisition Regulation (48 CFR chapter 1) and the HUD Acquisition Regulation (48 CFR chapter 24).

(g) *Submission procedures.* Solicited assistance applications shall be submitted in accordance with the time and place and content requirements described in the Department's NOFA. Solicited bids/proposals for procurement contracts shall be submitted in accordance with the requirements in the IFB or RFP.

(h) *Approval procedures—(1) Acceptance.* HUD's acceptance of an

application or proposal for review does not imply a commitment to provide funding.

(2) *Notification.* HUD will provide notification of whether a project will be funded or rejected.

(3) *Form of award.* (i) HUD will award technical assistance funds as a grant, cooperative agreement or procurement contract, consistent with this section, the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301-6308, the HUD Acquisition Regulation, and the Federal Acquisition Regulation.

(ii) When HUD's primary purpose is the transfer of technical assistance to assist the recipients in support of the Title I or Section 810 programs, an assistance instrument (grant or cooperative agreement) will be used. A grant instrument will be used when substantial Federal involvement is not anticipated. A cooperative agreement will be used when substantial Federal involvement is anticipated. When a cooperative agreement is selected, the agreement will specify the nature of HUD's anticipated involvement in the project.

(iii) A contract will be used when HUD's primary purpose is to obtain a provider of technical assistance to act on the Department's behalf. In such cases the Department will define the specific tasks to be performed. However, nothing in this section shall preclude the Department from awarding a procurement contract in any other case when it is determined to be in the Department's best interests.

(4) *Administration.* Project administration will be governed by the terms of individual awards and relevant regulations. As a general rule, proposals will be funded to operate for one to two years, and periodic and final reports will be required.

(i) *Environmental and intergovernmental review.* The requirements for Environmental Reviews and Intergovernmental Reviews do not apply to technical assistance awards.

(j) *Selection of recipients of technical assistance.* Where under the terms of the funding award the recipient of the funding is to select the recipients of the technical assistance to be provided, the funding recipient shall publish, and publicly make available to potential technical assistance recipients, the availability of such assistance and the specific criteria to be used for the selection of the recipients to be assisted. Selected recipients must be entities participating or planning to participate in the Title I or Urban Homesteading programs or activities for which the technical assistance is to be provided.

(Approved under OMB Control Numbers 2535-0085 and 2535-0084)

4. Section 570.406 is revised to read as follows:

§ 570.406 Formula miscalculation grants.

(a) *General.* Grants under this section will be made to States and units of general local government determined by the Secretary to have received insufficient amounts under section 106 of the Act as a result of a miscalculation of its share of funds under such section.

(b) *Application.* Since the grant is to correct a technical error in the formula amount which should have been awarded under section 106, no application is required.

(c) *Use of funds.* The use of funds shall be subject to the requirements, certifications and Final Statement otherwise applicable to the grantee's section 106 grant funds provided for the fiscal year in which the grant under this section is made.

(d) *Unavailability of funds.* If sufficient funds are not available to make the grant in the fiscal year in which the Secretary makes the determination required in paragraph (a) of this section, the grant will be made, subject to the availability of appropriations for this Subpart, in the next fiscal year.

§ 570.407 [Removed]

5. Section 570.407 is removed.

Dated: July 8, 1991.

S. Anna Kondratas,
Assistant Secretary for Community Planning
and Development.

[FR Doc. 91-20300 Filed 8-23-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 255

RIN 0790-AC06

[DoD Directive 6040.37]

Confidentiality of Medical Quality Assurance (QA) Records

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense has given high priority to the establishment and continuation of medical quality assurance programs throughout the military medical care system. An effective quality assurance program is predicated on peer assessment of professional practice. In order to foster participation in

meaningful discussion and critical review of care, it is essential that the confidentiality of peer review processes be protected. In 1987, Congress provided confidentiality for medical quality assurance documents in the DoD Authorization Act recognizing that confidentiality is important to prevent public disclosure of facts and opinions that might cause harm to participants in the process of quality assurance activities. At the same time, allowance is made for disclosure of specified information when required for authorized quality monitoring, patient safety, or administrative functions. This rule adheres closely to the specific provisions of the statute. Due to an administrative oversight, this rule was not previously published as a final rule.

EFFECTIVE DATE: August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Lt. Col. P. Timothy Ray, (703) 695-8800.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 255

Armed forces, Health care, Health records, Privacy.

Accordingly, title 32 CFR, chapter I, subpart M, is amended to add part 255 to read as follows:

PART 255—CONFIDENTIALITY OF MEDICAL QUALITY ASSURANCE (QA) RECORDS

Sec.

- 255.1 Purpose.
- 255.2 Applicability and scope.
- 255.3 Definitions.
- 255.4 Policy.
- 255.5 Responsibilities.
- 255.6 Procedures.

Authority: 10 U.S.C. 1102.

§ 255.1 Purpose.

This part implements 10 U.S.C. 1102 in accordance with policies in 5 U.S.C., DoD Directive 6025.13,¹ DoD Directive 6025.11,² and 32 CFR part 199.

§ 255.2 Applicability and scope.

This part applies to: (a) The Office of the Secretary of Defense (OSD); the Military Departments (including their National Guard and Reserve components); the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; the Defense Agencies; and the DoD Field Activities.

(b) Civilian healthcare entities or individuals, when they provide medical QA information on healthcare of DoD

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

² See footnote 1 to § 255.1

beneficiaries to the Department of Defense.

(c) The Peer Review Organization (PRO) Program of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as specified in 32 CFR part 199.

§ 255.3 Definitions.

(a) *Aggregate Statistical Information.* An assembled collection of numerical facts and other information or data derived from various DoD health program activities. Names, social security numbers, or other specific information that will identify or reasonably lead to identification of individual healthcare providers, patients, healthcare facilities, or other specific organizational entities may not be included in aggregate statistical data.

(b) *Credentials.* Documents providing evidence of education, training, licensure, experience, and expertise of a healthcare provider.

(c) *Healthcare Provider.* Any military or civilian healthcare professional who, under regulations of a Military Department, is granted clinical practice privileges or is in training to provide healthcare services in a military MTF or DTF or who is licensed or certified to perform healthcare services by a governmental board or Agency or professional healthcare society or organization.

(d) *Healthcare QA Program.* Any activity carried out before, on, or after the enactment of 10 U.S.C. 1102 by or for the Department of Defense to assess the quality of medical care. This includes activities conducted by individuals, military MTF or DTF committees, contractors, military medical departments, or DoD Agencies responsible for QA, credentials review and clinical privileging, infection control, patient care assessment (including review of treatment procedures, therapeutics, blood use, medication use), review of healthcare records, health resources management review, and risk management review.

(e) *Individual QA Action.* A provider sanction, privileging action, or other activity on an individual healthcare provider intended to address a quality of healthcare matter. Such an action is based on processes structured by the QA program.

(f) *Medical.* Includes medical, mental health, and dental QA records, programs, activities, and information.

(g) *QA Record.* The proceedings, records, minutes, and reports that emanate from healthcare QA program activities and are produced or compiled by the Department of Defense as part of a healthcare QA program.

§ 255.4 Policy.

It is DoD policy that:

(a) Medical QA records created by or for the Department of Defense, as part of a medical QA program, are confidential and privileged. They may not be made available to any person under the "Freedom of Information Act" (5 U.S.C. 552). As a system of records, they are within the purview of the "Privacy Act" (5 U.S.C. 552a) and, therefore, the individual healthcare provider who is the subject of an individual QA action may be entitled to access to the records. With the exception of such a provider, the identities of third parties in the record; i.e., any person receiving healthcare services (patients) from the Department of Defense or any other person associated with the DoD QA program, shall be deleted from the record before any disclosure of the record is made outside the Department of Defense. This identity deletion requirement does not apply to disclosures under 5 U.S.C. 552a, but other deletion requirements under section 552a may apply in certain circumstances.

(b) No part of any medical QA record may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except in accordance with 10 U.S.C. 1102.

(c) A person who reviews or creates medical QA records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not testify in any judicial or administrative proceeding on such records or on any finding, recommendation, evaluation, opinion, or action taken by such person or body for such records, except in accordance with 10 U.S.C. 1102.

(d) A person or entity having possession of or access to medical QA records or testimony may not disclose the contents of such record or testimony in any manner or for any purpose, except in accordance with 10 U.S.C. 1102.

(e) Any person who willfully discloses a medical QA record other than as provided in 10 U.S.C. 1102, knowing that such record is a medical QA record, shall be subject to adverse personnel action (to include, in appropriate cases, dismissal or separation), and may be liable under 10 U.S.C. 1102 for a fine of not more than \$3,000 in the case of a first offense and not more than \$20,000 in the case of a subsequent offense.

(f) Information on healthcare providers who are found to be incompetent, negligent, medically or psychiatrically impaired, or guilty of misconduct as defined in DoD Directive

6025.13 or 6025.11, shall be provided to Agencies specified in those Directives.

(g) Information shall be submitted to the National Practitioner Data Bank (NPDB) instituted by Public Law 99-660 in accordance with applicable law and DoD Directives.

(h) Aggregate statistical information on results of DoD medical QA programs may be provided in response to written requests.

(i) As provided in 10 U.S.C. 1102, a person who participates in or provides information to a person or body that reviews or creates medical QA records shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith, based on prevailing professional standards at the time the medical QA program activity took place.

(j) Nothing in this part shall be construed as limiting access to the information in a record created and maintained outside a medical QA program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a healthcare QA program.

§ 255.5 Responsibilities.

(a) The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) shall monitor implementation of this Directive and may issue such instructions as may be necessary to implement this part. Instructions to the Military Departments shall be issued through the Secretaries of the Military Departments.

(b) The General Counsel of the Department of Defense (GC, DoD) shall provide legal advice on the interpretation and implementation of this part.

(c) The Secretaries of the Military Departments, or their respective designees, shall implement the requirements of this part and the instructions issued under paragraph (a) of this section.

§ 255.6 Procedures.

The Assistant Secretary of Defense for Health Affairs shall issue instructions, in accordance with § 255.5(a) that require the protection of confidentiality as follows:

(a) *QA Records That Are Protected From Disclosure, Except as Described in Paragraphs (b) (1) through (7) of this section.* Those records include, but are not limited to, the data, testimony, and working documents of any medical or dental treatment facility (MTF or DTF), DoD contractor, Military Department, or DoD Agency involved in monitoring,

assessing, or documenting quality of healthcare.

(b) *DoD QA Records May Be Authorized for Disclosure or Testimony to the Following:*

(1) A Federal Executive Agency, or private organization, if such medical QA record or testimony is needed by such Agency or organization to perform licensing or accreditation functions related to DoD healthcare facilities or to perform monitoring, required by law, of DoD healthcare facilities.

(2) An administrative or judicial proceeding commenced by a present or former DoD healthcare provider concerning the termination, suspension, or limitation of clinical privileges of such healthcare provider.

(3) A governmental board or Agency or a professional healthcare society or organization, if such medical QA record or testimony is needed by such board, Agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards of any healthcare provider who is, or was, a member or an employee of the Department of Defense.

(4) A hospital, medical center, or other institution that provides healthcare services, if such medical QA record or testimony is needed by such institution to assess the professional qualifications of any healthcare provider who is, or was, a member or employee of the Department of Defense and who has applied for, or has been granted, authority or employment to provide healthcare services in or on behalf of such institution.

(5) An officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(6) A criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

(7) An administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in paragraph (b)(6) of this section, but only for the subject of such proceeding.

(c) *Aggregate Statistical Information.* Nothing in this part shall be construed as authorizing or requiring the withholding, from any person or entity, aggregate statistical information on the result of DoD medical QA programs.

(d) *Congressional Requests.* Nothing in this part shall be construed as authority to withhold any medical

quality assurance record from a committee of either House of Congress, any joint committee of Congress, or the General Accounting Office if such record pertains to any matter within their respective jurisdictions.

Dated: August 20, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-20240 Filed 8-23-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

RIN 1024-AB76

36 CFR Part 7

Fishing Regulations; Sequoia and Kings Canyon National Parks, CA

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking amends the finishing regulations for Sequoia and Kings Canyon National Parks by terminating closures on 42 miles of streams and providing for fishing in almost all streams and lakes throughout these parks. The parks' research and monitoring programs have identified a need to restore the natural distribution and abundance of native species, and to help retard expansion of introduced species. This amendment addresses these concerns and provides, on an annual basis, for regulatory adjustments based upon ongoing research and monitoring. The park superintendent will be able to annually incorporate season opening and closing dates and other provisions issued by the State of California as well as to make other necessary modifications with respect to fishing restrictions. Such provisions and modifications will be annually documented in the compendium of Superintendent's Orders and made available to the public. The effects of this rulemaking on anglers will be minimal. Anglers will have to be able to identify fish species to make appropriate keep or release decisions, and will also be expected to be knowledgeable about their location and elevation in backcountry areas to assure compliance with annual Superintendent's Orders specific to location.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Harold Werner, Fish and Wildlife Biologist, Sequoia and Kings Canyon National Parks, Three Rivers, CA 93271.

Telephone: (209) 565-3341, Extension 221.

SUPPLEMENTARY INFORMATION:

Background

Recreational fishing is a valid visitor activity in Sequoia and Kings Canyon National Parks. It is recognized as such by National Park Service policy and also mandated in legislation for Sequoia National Park (16 U.S.C. 45b) enacted in 1926. Existing regulations applicable to fishing in these Parks are codified in 36 CFR 7.6(b), which identify approximately 45 miles of streams that are closed to fishing. This includes approximately three miles of stream in the Soda Springs drainage which are closed to protect a threatened species, the Little Kern golden trout.

The pristine distribution of trout in Sequoia and Kings Canyon National Parks has been obscured by a long history of fish introduction that began in the 1850's and became widespread by the 1870's. Available information indicates that the parks' high elevation lakes and streams were barren of fish, although in some areas native trout did range upwards to 9,000 feet. Rainbow trout were native to the streams on the west side of these parks, and Golden trout were found at the south side of Sequoia National Park. As a result of fish introduction these species became established parkwide. In addition, eastern brook trout and brown trout were introduced to these parks. Brook trout dominate many of the parks' high lakes and brown trout are widespread in rivers and streams below 10,000 feet.

Monitoring of fish populations in the Kaweah River drainage from 1980 through 1985 showed a significant displacement of native trout by introduced brown trout as a proportion of the fish population. During that five-year period, brown trout increased from five percent to 12 percent of the surveyed population. The impact was greatest at low elevations, particularly where roadways make rivers easily accessible. It is believed this impact resulted in part because rainbow trout are easier to catch and thus harvested disproportionately more than brown trout, and because of predation on rainbow trout by large brown trout. Rainbow trout were impacted least in areas closed to fishing.

The objectives of the fishery management program in Sequoia and Kings Canyon National Parks are to:

(a) Protect and restore native fish populations, and meet the requirements of the Endangered Species Act;

(b) Permit and maintain quality fishing opportunities consistent with National Park Service policies and specific statutory mandates contained in the early legislation of Sequoia National Park.

Attainment of these objectives may be obtained within a controlled program of allowing angler harvests to help restore a survival advantage of rainbow and golden trout within their pristine range, and retard or eliminate continued expansion by introduced brown trout. This regulation serves these objectives by establishing Superintendent's Orders which may include: (1) Restrictions on the species and numbers of fish taken; (2) bait and terminal gear restrictions; and (3) fishing method or possession limit restrictions at various sites and elevations based on native fish distribution patterns and human developments. Ongoing monitoring and research will continue to measure the effectiveness of these regulations in terms of meeting fisheries management objectives. When a change is required, this regulation authorizes quick response by the superintendent to protect this resource and meet recreational goals by making local, routine changes in restrictions through Superintendent's Orders in a timely manner.

The Superintendent's Orders regarding fishing restrictions will be reviewed at least annually and any changes will be made a part of the parks' compendium. Public notice of restrictions established by the superintendent will be provided through signs, maps, brochures, newspaper notices or other appropriate methods as required by 36 CFR 1.7. Detailed information pertaining to the nature and extent of fishing restrictions will be readily available to anglers in the parks. Permanent or otherwise significant closures are subject to the rulemaking requirements of 36 CFR 1.5(b) and will continue to be codified in 36 CFR 7.8(b).

Summary of Public Comments

The National Park Service published a proposed rulemaking in the *Federal Register* on October 30, 1990 (55 FR 45619) and provided a 30 day period for public comments on the proposed revisions. A total of three (3) written comments were received; all three from organizations. There were no comments received from private individuals.

Analysis of Public Comments

All three organizations supported the proposed regulations. One organization specifically mentioned their agreement with the opening of 42 miles of previously closed streams to

recreational fishing. Another organization that commented felt that the regulations would be of a benefit to the parks' fisheries. The third organization specifically mentioned their support of catch and release fishing to perpetuate wild trout, and were also supportive of the regulation. There were no general or specific comments opposing or making recommendations to change the regulation.

After reviewing all comments and having received no recommendations for changes, the National Park Service has determined that the regulation as previously published requires no changes of substance. An editorial change has been made to § 7.8(b)(1) by the insertion of the word "parks" before the phrase "Resources Management Plan" to clarify that the reference is to the single Resource Management Plan for Sequoia and Kings Canyon National Parks. In addition, paragraphs (b)(3) and (b)(4) of the proposed rule have been switched in order. An editorial change has also been made to the final paragraph (b)(4)—proposed as paragraph (b)(3)—to clarify that it is also prohibited to fish in closed waters. This paragraph now reads that "Fishing in closed waters or in violation of a condition or restriction established by the Superintendent is prohibited."

This does not change the substance of the proposed regulation, but simply highlights that fishing is prohibited in all areas which are closed to fishing by Superintendent's Orders. Other than these changes, the regulation as previously proposed is published as a final rule.

Drafting Information

The primary author of these regulations is Harold Werner, Fish and Wildlife Biologist, Sequoia and Kings Canyon National Parks.

Paperwork Reduction Act

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

Compliance With Other Laws

The National Park Service has determined that this document is not a "major rule" under Executive Order 12291 (February 19, 1981), 46 FR 13193. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which became effective January 1, 1981, the NPS has determined that these final regulations will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis. The

economic effects of this rulemaking are local in nature and negligible in scope. It may have some minor effect on the types, but not quantity, of fishing supplies sold in the immediate area. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety.

The NPS has reviewed this rule as directed by Executive Order 12360, "Government Actions and Interference with Constitutionally Protected Property Rights," to determine if this rule has "policies that have taking implications." The NPS has determined that this rule does not have taking implications since it regulates activities on federal land.

In accordance with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*, an Environmental Assessment for fisheries management alternatives was prepared and placed on public review from March 12, 1987 until June 30, 1987. A Finding of No Significant Impact was approved on December 14, 1987.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 4621(k); section 7.96 also issued under D.C. Code 8-137 (1981); and D.C. Code 40-721 (1981).

2. Section 7.8 paragraph (b) is revised to read as follows:

§ 7.8 Sequoia and Kings Canyon National Parks.

(a) * * *

(b) Fishing:

(1) Fishing restrictions, based on management objectives described in the parks' Resources Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on any activity pertaining to fishing including, but not limited to, species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, size, location and elevation, and possession limits.

(3) Soda Springs Creek drainage is closed to fishing.

(4) Fishing in closed waters or in violation of a condition or restriction established by the Superintendent is prohibited.

Dated: July 5, 1991.

Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-20308 Filed 8-23-91; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3985-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is announcing its decision to deny the petition submitted by Bethlehem Steel Corporation (BSC), Lackawanna, New York, to exclude, on a one-time basis, certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. 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 265 and 268 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. This rulemaking finalizes the proposed denial for BSC's petitioned waste published on April 7, 1989 (see 54 FR 14101). The effect of this action is that this waste must continue to be handled as hazardous in accordance with 40 CFR parts 260 through 268, and the permitting standards of 40 CFR part 270.

EFFECTIVE DATE: August 26, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-B5DF-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 (703) 920-9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7392.

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 (1) that the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents or factors that could cause the waste to be hazardous are present.

B. History of this Rulemaking

Bethlehem Steel Corporation (BSC), located in Lackawanna, New York, petitioned the Agency to exclude from hazardous waste control, on a one-time basis, a specific waste that it had generated. After evaluating the petition, EPA proposed, on April 7, 1989, to deny BSC's petition to exclude its waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 14101). On January 29, 1990, the Agency reopened the comment period to enable public review of information supporting the proposed delisting health-based level for benzo(a)pyrene. (See 55 FR 2847).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to deny BSC's petition.

II. Disposition of Delisting Petition

A. Bethlehem Steel Corporation, Lackawanna, New York

1. Proposed Exclusion

BSC petitioned the Agency for an exclusion of its ammonia still lime sludge, presently listed as EPA Hazardous Waste No. K060, and contained in an on-site 5.4 acre landfill. BSC based its petition on the claim that the constituents of concern, although present in the waste, are present in either insignificant concentrations or, if present at significant levels, are essentially in immobile forms.

Additionally, BSC claims that this waste is not hazardous on any other basis (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous).

In support of its petition, BSC submitted (1) detailed descriptions of its manufacturing process, including schematic diagrams; (2) a list of raw materials and Material Safety Data Sheets (MSDS) for all tradename materials that might be expected to have contributed to the waste; (3) total constituent and EP leachate analyses for the EP toxic metals, nickel, and cyanide on several samples of the petitioned waste; (4) total constituent analyses for sulfide on samples of the petitioned waste; (5) total oil and grease analysis data on samples of the petitioned waste; (6) results from characteristics testing for ignitability, corrosivity, and reactivity; (7) total constituent analyses of the petitioned waste for the organic constituents for which the waste was listed (naphthalene and phenolics), as well as benzene, benzo(k)fluoranthene, benzo(a)pyrene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and tetrachloroethylene; and (8) ground-water monitoring data collected from wells monitoring the on-site landfill.

The Agency evaluated the information and analytical data provided by BSC in support of its petition and determined that the hazardous constituents found in the petitioned waste could pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model and Organic Leachate Model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. The Agency also evaluated ground-water monitoring information submitted in support of BSC's petition. Based on these evaluations, the Agency determined that BSC failed to substantiate its claim that the hazardous constituents of concern will not leach and migrate at concentrations above health-based levels. See 54 FR 14101, April 7, 1989, for a more detailed explanation of why EPA proposed to deny BSC's petition.

2. Agency Response to Public Comments

The Agency received comments on the proposed rule from three interested parties. One interested party submitted comments on both the proposed denial and the information supporting the proposed health-based level for benzo(a)pyrene. (See 55 FR 2847, January 29, 1990.) The first commenter supported the Agency's proposed decision to deny the petition, but

expressed the following concerns: (1) That the Agency failed to evaluate total levels of hazardous constituents in the waste, (2) that the VHS model's assumptions concerning reasonable worst-case management/disposal scenarios are not suitably conservative, and (3) that the VHS model understates the environmental risks created by large-quantity waste generators. Because the Agency, based in part on the VHS model as currently constituted, already had sufficient bases to deny BSC's petition for the waste, as detailed in the proposed rule, and the concerns raised by the commenter do not affect EPA's decision to deny this petition, the Agency did not assess whether the additional bases for denial, suggested by the commenter, should be included as part of the rationale for denying the petition. Therefore, the Agency does not address those comments in today's rule.

The remaining two commenters opposed the Agency's denial decision for a number of reasons. The comments submitted related to the following areas: (1) Accuracy of predicted leachable lead concentrations, (2) accuracy and significance of predicted leachable benzo(a)pyrene concentrations, (3) the Agency's use of the OLM and VHS model, (4) authority for use of ground-water data as a basis for denial, (5) significance of ground-water contamination, and (6) petition completeness. The specific comments made by these two commenters regarding the Agency's proposed decision to deny the petition, and the Agency's response to them, are discussed below.

a. Accuracy of Predicted Leachable Lead Concentrations

Comment: One commenter claimed that the petition was for a one-time exclusion of about 170,000 cubic yards of waste, not a volume of waste generated annually (170,000 cubic yards/year of waste) as described in the discussion of the use of the VHS model (54 FR 14106).

Response: The Agency agrees with the commenter's statement that the petition was written to include only the 170,000 cubic yards of waste that has been placed in the landfill in question. Further, the Agency notes that the petition does not consider any waste that might be generated at the facility in the future or any other materials that might be placed in the landfill in question. That clarification, however, does not affect the compliance-point concentrations for the petitioned waste generated by the Agency using the VHS model.

Comment: One commenter claimed that the petitioned waste is a mixture of a K060-listed hazardous waste and solid wastes that are exempt from classification as hazardous waste as set forth in 40 CFR 261.4(b)(7) (the "Bevill exemption"). As such, based upon the proposed clarification of the interaction between 40 CFR 261.4(b)(7) and 40 CFR 261.3(a)(2)(iv) (i.e., the mixture rule), which was published by the Agency on April 17, 1989 at 54 FR 15316, and 15336-37, the commenter believed that the petitioned mixture is itself exempt from classification as hazardous waste. (The Agency notes that this clarification was finalized on September 1, 1989 at 54 FR 36592 and 36622-23). The commenter made specific reference to the Agency's proposed position that "If the mixture exhibits one or more hazardous characteristics that are exhibited by the Bevill waste but not by the non-excluded characteristic waste, then the mixture is not a hazardous waste." (See 54 FR 15337).

Response: The Agency disagrees with the commenter's interpretation of the clarification of the applicability of the mixture rule to mining waste. The clarification specifically discusses the Agency's resolution to apply the mixture rule in almost all circumstances. (See 54 FR 15336, 54 FR 36622). It further explains that "mixtures of one or more listed hazardous wastes and a large volume low-hazard mineral processing waste will be considered a hazardous waste unless and until the mixture is delisted." (See 54 FR 15336, 54 FR 36622). Thus, the mixture rule, even as modified in the final mining waste exclusion rule, still applies to BSC's petitioned waste because the petitioned waste is a mixture of a solid waste and a listed (K060) hazardous waste (not a characteristic hazardous waste which the commenter references).

Comment: Two commenters claimed that the Agency's evaluation of the petition relies on data from a pre-petition submission that were never intended to be of the integrity required for a formal delisting petition. To support this claim, one commenter submitted a copy of a May 11, 1989 letter which had been sent to BSC from the contractor responsible for collecting these pre-petition samples; this letter provides information about the 1984 sampling work conducted for BSC. This letter also identifies the laboratories used by the contractor to sample and analyze the pre-petition samples.

Response: The Agency recognizes that the proposed denial of BSC's petition is based, in part, on analytical data submitted in the pre-petition. In fact,

BSC was notified, by letter, of the Agency's intentions to use these data on June 13, 1988 (see the RCRA public docket for the proposed rule for a copy of this letter). As previously explained to BSC, the Agency agrees that samples collected without concern for chain-of-custody protocol may be of questionable integrity. Nevertheless, the Agency believes that the data submitted by BSC, whether intended to be part of a petition or not, and even in the absence of documentation regarding chain-of-custody and quality assurance/quality control (QA/QC) procedures, indicate that at least some of the petitioned waste contains hazardous constituents in a form that presents a hazard to human health and/or the environment (most notably, the presence of significant levels of leachable lead). Thus, the Agency believes that the analytical data submitted for these pre-petition samples may be considered during the evaluation of the petition unless BSC can demonstrate that the analytical data submitted are invalid (e.g., through evidence of equipment contamination or improper handling).

Furthermore, the Agency notes that certain information contained in the May 11, 1989 letter is inconsistent: Item 6 of the letter explains that no chain-of-custody records for the BSC sampling event exist in the contractor's file; however, Item 7 of the same letter states that the work conducted by the contractor "was done in three (3) phases and the report documenting these phases and the chain-of-custody practices is attached." (The attachment described was not submitted by the commenter.) The Agency interprets this information to mean that (1) specific records are not available for the BSC sampling event, and (2) general chain-of-custody practices followed by the contractor, apparently for the BSC sampling event, are documented. The Agency also wishes to note that the commenters did not discuss whether information concerning QA/QC procedures followed by the laboratories was available.

Comment: One commenter determined that the four leachable lead values which fail the VHS model evaluation would all be considered outliers if all data events (a total of 19 samples) were taken into consideration together for means of evaluation using the Dixon Extreme Value Test (a statistical procedure which the Agency has used in previous delisting decisions to identify statistical outliers).

Response: The Agency acknowledges that the Dixon Extreme Value Test has been used, in previous delisting

evaluations, to determine whether a seemingly high value is an outlier. However, the Agency notes that the Dixon Test is based on the assumption that only one sample in a given data set is a potential outlier. Stated another way, the test is inappropriate as applied by the commenter for identifying multiple outliers.

Further, the Agency believes that it is inappropriate to pool numerous data sets of sampling data for the purposes of conducting an outlier analysis without considering the sample collection procedures followed. In particular, sample collection procedures for the three BSC sampling events, as discussed in the proposed decision (see 54 FR 14104), relied on both grab and composite sampling techniques. BSC's grab samples represent the composition of a specific portion of the petitioned waste at a specific location in the unit. BSC's composite samples were composited from a number of grab samples collected from various locations in the unit, thus, effectively "pooling" the data during sample collection rather than analysis. Because of differences such as these, the Agency does not believe that one should assume that all data can be pooled together, rather one should consider whether separate analysis of each data set, or separate analysis of grab and composite samples, may be more appropriate. For example, if the Dixon Test is applied to the data for the first data set (a total of 6 samples), none of the points are determined to be outliers using the Dixon Test.

Comment: One commenter explained that EPA's own guidance recommends using confidence intervals during the statistical analysis of sampling data collected to determine whether a waste is hazardous. The commenter claimed that EPA's "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846, indicates that the upper limit of the 90th percent confidence interval should be compared to the applicable regulatory threshold to determine if a waste contains the chemical contaminant of concern at a hazardous level. Based on the 95th percent upper confidence limit, the commenter calculated that the theoretical compliance-point concentration for leachable lead in the petitioned waste is 0.021 ppm, which is less than the regulatory level of concern of 0.050 ppm.

Response: The Agency, in its evaluation of delisting petitions, historically relied on the maximum

observed concentration of a contaminant to evaluate whether a waste is hazardous. As explained at 50 FR 48909-10, November 27, 1985, the Agency believes the use of the mean value, 95th percent upper confidence limit, or the maximum value may be appropriate in different cases depending upon the process generating the waste, the homogeneity of the waste, the procedures followed during sample collection, and the number of samples collected. For example, if the Agency believes that the petitioned waste is homogenous, the sampling was comprehensive, and enough samples were taken to adequately define the mean values, then the Agency may consider using the mean value in its evaluation. In its evaluation of BSC's petitioned waste, the Agency chose to use the maximum leachable concentrations of lead because BSC had not conducted sufficient sampling to justify the use of a statistical evaluation in the determination of the hazard posed by the waste. Specifically, the Agency did not consider the 19 samples sufficient to comprise a large enough data set to allow the use of any value (such as the average) other than the maximum observed value for lead. The Agency believes that, based on the volume of waste and the variation in analytical results, BSC did not collect and analyze a sufficient number of samples to warrant the use of a mean value.

The Agency also notes that the commenter, in calculating the upper 95 percent confidence level for the leachable lead data, did not include 4 of the lead levels because the data points were termed "outliers". As noted previously in this notice, EPA does not believe the high lead levels can be ignored as outliers. If the Agency had chosen to evaluate the upper 95th confidence level, it would have evaluated all of the lead data (including using the reported detection limits for samples in which lead was not detected). Using all of the available data, the mean would be 0.20 ppm, with an upper 95 percent confidence of 0.93 ppm. Thus, if the Agency had considered the upper 95th confidence level for BSC's leachable lead data in its VHS model analysis of the waste, the calculated lead level at the compliance point (0.31 ppm) would still exceed EPA's level of concern.

Comment: One commenter argued that the application of the VHS model is inappropriate for evaluating the transport of lead from BSC's petitioned waste because the model does not account for the attenuation of lead that

is likely to occur due to high concentrations of dissolved carbonates in the ground water and the nature of the slag material through which it travels.

Response: As discussed in the proposed rule (see 54 FR 14103), Agency delisting decisions are waste-specific, not disposal-site specific. They are formulated by evaluating the hazard of a petitioned waste in a non-Subtitle C regulated management setting. Delisting evaluations which consider the site of disposal (e.g., a specific disposal site where the underlying material or ground water, such as suggested by the commenter, promotes attenuation) could not predict future storage or disposal conditions that may be pertinent if the waste were removed from the present disposal site, a situation which could occur if BSC's waste were to be excluded from subtitle C regulation. For this reason, the Agency believes that the assumption of no attenuation in the VHS model is a reasonable worst case. Furthermore, BSC did not provide any quantitative way to account for possible attenuation of lead, nor did BSC document how (or at what levels) carbonate in the ground water or slag material would ensure lead levels would be adequately attenuated.

Comment: Two commenters noted that lead concentrations measured in actual ground-water samples are consistently below EPA's health-based level. One of the commenters also believed that actual ground-water monitoring data supports BSC's claim that the petitioned waste is not hazardous.

Response: The Agency agrees that lead concentrations measured in BSC's ground-water samples are below the corresponding health-based level. However, benzene, phenanthrene, barium, fluorene, anthracene, 1,1-dichloroethane and 2,4,6-trichlorophenol were detected in BSC's ground-water samples at concentrations above the corresponding health-based levels.

The Agency uses models such as the OLM and VHS model to estimate the potential migration of hazardous constituents from the unregulated disposal of petitioned wastes. The Agency also considers any other available information, such as ground-water monitoring data relevant to the petitioned waste, to characterize the impact on ground-water quality (if any) from the disposal of the waste. Because of the differences between the hypothetical VHS landfill and BSC's landfill, the Agency recognizes that the calculated compliance-point concentrations for lead in BSC's waste

may not necessarily correspond directly with ground-water monitoring data. To summarize, the Agency used VHS model results in conjunction with actual ground-water monitoring data to fully evaluate (not to verify) the impacts of the disposal of BSC's waste. As discussed in the proposal, the VHS model predicts that, in regard to lead, BSC's waste has the potential to contaminate ground water above delisting levels of concern.

b. Accuracy and Significance of Predicted Leachable Benzo(a)pyrene Concentrations

Comment: One commenter claimed that analytical data for benzo(a)pyrene provided in BSC's November 1984 submittal were not obtained in accordance with EPA Publication SW-846 and, therefore, should not be used to evaluate the petition. The commenter further provided a summary of differences between this non-SW-846 method and the SW-846 method for benzo(a)pyrene. In addition, the commenter stated that no QA/QC data were provided for the non-SW-846 benzo(a)pyrene analyses.

Response: With regard to BSC's use of a non-SW-846 method to quantify benzo(a)pyrene, the Agency does not believe that the commenter provided sufficient information to demonstrate that the non-SW-846 method is not comparable or that the laboratory performing the analysis provided data of questionable validity. In fact, without adequate documentation of QA/QC procedures (which the commenter explained are not available), the Agency does not believe that the analytical results should be disregarded. The Agency believes that the data submitted by BSC, even in the absence of documentation regarding QA/QC procedures, indicate that at least some of the petitioned waste may contain constituents in a form that presents a hazard to human health and/or the environment.

Comment: Two commenters stated that the Agency has not considered the fact that ground-water samples analyzed show the absence of detectable concentrations of benzo(a)pyrene.

Response: As stated previously in this notice, the Agency used VHS model results in conjunction with actual ground-water monitoring data to fully evaluate (not to verify) the impacts of the disposal of BSC's waste. Because of the differences between the hypothetical VHS landfill and BSC's landfill, the Agency recognizes that the calculated compliance-point concentrations for benzo(a)pyrene in BSC's waste would

not necessarily correspond directly with ground-water monitoring data.

Comment: One commenter claimed that the delisting health-based level used by the Agency for benzo(a)pyrene is of questionable authority and integrity. The commenter criticized the technical merits of the proposed benzo(a)pyrene health-based level on numerous accounts, including that the Agency's proposed level ignores well-documented studies regarding the presence of benzo(a)pyrene in the environment and that benzo(a)pyrene criteria established or proposed by other authorities range from 0.00003 to 0.01 ppm. The commenter claimed that the Agency has not provided the scientific and regulated community a reasonable opportunity to review and comment on the proposed level or its use in the evaluation of data. The commenter specifically noted that the documentation provided for the proposed benzo(a)pyrene health-based level was dated December 28, 1989, eight months after the proposed denial of BSC's petition. Further, the commenter stated that the Agency's health-based level for benzo(a)pyrene has not been finalized or subjected to the basic due process requirements of public notice and comment as required by both RCRA and the Administrative Procedure Act.

Response: The Agency believes that appropriate rulemaking procedures were followed in proposing the benzo(a)pyrene health-based level of 0.000003 used in the Agency's initial evaluation of BSC's delisting petition. The use of that level was subject to public comment and response during the initial comment period for the proposed delisting decision and significantly, during the extended comment period pertaining specifically to the proposed health-based level for benzo(a)pyrene. The Agency notes that this same commenter chose to provide comments during both of these periods.

The Agency reviewed the information that the commenter provided regarding the 0.000003 ppm proposed delisting health-based level for benzo(a)pyrene, particularly the various benzo(a)pyrene criteria that are recommended, proposed, or promulgated by other authorities. However, EPA's Office of Drinking Water has proposed a maximum contaminant level (MCL) drinking water standard of 0.0002 ppm for benzo(a)pyrene. (See 55 FR 30370, July 25, 1990). Therefore, at this time, the Agency believes that it is appropriate, in BSC's case, to withdraw as a basis of petition denial the finding of significant concentrations of benzo(a)pyrene in the petitioned waste. This action does not affect the Agency's decision to deny

BSC's petition. Regardless of the determination of an appropriate health-based level for benzo(a)pyrene and subsequent evaluation of petition data, information provided by BSC in its petition indicates that the landfill waste contains significant levels of leachable lead and that the landfill may be adversely impacting ground-water quality at the Lackawanna, New York site.

c. The Agency's Use of the OLM and VHS Model

Comment: One commenter claimed that the waste will continue to be subject to regulation following its delisting, as it will come within the scope of the State of New York's solid waste regulations. The commenter believed, therefore, that the use of the OLM and VHS model is inappropriate because their use is justified only by the need to model "unregulated disposal".

Response: The Agency evaluates all delisting petitions with the understanding that, if the petitioned waste is excluded, it will be removed from Federal regulation as a hazardous waste. EPA also recognizes that future handling and management of the excluded waste will be regulated by the state in accordance with subtitle D criteria. Nevertheless, the Agency maintains that its formulation of a delisting decision is waste-specific, not disposal-site specific. As stated previously in today's notice, the Agency does not believe that delisting evaluations should be based on the prediction of future storage or disposal conditions (such as the waste remaining in place or being transported only within the state) because once delisted, a waste can be disposed in any subtitle D facility. For this reason, the Agency believes that it is appropriate to model a reasonable worst-case scenario. In addition, because each state has the authority to implement its own subtitle D programs, EPA does not believe that it is appropriate to make specific assumptions concerning the implementation of a specific state's subtitle D program. Finally, EPA notes that the commenter did not offer any specific alternative to the Agency's use of the OLM/VHS model, given the apparent regulatory controls maintained by the State for solid wastes.

Comment: Two commenters believed that the Agency's strict adherence to the use of the OLM and VHS model in evaluating BSC's petition is inconsistent with the decision of the Court in *McLouth Steel Products Corp. v. Thomas*, 838 F. 2d 1317 (DC Cir. 1988). The commenters stated that, based on

the *McLouth* decision, the Agency is required to remain open to all challenges to the use of the VHS model, including its application to each delisting case, if the Agency chooses to treat the model as a non-binding policy. The commenters' concerns regarding the application of the models were two-fold: (1) The models are inappropriate given the regulatory framework under which the delisted waste would be managed, and (2) the models are subject to numerous technical assumptions and inaccuracies.

Response: The Agency disagrees with the commenters on both points and maintains that the models have been used appropriately in the evaluation of BSC's petitioned waste. Despite the commenter's claims to the contrary, the Agency holds that the VHS model has been applied with discretion. The subject waste is extremely large in volume and basically solid in nature. If delisted, the Agency believes that economic and engineering considerations would dictate that the waste be placed in a landfill. The VHS model is designed to model a reasonable worst-case scenario, specifically an unregulated municipal landfill; thus, the Agency believes the use of the VHS model is appropriate in this case. With respect to the commenters' claims concerning the "technical assumptions and inaccuracies" of the models, each of those claims has been addressed in separate portions of today's notice.

Comment: Two commenters stated that the VHS model is fundamentally flawed by its neglect of attenuation and biodegradation during the course of pollutant migration from the landfill to a receptor.

Response: The Agency disagrees with the commenters and notes that attenuation was considered during the development of the VHS model. As discussed previously, Agency delisting decisions are waste-specific, not disposal-site specific. To model the degree of attenuation and biodegradation a chemical compound will exhibit in soil, the Agency would need to consider the physical and chemical properties of the compound under investigation, the site-specific physical and chemical properties of the soil environment, and site-specific climatic parameters such as precipitation quantity and intensity. Furthermore, a variety of site conditions may lead to mobilization of waste constituents (e.g., mobilization by infiltration with leachate originating from other co-disposed waste and the possible exceedance of the soil's attenuation capacity). Due to the wide

variability in attenuation and biodegradation dynamics and the need to employ a conservative approach, the Agency believes that the generic assumption of no attenuation in the VHS model is a reasonable worst case.

The Agency recognizes that some organic compounds may be partially transformed to other species (potentially less toxic) by a variety of chemical and biological processes within the ground-water zone. Unfortunately, the available data on biodegradation of complex organics is rather limited, and such information as has been published mainly derives from the study of wastewater treatment plants, which may not be analogous to the subsurface environment. Until better models and data become available, and are consistent with the conservative approach to delisting, the Agency believes that it is appropriate to rely on the VHS model for the evaluation of BSC's landfilled waste. Finally, the commenters did not provide any specific alternatives to the OLM/VHS model that would allow the attenuation/biodegradation mechanism to be better evaluated.

Comment: One commenter claimed that the VHS model does not incorporate factors reflective of the subject waste's low permeability.

Response: The Agency believes that, unless the petitioned waste's permeability is zero and can be expected to remain so indefinitely, contaminants will eventually emerge from the landfill. Further, the permeability of BSC's waste is, to some extent, a site-specific factor. For example, if the waste is disturbed, or in fact moved from its present location (as it could be if delisted), its permeability may change depending on the way in which it settles in its new location. Further, the petitioner has not supplied sufficient data to estimate the permeability of the waste even in its present location. Permeability studies were conducted on only three samples, two of which were described as "oily." In fact, the samples collected in support of BSC's petition exhibited oil and grease levels less than or equal to 0.93 percent. Furthermore, the commenter did not indicate how the permeability of the waste could be used to predict constituent leaching.

Comment: One commenter stated that the accuracy of the OLM for low contaminant solubilities is suspect. The commenter further explained that the OLM is statistically derived from a database that relates an organic contaminant's water solubility and its concentration in the waste to the

contaminant's concentration in the extract. Since the model is statistically derived, its most accurate predictions are made in the central part of the distribution. Benzo(a)pyrene's extremely low solubility in water, combined with the very low concentrations of benzo(a)pyrene in the waste, render the model suspect in this case. The commenter also cited data previously published by EPA that indicated a concentration of 1 ppm benzo(a)pyrene in waste is expected to generate a level of 8.1×10^{-8} ppm in the leachate.

Response: The Agency believes that the OLM remains a useful tool for the evaluation of delisting petitions, and has worked carefully to incorporate the best available scientific information in its formulation. The development of the model was based on a data set containing more than 1000 points, and the parameters were revised to address public comments received on its initial proposed use (see 50 FR 48953, November 27, 1985; 51 FR 27061, July 29, 1986; and 51 FR 41082, November 13, 1986). The original OLM proposal (see 50 FR 48955) presented a three-part equation: linear leaching behavior between 0 and 1 ppm, linear behavior between 1 and 10 ppm (the transition range), and logarithmic leaching behavior above 10 ppm. It was this initial version of the OLM that led to the predicted level of benzo(a)pyrene cited by the commenter. After receiving public comment, the Agency decided to abandon this "multiple-curve" approach as unreliable and to develop the OLM on the basis of a larger data set (51 FR 27061).

d. Authority For Use of Ground-water Data as a Basis for Denial

The Agency received two comments regarding the Agency's use of ground-water monitoring data as a basis for denying delisting petitions. The first comment questioned the Agency's authority for considering ground-water monitoring data in the evaluation of delisting petitions. The second challenged the Agency's justification for evaluating ground-water data in certain special cases, such as BSC's.

Comment: One commenter claimed that the Agency's authority to consider ground-water data in the evaluation of delisting petitions has not been formally authorized.

Response: In its evaluation of delisting petitions, the Agency normally assesses the potential for toxic constituents to migrate from the petitioned waste into ground water. Although EPA uses models to predict the transport of waste constituents, EPA views ground-water

monitoring data from an adequate well system as important information in determining that the petitioned waste has not had (or could not have) an adverse impact on ground water. Therefore, the Agency routinely evaluates ground-water monitoring data for petitions involving on-site and dedicated off-site land-based hazardous waste management units. The Agency believes that a petitioned waste's potential to contribute to ground-water contamination is a sufficient basis for denial of a petition because the Agency, in its evaluation of a petition, must determine whether factors (including additional constituents) could cause the petitioned waste to be hazardous (see 40 CFR 260.22(a)(2)). The Agency's authority for requesting ground-water monitoring data from petitioners, information that is needed to evaluate the petition, is found in 40 CFR 260.22(j): "After receiving a petition for an exclusion, the Administrator may request any additional information which he may reasonably require to evaluate the petition." EPA recently proposed amendments to clarify the Agency's authority to consider ground-water monitoring data in evaluating delisting petitions (see October 12, 1989, 54 FR 41930).

Comment: One commenter noted that EPA granted several exclusions despite the unavailability of ground-water data (i.e., General Electric at 52 FR 29847, August 12, 1987) or despite evidence suggesting ground-water contamination (i.e., Vulcan Materials at 53 FR 29058, August 2, 1988; and Merck & Company at 53 FR 37601, September 27, 1988).

Note: The commenter cited 50 FR 29846 in reference to an exclusion granted despite the unavailability of ground-water monitoring data. The citation 50 FR 29846 corresponds to a notice of IRS Systems of Records. The Agency assumes, as discussed further below, that the commenter actually meant to cite 52 FR 29847 which granted General Electric an exclusion.

Response: In August of 1984, BSC was sent a letter requesting, among other things, ground-water monitoring data in support of their petition. In November of 1984, the Agency sent letters to all active petitioners, including BSC, to inform them of the expected changes in the delisting process as a result of the impending passage of the Hazardous and Solid Waste Amendments (HSWA) of 1984. Petitioners were informed that ground-water monitoring data would be required in many cases. Most petitioners, including BSC, supplied the necessary information.

The commenter believes that the Agency should not deny BSC's petition based on ground-water monitoring

information because other petitioners have been granted exclusions without consideration of ground-water monitoring data (i.e., General Electric at 52 FR 29847). In the case of General Electric's (GE) petition, submission of ground-water monitoring data was neither required nor available for the petitioned waste at the time the Agency proposed to grant that petition. The Agency determined that GE's waste was not hazardous, based, in part, on predictions concerning what the concentration of constituents of concern in groundwater would be, and the Agency concluded that GE's exclusion should be finalized without additional ground-water information.

In BSC's case, however, ground-water monitoring data existed at the time the Agency proposed to deny BSC's petition (and these data continue to be generated), and thus served as an appropriate and valid basis for measuring the mobility and hazard associated with the petitioned waste.

The commenter also contended that the Agency's use of ground-water data in the evaluation of delisting petitions is subject to question since the Agency previously granted exclusions despite evidence suggesting ground-water contamination (i.e., Vulcan Materials at 53 FR 29058, Merck & Company at 53 FR 37601). As was the case for the petitions cited by the commenter, petitioners have the option to present demonstrations to the Agency that ground-water monitoring data, for wells which monitor units in which petitioned wastes are managed, do not represent the actual impact of petitioned wastes on ground-water quality. In the cases of Vulcan Materials and Merck and Company, the Agency determined after detailed review of comprehensive ground-water monitoring and waste characterization information that the petitioned wastes were not a source of ground-water contamination. (See Vulcan Materials, 53 FR 29065-66; Merck & Company, 53 FR 37606).

Comment: The commenter further claimed that consideration of ground-water data in the evaluation of delisting petitions is not technically justified in all cases. Unilateral application of a policy specifying that ground-water contamination is grounds for denial of a delisting petition is inappropriate because in some cases site-specific ground-water monitoring data are not reflective of a waste's leaching characteristics. These cases include older facilities and facilities at which multiple waste management units are present in close proximity. Given the Lackawanna facility's age (operations began in the early 1900s) and the

number of proximate on-site solid waste management units (discussed further below), the commenter believed that ground-water monitoring data for the unit containing the petitioned waste are not reflective of the waste's leaching characteristics and, therefore, should not be used as grounds for denial of the petition.

Response: Because the delisting process is intended for those wastes which clearly do not pose a hazard to human health or the environment, the Agency believes that evidence that a waste has caused or may cause ground-water contamination is sufficient basis to deny a petition. However, as the commenter acknowledged in the previous comment, the Agency has and will consider petitioners' demonstrations that ground-water monitoring data, for wells which monitor units in which petitioned wastes are managed, do not represent the actual impact of petitioned wastes on ground-water quality (e.g., Vulcan Materials at 53 FR 29058, and Merck & Company at 53 FR 37601). The following section of today's notice addresses such a demonstration made by the commenter.

e. Significance of Ground-Water Contamination

In the proposed denial, the Agency stated that data from the analysis of samples collected from the existing ground-water monitoring system at BSC's landfill (known as Hazardous Waste Management Area 2 or HWM-2) indicate that the petitioned waste may have contributed to ground-water contamination. Specifically, seven constituents were detected in ground water at concentrations which exceed the health-based levels used in delisting decision-making. These constituents were benzene, phenanthrene, barium, fluorene, anthracene, 1,1-dichloroethane, and 2,4,6-trichlorophenol.

One commenter believed that the ground-water data presented by the Agency in the proposed denial, when reviewed in proper context, do not support the conclusion that the petitioned waste may be adversely impacting ground-water quality at the site. In support of their arguments, the commenter submitted the following additional data:

1. The results of Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) analyses of samples composited from full-depth corings obtained from the petitioned unit and Solid Waste Management Units (SWMUs) S-5, S-6, S-7, and S-11/S-22 (see Figure 1 for unit locations).

2. The results of the analysis of a ground-water sample collected March 1989 from Well MW-11. Well MW-11 is located about 800 to 900 feet east of HWM-2 (see Figure 2). The sample was analyzed for the six organic compounds listed in the proposal which were detected in HWM-2 monitoring wells at concentrations greater than the health-based levels. The commenter also submitted ground-water elevation data measured in March 1989 to support the contention that Well MW-11 is

upgradient of HWM-2 and its associated wells.

3. Usage and content descriptions, as well as a location map (Figure 1), of 29 SWMUs identified by the National Enforcement Investigation Center's (NEIC) mid-1988 investigation of BSC's Lackawanna facility (a copy of this report can be found in the RCRA public docket for today's notice). NEIC tentatively identified a total of 110 SWMUs which it believes could have or did receive materials containing hazardous constituents. The commenter

states that 29 of the 110 SWMUs (including HWM-2) are located in the Slag Fill Area identified in Figure 1. BSC created the Slag Fill Area by depositing excess blast furnace and steelmaking slags (along with smaller amounts of iron and steel scrap) on the shore of Lake Erie. The fill was deposited to an average height of about 30 feet above the mean Lake Erie water level and resulted in extending the Lake Erie shoreline by approximately 1700 feet westward.

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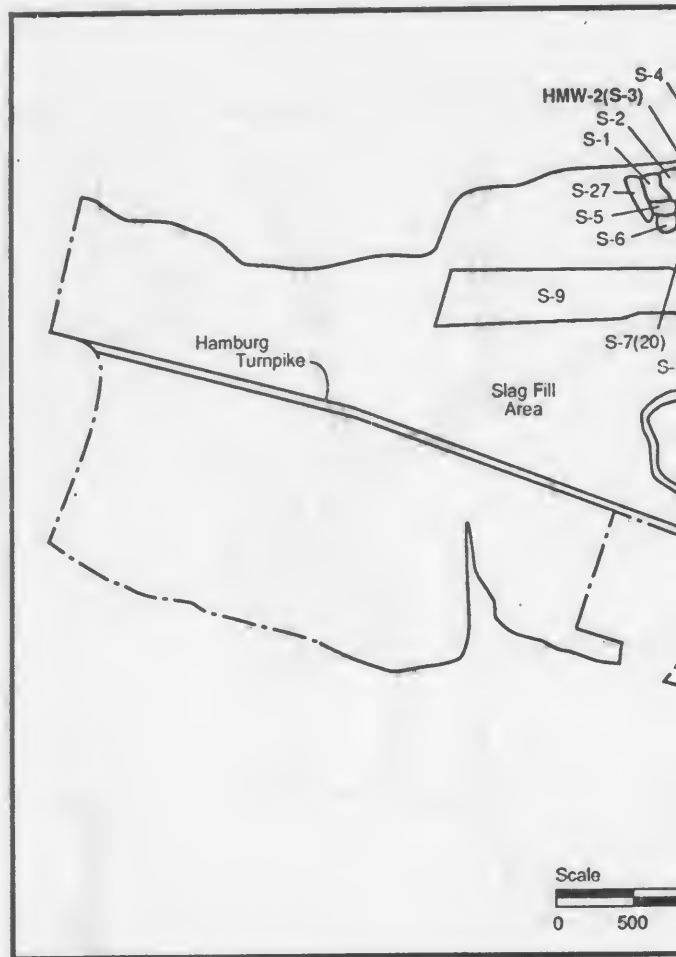


FIGURE 1

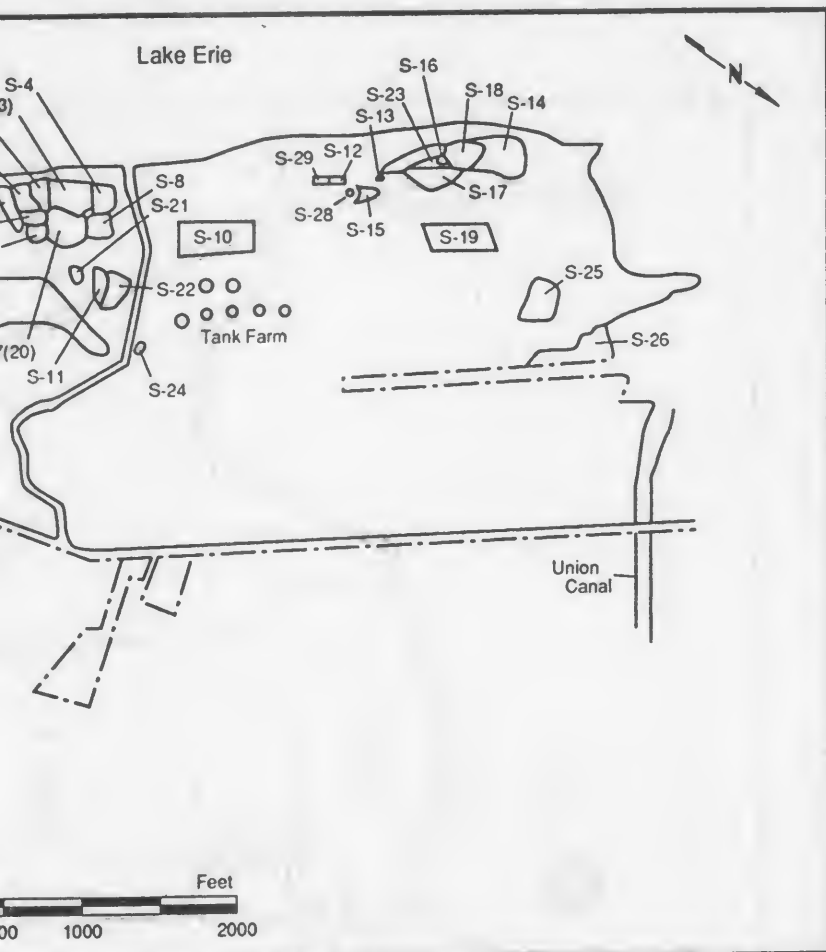
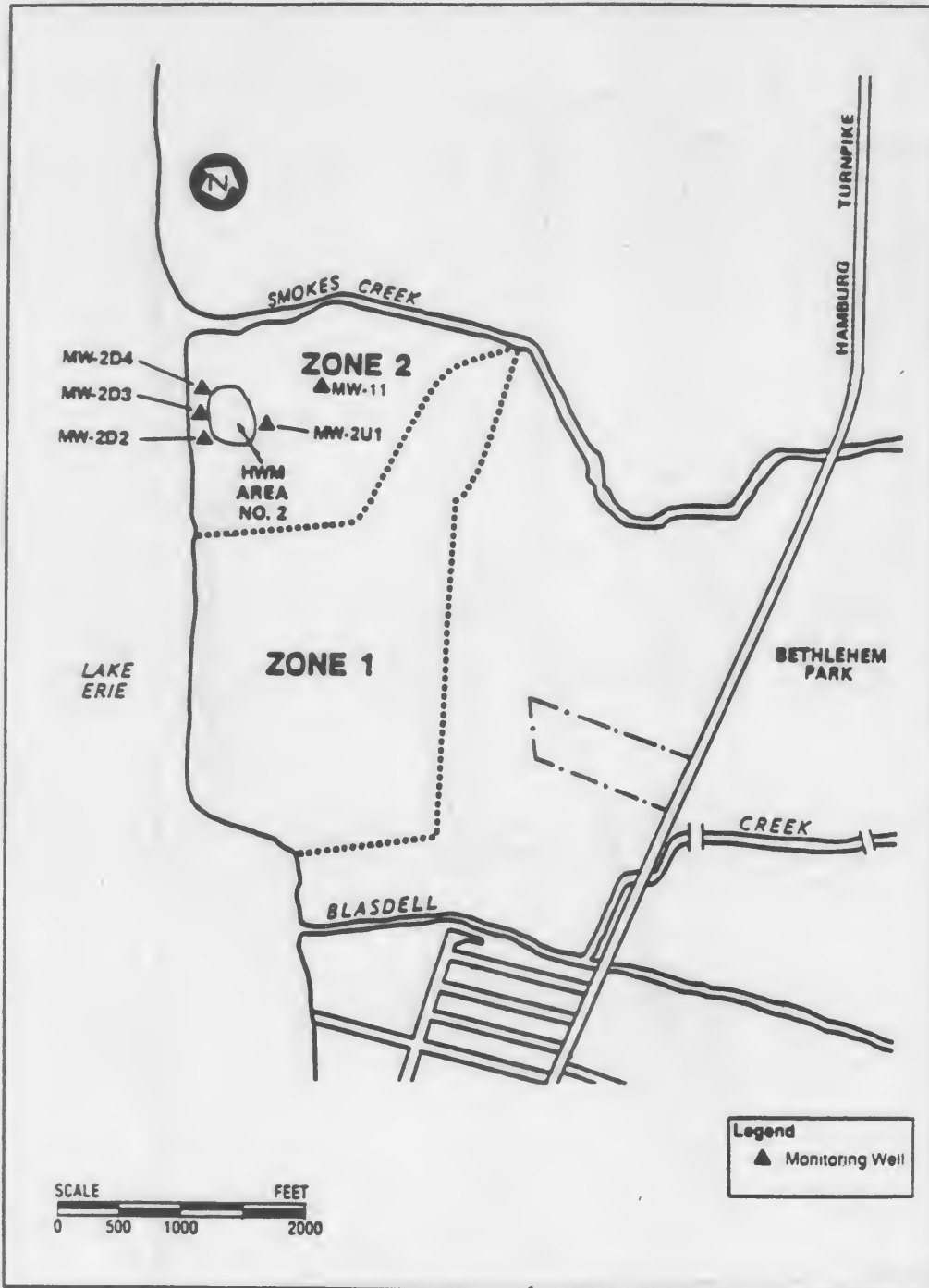


FIGURE 2



The commenter presented the following general comments regarding the Agency's evaluation of data from wells which monitor HWM-2:

1. The concentrations of ground-water contaminants cited by EPA frequently are not of statistical significance.

2. The source of the contaminants has not been demonstrated to be the subject waste.

3. Since information regarding Slag Fill Area SWMUs was not available nor requested during EPA's review of the petition, the commenter believes that EPA did not consider the potential impact of these SWMUs in development of its conclusion that observed contamination in the HWM-2 monitoring wells is due to the subject waste. Given the number of SWMUs and diversity of materials contained therein, the commenter believes that the ground-water contamination cited in EPA's proposal does not provide sufficient basis to conclude that the subject waste has impacted site ground water. In fact, the commenter believes that enough data are available to conclude that contamination observed is indeed from other sources.

In support of these general comments, the commenter presented specific comments addressing each of the constituents detected in ground water. The Agency's response to these specific comments, which also provide response to the three general comments discussed above, are presented by constituent in the following paragraphs.

Benzene. The commenter believed that the petitioned waste is not the source of benzene detected in ground water. In support of this contention, the commenter made the following four assertions regarding the Agency's use of benzene data to support denial of BSC's petition.

Comment: Benzene is absent in bulk samples of the petitioned waste. Previously submitted results of total constituent benzene analyses for representative samples of the petitioned waste showed benzene concentrations below the 0.01 mg/kg detection limit for each of the twelve samples analyzed.

Response: The Agency acknowledges that benzene was not detected in total constituent analyses of samples of the petitioned waste; however, as discussed previously in this notice and in the proposal, the Agency does not believe that BSC's sampling program was adequate to completely characterize the composition of the petitioned waste. Therefore, the Agency is not convinced that upon completion of an adequate sampling program the waste would not exhibit detectable levels of benzene,

given the nature of the processes that generated the petitioned waste.

Comment: Benzene was not detected in TCLP analyses of the petitioned waste. Specifically, full-depth corings recently obtained from HWM-2 were composited and evaluated for leachability using the TCLP. The commenter believed these data corroborate their contention that the subject waste is not the source of benzene detected in HWM-2 wells. The results indicate that the benzene concentration in TCLP leachate is below the level of detection, thereby supporting the conclusion that the subject waste is not the source of benzene detected in site ground water.

Response: The Agency has several concerns regarding the commenter's use of the TCLP analysis to characterize the concentration of benzene in leachate of the petitioned waste. First, only one sample of the petitioned waste has been characterized by the TCLP analysis. Consequently, the sampling protocol is inadequate for characterizing the concentration of benzene in TCLP leachate of the entire volume of the petitioned waste. In addition, the waste sample analyzed was described as a composite of four full-depth core samples, although the commenter has not indicated where or how the samples were collected or composited.

Inappropriate compositing could cause the loss of benzene, a volatile chemical, from the waste samples prior to analyses. Second, the commenter has not provided any QA/QC data for the TCLP analysis. Third, information submitted by the commenter suggests that the petitioned waste is oilier than was previously indicated (BSC's petition indicated that the maximum oil and grease content of BSC's waste is 0.93 percent). Specifically, corings for permeability analysis submitted by the commenter were described as being "oil soaked" and having an "oily odor". The Agency is concerned with this unexplained presence of oil because the TCLP currently has no provisions for oily wastes (*i.e.*, elevated concentrations of oil and grease may render the TCLP analyses invalid). Finally, the Agency notes that the TCLP data discussed above indicates that two other organic compounds, methylene chloride and 1,1,1-trichloroethane, were, in fact, detected in the leachate. Again, the Agency is not convinced that upon completion of an adequate sampling program the waste would not exhibit detectable levels of benzene and/or other organic compounds.

Comment: Well MW-11 exhibits elevated levels of benzene. Data recently obtained from Well MW-11

indicate a ground-water benzene concentration of 0.99 mg/L, which is three to four orders of magnitude higher than the 0.005 to 0.039 mg/L values reported for the HWM-2 wells. The commenter believes the elevated concentration of benzene in Well MW-11 corroborates the assertion that the source of benzene detected in the HWM-2 wells is upgradient of HWM-2. In addition, the likelihood of an upgradient source explains the presence of benzene in upgradient Well MW-2U1 as well as downgradient Wells MW-2D3 and MW-2D4.

Response: The Agency agrees that the ground-water sample collected from Well MW-11 contains a concentration of benzene (0.99 mg/L) which might indicate that a source of benzene exists upgradient of the petitioned waste. However, the Agency has several concerns regarding the commenter's use of ground-water monitoring data from Well MW-11 to support this assertion. First, the data from Well MW-11 that the commenter presents are from a sample collected in March 1989. The Agency believes that historical ground-water monitoring data are necessary to determine whether ground-water contamination in the vicinity of Well MW-11 existed during the period of time that ground-water contamination in the vicinity of HWM-2 has been documented. If ground-water contamination in the vicinity of Well MW-11 is a recent occurrence, such that it is unrelated to historic ground-water contamination in the vicinity of HWM-2, the commenter's concerns are unjustified. Second, the commenter provides no information concerning MW-11's construction. This information is necessary if a comparison is to be made between data for Well MW-11 and data for the wells monitoring HWM-2 (*e.g.*, the Agency needs to know whether Well MW-11 is monitoring the same stratigraphic interval as the wells monitoring HWM-2). Third, the Agency questions the validity of water level elevation data submitted by the commenter in support of the commenter's contention that Well MW-11 is upgradient of HWM-2. Although it is likely that Well MW-11 is upgradient of HWM-2 at least some of the time, the water level measurement for Well MW-11, presented by the commenter to confirm their assertion that Well MW-11 is upgradient, was made five days after water levels were measured in HWM-2's downgradient wells. (In addition, the water level for HWM-2's designated upgradient well was measured the day following the downgradient well measurements.) It is

inappropriate, particularly in a case such as BSC's where ground-water flow direction is expected to fluctuate as a result of influence from Lake Erie, to compare water levels measured five days apart. Fourth, the commenter fails to present March 1989 benzene data for the four wells which monitor HWM-2. These data are necessary to assist in evaluating the relationship between Well MW-11 and the wells that monitor HWM-2. Similarly, the commenter provides only results of the analysis of the MW-11 sample for the six organic contaminants detected in ground water collected from HWM-2 wells. A complete set of analytical data for Well MW-11 is necessary to make a correlation between data from Well MW-11 and data from HWM-2 monitoring wells.

The Agency agrees that data from Well MW-11 suggest that benzene detected in designated upgradient Well MW-2U1 may result from a contaminant source upgradient of HWM-2; however, concentrations of benzene reported in ground-water samples collected from the wells designated as downgradient of HWM-2 have contained higher concentrations of benzene than Well MW-2U1. If, as the commenter suggests, benzene contamination is originating from a source upgradient of HWM-2, the Agency would expect HWM-2's upgradient well to contain greater concentrations of benzene than the downgradient wells, since the upgradient well is closer to Well MW-11, the location of the elevated benzene concentrations. Since samples collected from wells downgradient of HWM-2 have contained benzene concentrations greater than that reported for Well MW-2U1, the Agency believes there is sufficient basis to conclude that wastes contained in HWM-2 may be contributing to the benzene contamination of the ground water. In addition, as stated in the proposal, the upgradient well's close proximity to the landfill, the low hydraulic gradient across the landfill, and fluctuations in ground-water flow caused by nearby lake Erie, suggest that the upgradient well could also intercept flow from the petitioned unit. Thus, the contamination observed in the upgradient well may result from migration of constituents from the landfill.

Comment: Elevated benzene levels detected in TCLP leachate generated from samples from three other Slag Fill Area SWMUs provide sufficient evidence to demonstrate that the low levels of benzene contamination observed in the HWM-2 monitoring wells are not due to the petitioned

waste. TCLP leachate benzene concentrations reported for SWMUs S-5 (0.110 mg/L, approximately 150 feet southeast of HWM-2) and S-11/S-22 (36.0 mg/L, approximately 1000 feet northeast of HWM-2) support the conclusion that benzene contamination observed in HWM-2 wells is not the result of the petitioned waste.

Response: As discussed previously in today's notice, the Agency is concerned with the adequacy of the sampling protocol used to collect the samples for TCLP analysis, the omission of appropriate QA/QC data, and the reported "oily" nature of the waste. In addition, the Agency does not believe that the presence of benzene in TCLP leachates generated from samples collected from SWMUs located in the vicinity of HWM-2 is sufficient basis to disregard the petitioned waste as a potential source of benzene contamination. The Agency also disagrees with the commenter that the levels of benzene contamination reported in wells that monitor HWM-2 are "low." The highest concentration of benzene reported in a well that monitors HWM-2 is 0.041 mg/L (11/6/87), a value which is over eight times the delisting health-based level (0.005 mg/L). Finally, while the TCLP data suggest that other sources of benzene contamination may exist at the BSC facility, the commenter did not provide any conclusive data to demonstrate that the petitioned unit is not contributing to contamination of the ground water.

Phenanthrene, Anthracene, and Fluorene. The commenter believed that phenanthrene, anthracene, and fluorene in ground water may originate from other Slag Fill Area SWMUs, particularly those used for management of tar wastes. Although specific data from BSC's recent SWMU characterization program were not available for these constituents, the commenter made the following two assertions regarding the Agency's use of phenanthrene, anthracene, and fluorene data to support denial of BSC's petition.

Comment: The presence of other tar constituents (such as pyridine, benzene, and toluene) in TCLP leachate from SWMUs S-11 and S-22 support the contention that the source of tar constituents detected in ground water is upgradient of HWM-2. Moreover, the existence of upgradient SWMUs helps explain the fact that phenanthrene, anthracene, and fluorene were detected in upgradient well MW-2U1 as well as downgradient wells MW-2D2, MW-2D3, and MW-2D4.

Response: The Agency does not believe that the presence of pyridine,

benzene, and toluene in TCLP leachate from SWMUs S-11 and S-22 in any way demonstrates that phenanthrene, anthracene, and fluorene could not have migrated from the petitioned waste to ground water. First, BSC never analyzed the petitioned waste for either phenanthrene, anthracene, or fluorene; therefore, there does not exist adequate basis for concluding that phenanthrene, anthracene, or fluorene are not present in the petitioned waste (also see the Agency's response to the comment that follows). Second, the commenter has not provided the Agency with the phenanthrene, anthracene, or fluorene concentrations in wastes contained in SWMUs located in the vicinity of HWM-2. Third, the commenter has not provided the Agency with ground-water monitoring information which demonstrates that phenanthrene, anthracene, or fluorene are present in ground water upgradient of the petitioned unit. In fact, phenanthrene, anthracene, and fluorene were undetected in the ground-water sample recently collected from Well MW-11. Fourth, although SWMUs S-11 and S-22 might be hydraulically upgradient of HWM-2, the commenter has presented no hydrogeologic information confirming that hydraulic connection between these units exists. Lastly, as explained previously in this notice, the Agency believes that water level data indicate that ground-water contamination observed in the designated upgradient well may result from migration of constituents from the landfill.

Comment: Phenanthrene, anthracene, and fluorene are not reasonably expected to have occurred in the petitioned waste. The commenter believed that during the tar recovery process, phenanthrene, anthracene, and fluorene, because of their high molecular weights and high boiling points, would have tended to remain in the tar portion of the system. Consequently, phenanthrene, anthracene, and fluorene would not be present in the aqueous portion of the system which, ultimately, is the material which is routed to the ammonia stills. The commenter believed that the fact that phenanthrene, anthracene, and fluorene "are not listed as cause for concern" in the background listing document for K060 supports their contention. In addition, although BSC has not been required to provide waste sampling data for phenanthrene, anthracene, and fluorene, BSC has analyzed the petitioned waste for other PAHs (*i.e.*, naphthalene, benzo(a)pyrene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene). Concentrations of all of the

higher molecular weight PAHs (benzo(a)pyrene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene) were consistently reported to be below the 0.010 mg/kg detection limit in samples of the petitioned waste. The commenter believed that given their relatively high molecular weights, phenanthrene, anthracene, and fluorene should also not be expected to originate from the petitioned waste, despite their detection in HWM-2 monitoring wells.

Response: Although phenanthrene, anthracene, and fluorene may not be expected to occur in ammonia still lime sludge, the commenter has not provided information that demonstrates that these constituents are not expected to occur in the other wastes which comprise approximately 98 percent of the petitioned waste. In addition, because the tar fraction of the coke oven gas is in contact with the weak ammonia liquor (WAL) fraction while the coke oven gas is being cooled and before decanting occurs, the Agency believes that higher molecular weight and higher boiling point constituents could be derived from the ammonia still lime sludge portion of the waste, particularly if at any time in the past the separation process was operated inefficiently. The fact that (benzo(a)pyrene, identified by the commenter as a high molecular weight, high boiling point constituent, has been detected in the petitioned waste, confirms the Agency's belief. Although the commenter claimed that benzo(a)pyrene has not been detected in the petitioned waste, BSC reported to the Agency the results of the analysis of six waste samples in which benzo(a)pyrene was detected (see the petitioner's November 19, 1984 submittal in the RCRA public docket for the proposed rule). As the commenter noted, naphthalene, a PAH with a molecular weight similar to those of phenanthrene, anthracene, and fluorene, has also been detected in the petitioned waste (see the RCRA public docket for the proposed rule for a copy of the results of samples collected in April, 1984).

Barium. The commenter claimed that EPA's concern regarding barium concentrations in ground water does not justify petition denial. The commenter made the following specific comments regarding the Agency's use of barium data to support denial of BSC's petition.

Comment: The Agency's use of barium data ignores the fact that actual waste data exhibit leachate concentrations well below the delisting health-based level. EP toxicity test data submitted July 18, 1984 and April 16, 1985 indicate leachable barium concentrations ranging from 0.24 to 0.645 ppm, all of

which are below the 1.0 mg/L (ppm) National Interim Primary Drinking Water Standard.

Response: As presented in the proposal, the maximum EP leachate concentration of barium in samples of the petitioned waste was, in fact, higher than the range presented in the petitioner's comment (1.48 ppm, middle sample #7, March, 1984). Therefore, the Agency does not agree that leachable barium levels are below the 1.0 mg/L (ppm) drinking water standard.

Comment: The Agency's use of barium data ignores the fact that waste data exhibit VHS model-predicted compliance-point concentrations well below the delisting health-based level. EPA's own application of the conservative VHS model predicts worst-case barium compliance point concentrations to be only 0.23 mg/L, a concentration below the health-based level used in delisting decision-making.

Response: As stated previously in this notice, the Agency uses VHS model results in conjunction with actual ground-water monitoring data to fully evaluate (not to verify) the impacts of the disposal of BSC's waste. Because of the differences between the hypothetical VHS landfill and BSC's landfill, the Agency recognizes that the calculated compliance-point concentrations for barium in BSC's waste would not necessarily correspond directly with ground-water monitoring data.

Comment: EPA does not consider the complete ground-water monitoring database available and relies on data from a single nearly four-year-old sampling event. Thorough review of the complete ground-water monitoring database for the HWM-2 wells reveals that the June 1985 barium values reported in the proposal are anomalies or erroneous and actual barium levels in site ground water are considerably lower. Barium concentrations for all but one of the 43 barium values reported during the eleven sampling rounds for barium to date are below the 1.0 mg/L drinking water standard currently in effect. The averages and upper confidence limits for each well are also below the current 1.0 mg/L drinking water standard. In addition, barium values from subsequent sampling rounds are consistently lower than the June 1985 values.

Response: The commenter did not provide any information (e.g., appropriate laboratory or field reports) to demonstrate that any of the barium values detected in ground water are erroneous. Furthermore, the Agency disagrees with the commenter's method for concluding that the barium value

which exceeds the health-based level is erroneous and/or anomalous. The statistical analysis employed by the commenter defines the interval within which the true mean of the barium concentrations will fall with a specified confidence (in the commenter's case, 95 percent). The Agency, in its evaluation of delisting petitions, recognizes that ground-water data exhibit natural variation, and does not consider the mean of the ground-water data to be representative of the true potential impact of the waste on the environment.

For the purposes of delisting, detection of a hazardous constituent in ground water at a concentration exceeding the health-based level is regarded as basis for concern. Therefore, for the purposes of delisting, constructing tolerance intervals would be a more appropriate statistical analysis of the barium data. Tolerance limits will estimate the interval within which a specified proportion of the barium concentration measurements will fall with a given degree of confidence.

The Agency constructed tolerance intervals for the monitoring well data presented by the commenter. The tolerance intervals were constructed to contain 95 percent of the barium data with 95 percent confidence. The upper limit of the tolerance interval calculated for each of the monitoring wells was as follows: MW-2U1, 1.072 ppm; MW-2D2, 1.312 ppm; MW-2D3, 1.006 ppm; and MW-2D4, 1.332 ppm. Because each of these values exceeds the delisting health-based level for barium (1.0 ppm), more than 5 percent of the barium concentration measurements for the HWM-2 monitoring wells would be expected to exceed the delisting health-based level for barium. (For further information, see "Statistical Analysis of Ground-water Monitoring Data at RCRA Facilities—Interim Final Guidance," April 1989; statistical calculations used to determine the upper limit of the tolerance interval for BSC's barium data are located in the RCRA public docket for today's notice.)

Comment: The results for the sampling rounds in which the higher barium concentrations were reported are based on the analyses of unfiltered ground-water samples. Since the samples were not filtered prior to analysis, the commenter believes the reported barium concentration is biased upward by the relatively high concentrations of suspended solids in the HWM-2 wells. (The commenter reported that the concentration of suspended solids in the HWM-2 wells was occasionally greater than 100 mg/

L). The commenter believes that consequently the true mobile barium concentrations in HWM-2 ground water are likely to be less than the values obtained from analysis of unfiltered samples. The commenter notes that the eight most recent sampling rounds (two for dissolved barium and six for total barium conducted over a nearly 4-year period) indicate that barium concentrations are well below levels of regulatory concern.

Response: The Agency requests that petitioners submit total (unfiltered) metals results for ground-water samples. For the purposes of the delisting program, the Agency considers filtering samples prior to acid preservation to be an unacceptable technique. (See Superfund Ground-Water Issue—Ground Water Sampling for Metals Analyses in the RCRA public docket for today's notice.) Consequently, the Agency does not intend to disregard results of barium analyses performed on unfiltered ground-water samples.

1,1-Dichloroethane. The commenter believed that 1,1-dichloroethane detected in ground-water collected from well monitoring HWM-2 is the result of an upgradient source, and does not believe that detection of 1,1-dichloroethane in ground-water samples collected from HWM-2 wells provides sufficient basis to conclude that the petitioned waste contains leachable 1,1-dichloroethane. Although the recently conducted tests on wastes from slag fill area SWMUs provide no data on 1,1-dichloroethane leachate concentrations exhibited by other on-site wastes, the commenter made the following assertions in support of their conclusion that the petitioned waste is not the source of 1,1-dichloroethane reported in wells that monitor HWM-2.

Comment: 1,1-Dichloroethane is not expected to be present in ammonia still lime sludge because (1) it is a chlorinated solvent, and (2) it is not expected in cokemaking wastes, based on the list of toxic pollutants used for the development of effluent limitation guidelines and standards for the Coke Making Subcategory of the Iron and Steel Industry.

Response: Although 1,1-dichloroethane may not be expected to occur in ammonia still lime sludge, the commenter has not provided information that demonstrates that 1,1-dichloroethane is not expected to occur in the other wastes which comprise approximately 98 percent of the petitioned waste. Consequently, the Agency believes that because BSC has not analyzed the petitioned waste for 1,1-dichloroethane, there is no basis for concluding that 1,1-dichloroethane is not

present in the petitioned waste (also see the Agency's response to the following comment).

Comment: There exist a number of SWMUs in the slag fill area. In addition, when detected, 1,1-dichloroethane has been found in upgradient as well as downgradient wells. The likelihood of an upgradient source helps explain the 1,1-dichloroethane concentrations detected in wells upgradient and downgradient of HWM-2. In addition, recent analysis of a ground-water sample collected from Well NW-11 indicates a 1,1-dichloroethane concentration of 4.3 mg/L. This value is three orders of magnitude higher than the concentrations detected in the HWM-2 wells and supports the beliefs that the source of 1,1-dichloroethane is not the petitioned waste.

Response: The Agency agrees that it is possible that 1,1-dichloroethane contamination detected in wells which monitor HWM-2 may originate from a source other than the petitioned waste. However, the Agency does not believe sufficient data exist to demonstrate that the petitioned waste has not contributed to the 1,1-dichloroethane contamination detected in ground water collected from HWM-2 wells. First, BSC has not analyzed the petitioned waste for 1,1-dichloroethane. Second, BSC has not provided the Agency with either adequate ground-water monitoring information collected upgradient of HWM-2, or waste analysis data for SWMUs located in the vicinity of HWM-2, that demonstrate that 1,1-dichloroethane originates from an upgradient source. Third, as explained previously in this notice, the Agency believes that, as a result of fluctuations in ground-water flow direction, ground-water contamination observed in the designated upgradient well may result from migration of constituents from the landfill.

2,4,6-Trichlorophenol. The commenter believes that 2,4,6-trichlorophenol concentrations reported in ground water samples collected from HWM-2 monitoring wells are not reflective of leaching characteristics of the petitioned waste. The commenter made the following comments regarding the Agency's use of 2,4,6-trichlorophenol data to support denial of BSC's petition.

Comment: The statistical basis for the Agency's use of 2,4,6-trichlorophenol data to support denial of BSC's petition is questionable. The statistical validity of values reported at the detection limit does not provide sufficient basis for concluding that hazardous constituents are present at levels of concern. The agency has ignored 2,4,6-trichlorophenol data which indicate that 2,4,6-

trichlorophenol concentrations have consistently been below detection in all but the June 6, 1986 sampling round cited by EPA.

Response: The commenter has not provided any statistical analysis to support its contention that values reported at the detection limit are not statistically valid, thus, the Agency continues to believe that the concentrations reported at the detection limit indicate that the petitioned waste may be contributing to ground-water contamination. Furthermore, the commenter has not provided any information (e.g., appropriate laboratory or field reports) which demonstrates that the values reported at the detection limit are in error. Consequently, the Agency believes that the 2,4,6-trichlorophenol data represent the true concentrations of 2,4,6-trichlorophenol in ground water. The Agency is concerned that levels of 2,4,6-trichlorophenol may in fact be present in ground water at concentrations above health-based levels, but at or somewhat below the reported detection limits. Because the delisting process is intended for those wastes which clearly do not pose a hazard to human health or the environment, the Agency believes that evidence that a waste may have caused ground-water contamination supports denial of a petition. However, as noted previously, the Agency will consider demonstrations that ground-water monitoring data for wells which monitor the unit in which a petitioned waste is managed do not represent the actual impact of the petitioned waste on ground-water quality. Data submitted by petitioner which indicate that 2,4,6-trichlorophenol concentrations have been below detection in all but the June 6, 1986 sampling round do not constitute an adequate demonstration.

Comment: The commenter maintains that recently available TCLP data for the petitioned waste indicate that 2,4,6-trichlorophenol concentrations in the TCLP leachate are below the level of detection.

Response: The Agency presented its concerns regarding TCLP analyses of the petitioned waste previously in this notice.

f. Petition Completeness

Comment: One commenter, noting the Agency's statement at 54 FR 14106 that "the sampling and analysis program conducted in support of the petition (is) incomplete", complained that the petitioner supplied information in good faith. In addition, the commenter explained that although EPA's petition requirements have changed

substantially since the original submission, the petitioner has been and is willing to work with EPA to develop information needed for a comprehensive characterization of the waste.

Response: The Agency acknowledges that BSC responded in good faith to delisting information requests. However, regardless of BSC's willingness to supply additional information, at this time EPA firmly believes that the petitioned waste poses a threat to human health and the environment based on the Agency's evaluation of waste composition data and groundwater monitoring data submitted to date. Furthermore, the Agency maintains that BSC has not provided a convincing demonstration that the petitioned waste is not hazardous. The Agency believes that additional sampling and analysis to "complete" the existing petition will only serve to delay the same conclusion. The Agency notes, however, that BSC has the option to submit a new petition in the future that specifically addresses the concerns raised in the proposed rule (*i.e.*, the petition should contain a complete characterization of the petitioned waste and a demonstration that conclusively shows that the petitioned waste could not have contributed to existing groundwater contamination at the site). If a new petition is submitted, the Agency would evaluate both new and existing data to determine whether the petitioned waste has posed, or may potentially pose, a threat to human health or the environment. At that time also, the Agency would determine whether the new data sets are sufficiently comprehensive and of sufficient quality to justify discarding older data sets.

Comment: One commenter believed that BSC dutifully attempted to meet EPA's evolving delisting requirements and that they should be given the opportunity to submit additional information to complete the petition. The commenter stated further that the Agency's denial of BSC's petition should not be based on incomplete information especially if the incomplete information would be considered inadequate to support an exclusion.

Response: The agency does not believe that it is necessary to require a petitioner to submit a "complete" petition if the available information in an incomplete petition is sufficient to demonstrate that the petitioned waste is a hazardous waste. To do so would place an unnecessary expense and burden on the petitioning facility. For example, the Agency believes that it would be unreasonable to require a

facility to provide extensive analytical results for hazardous organic constituents if the petitioned waste was already shown to exhibit significant levels of chromium and cadmium. Furthermore, the Agency believes that there is a fundamental difference between a petition that is denied and one that is granted. A petitioned waste that is denied an exclusion must continue to be handled as a hazardous waste, therefore, the absence of information in the petition will not impact the ultimate fate of the waste. A petitioned waste not impact the ultimate fate of the waste. A petitioned waste that is delisted, however, is removed from subtitle C regulation. Thus, it is imperative that a petition for a waste likely to be excluded contain all necessary information concerning hazardous constituents that exist or may exist in the petitioned waste, pursuant to 40 CFR 260.22, so that the Agency can effectively evaluate the potential hazards of the petitioned waste.

Comment: One commenter expressed concern that the Agency failed to inform BSC, until the proposed rule, that at least 23 composite samples should be collected from the 5.4 acre landfill as part of a complete demonstration. The commenter further noted that the Agency's mention of sampling requirements "long after the fact implies that BSC's delisting effort has been simply awaiting denial" despite repeated Agency requests for additional information.

Response: The Agency recognizes that BSC was not specifically instructed to collect 23 samples. However, BSC was informed at a meeting on July 17, 1987 (between BSC and EPA representatives) that the number of samples collected is inadequate to characterize the waste. Further, the Agency disagrees with the commenter's implication that the Agency unnecessarily collected information even though a denial decision had been reached. The Agency acknowledges that the petition review process has evolved over the past several years. During this time, the Agency provided notice of delisting criteria to the public in numerous ways. For example, on February 5 and 7, 1985, the Agency conducted two public hearings to discuss the recent changes to the delisting program as a result of HSWA, including the adoption of models in the delisting review process, requirements for submitting a petition, and special requirements for petroleum refinery and multiple waste treatment facilities. On May 28, 1985, the Agency published information regarding the availability of a guidance manual that

would provide facilities with information on submitting a complete petition (see 50 FR 21607). Despite the Agency's efforts to educate the regulated community, BSC apparently was not informed or aware of standard delisting protocol. The Agency regrets this apparent oversight, but does not believe that it ultimately affects the final decision to deny BSC's petition because sufficient data exist that indicate that the petitioned waste is hazardous.

The Agency also notes that it will, as it has in past decisions, consider sampling strategies that deviate from the recommended standard protocol. In BSC's case, however, the Agency believed that it was appropriate to discuss the inadequacies of the sampling procedures in the proposed rule particularly in light of the large volume of petitioned waste and the lack of analytical data available to characterize the entire content of the petitioned landfill. Had the Agency not discussed BSC's sampling procedures, other potential petitioners or BSC themselves might have wrongly concluded that the sampling procedures were adequate. Finally, the Agency wishes to note that its request for information throughout the evaluation of BSC's petition was consistent with the need to obtain necessary information about the petitioned waste.

Comment: One commenter expressed concern that the Agency, in the proposed denial of BSC's petition, regarded BSC's "indicator approach" (for evaluating the presence of hazardous organic constituents) as insufficient. Specifically, the commenter explained that the Agency reviewed BSC's sampling and analysis plan, which included the "indicator approach," and subsequently indicated Agency concurrence by requesting analytical data for an additional three hazardous constituents.

Response: The Agency recognizes that the commenter may be correct in inferring that the Agency had ample opportunities to comment on the "indicator approach." The Agency also recognizes that at one time EPA staff may have suggested to BSC that this approach might be adequate. Nevertheless, after re-evaluation of this approach, and the analytical data submitted for the "indicator" constituents, the Agency maintains its position regarding the inadequacies of BSC's indicator approach (see 54 FR 14107 for more details). HSWA required the Agency to consider, during its review of petitioned wastes, any factors (including additional constituents) which could potentially cause a

petitioned waste to be hazardous. The Agency believes that its evaluation of the adequacy of BSC's indicator approach is consistent with the HSWA requirement to consider other factors. Specifically, in BSC's case, the Agency does not believe that the "indicator approach" completely demonstrated that other hazardous constituents are not present in the petitioned waste below levels of concern. Furthermore, the Agency believes that, regardless of whether it occurred in the past or now concurs with BSC's indicator approach, the petitioner has not demonstrated that the petitioned waste is not hazardous.

Comment: One commenter noted that, although the Agency claimed that a more complete characterization of the petitioned waste might demonstrate the presence of additional hazardous constituents, the opposite may be the case. Specifically, the commenter explained that additional analyses may demonstrate that the petitioned waste does not contain hazardous levels of additional constituents, including those detected in the ground water. The commenter further claimed that the following information is available to support this type of demonstration: (1) the demonstrated existence of solid waste management units in the vicinity of BSC's landfill—units which may have received wastes containing hazardous constituents; (2) available TCLP data that indicate that the wastes contained in these solid waste management units may be the source of organic constituents present in ground water; and (3) ground-water monitoring data that indicate contamination in monitoring wells upgradient of the petitioned unit.

Response: The Agency, of course, recognizes that additional characterization of the petitioned waste may support BSC's claim that the petitioned waste is not hazardous. However, as discussed previously in today's notice, BSC neither provided a complete characterization of the petitioned waste nor a demonstration that conclusively shows that the petitioned waste could not have contributed to existing ground-water contamination at the site. Without these demonstrations, the Agency believes that it is appropriate to finalize its decision to deny BSC's petition. In addition, BSC's former waste management practices, as reflected in the number of solid waste management units in the vicinity of the petitioned landfill, only heighten EPA's concern regarding possible unidentified contaminants in the petitioned waste. Furthermore, the TCLP data submitted

by the same commenter, as noted earlier, suggests that other constituents (*i.e.*, methylene chloride and 1,1,1-trichloroethane) are, in fact, present in the waste. The Agency maintains that the exact composition of the waste in the petitioned landfill as well as nearby solid waste management units is generally unclear.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that BSC's petitioned waste should not be excluded from hazardous waste control. The Agency, therefore, is denying Bethlehem Steel Corporation's petition for exclusion of its ammonia still lime sludge described in its petition as EPA Hazardous Waste No. K060 and contained in its landfill at its Lackawanna, New York facility. The effect of this rule is that this petitioned waste must continue to be handled as hazardous in accordance with 40 CFR parts 260 through 268 and the permitting standards of 40 CFR part 270.

III. Effective Date

This rule is effective immediately. 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 does not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that the denial should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. 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. The denial of this petition does not impose an economic burden on this facility because, prior to submitting and during the review of the petition, this facility should have continued to handle its waste as hazardous. The denial of this petition means that BSC must continue managing this waste as hazardous in a manner in which it has been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This rule

is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. 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 does not have a significant adverse economic impact on small entities. The facility included in this notice does not constitute a small entity. 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.

VI. 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 management and disposal, Recycling.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 6, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91-19759 Filed 8-23-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 271 and 272

[FRL-3987-2]

Louisiana; Final Authorization of State Hazardous Waste Management Program Agency

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for final authorization of revisions to its hazardous waste

program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of Louisiana's application and has made a decision, subject to public review and comment, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Louisiana's hazardous waste program revisions, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Louisiana's application for program revision is available for public review and comment.

Final authorization for State of Louisiana shall be effective on August 26, 1991, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Louisiana's program revision application must be received by the close of business September 25, 1991.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet Street, Baton Rouge, Louisiana 70810, phone (504) 765-0232, U.S. EPA, Region 6, Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6444; and U.S. EPA, Headquarters, Library, PM 211A, 401 M Street SW., Washington, DC 20460. Written comments, referring to Docket Number LA-91-2, should be sent to the Louisiana Project Officer, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA, Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6760.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6760.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266, 268 and 124 and 270.

B. Louisiana

Louisiana initially received final authorization on February 7, 1985 (See 50 FR 3348) to implement its base hazardous waste management program. Louisiana received authorization for revisions to its program on January 29, 1990 (See 50 FR 4889). On October 28, 1990, Louisiana submitted a complete program revision application for additional program approvals. Today,

Louisiana is seeking approval of its program revision in accordance with § 271.21(b)(3).

EPA has reviewed the State of Louisiana's application, and has made an immediate final decision that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Louisiana. The public may submit written comments on EPA's final decision up until September 25, 1991. Copies of Louisiana's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Louisiana's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The Louisiana program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 260 through 266, and 270 that were published in the Federal Register (FR) through September 9, 1987. A provision that is not being proposed for approval at this time is § 3006(f), Availability of Information, requirements. That submission is being reviewed separately, at the request of the State. This proposed approval includes, therefore, only the provisions that are listed in the chart below. This chart lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Radioactive Mixed Waste requirements, July 3, 1986 (51 FR 24504)	Louisiana Revised Statutes (LRS) 30: 2153 (1); Louisiana Administrative Code (LAC) 33:V.109.
2. Liability Coverage—Corporate Guarantee, July 11, 1986 (51 FR 25350)	LRS 30: 2180 A(1), LHWB Secs. 3715 A., B., G., as amended May 20, 1990, effective June 20, 1990; 3719 G., H., as amended May 20, 1990, effective June 20, 1990; 4411 A., B., as amended November 20, 1987, effective December 20, 1987; 4411 G. as amended May 20, 1990, effective June 20, 1990.

Federal citation	State analog
3. Standards for Hazardous Waste Storage and Treatment Tank Systems, July 14, 1986 (51 FR 25422) as amended August 15, 1986 (51 FR 29430).	LRS 30: 2180 A(1), LHWR Secs. 109 as amended May 20, 1990, effective June 20, 1990; 517 as amended July 1990, effective August 20, 1990; 523 as amended March 1990, effective July 1990; 1109 E.1. as amended March 20, 1990, effective April 20, 1990; 1109 E.7.b.-c. as amended March 20, 1990, effective April 20, 1990; 1509 B. as amended November 20, 1987, effective December 20, 1990; 1529 C.2. as amended November 20, 1987, effective December 20, 1990; 1901 as amended November 20, 1987, effective December 20, 1987; 1903 A.-D., effective December 20, 1987; 1905 A.-G. as amended November 20, 1987, effective December 20, 1987; 1907 A.-G. as amended November 20, 1988, effective December 20, 1988; 1907 H. and I., effective December 20, 1987; 1909 A.-C. as amended November 20, 1987, effective December 20, 1987; 1911 A.-D. effective December 20, 1987; 1913 A.-F. effective December 20, 1987; 1915 A.-C. effective December 20, 1987; 1917 A. and B. effective December 20, 1987; 1919 A. and B. effective December 20, 1987; 3105.Table 1 as amended May 20, 1990, effective June 20, 1990; 3501 C. as amended November 20, 1987, effective December 20, 1987; 3701 B. effective March 20, 1984; 4303 as amended March 20, 1990, effective April 20, 1990; 4313 effective December 20, 1987; 4317 as amended November 20, 1987, effective December 20, 1987; 4357 as amended March 20, 1990, effective April 20, 1990; 4377 as amended March 1990, effective July 20, 1990; 4397 as amended August 1987, effective November 20, 1987; 4431 effective March 20, 1984; 4431 A.1. and 2. effective December 20, 1987; 4433 A.-D. as amended November 20, 1987, effective December 20, 1987; 4435 A.-G. as amended November 20, 1987, effective December 20, 1987; 4437 A.-I. as amended November 20, 1987, effective December 20, 1987; A. and B. as amended November 20, 1987, effective December 20, 1987; 4440 A.-C. effective December 20, 1987; 4441 A.-F. effective December 20, 1987; 4442 as amended March 20, 1989, effective April 20, 1989; 4443 as amended November 20, 1987, effective December 20, 1987; 4444 as amended March 20, 1989, effective April 20, 1989; 4445 effective March 20, 1984; 4901 E. as amended May 20, 1990, effective June 20, 1990.
4. Corrections to Listings of Commercial Chemical Products and Appendix VIII Constituents, August 6, 1986 (51 FR 28296).	LRS 30: 2180 A(1), LHWR Secs. 4901.E. as amended March 1990, effective July 20, 1990; 3105 as amended September 1989, effective May 20, 1990.
5. Listing of Spent Pickle Liquor, as amended May 28, 1986 (51 FR 19320) and September 22, 1986 (51 FR 33612).	LHWR Sec. 4901 as amended July 1990, effective August 1990.
6. Revised Manual SW-846; Amended Incorporation by Reference, March 16, 1987 (52 FR 8072).	LRS 30: 2180 A(1), LHWR Secs. 105 I.1. as amended through August 20, 1987.
7. Closure/Post-Closure Care for Interim Status Surface Improvement, March 19, 1987 (52 FR 8704).	LRS 30: 2180 A(1), LHWR Secs. 4457 A.(1) and (2) and 4457 B., as amended June 20, 1989, effective July 20, 1989.
8. Definition of Solid Waste as amended April 11, 1985 (50 FR 14216) and August 20, 1985 (50 FR 33541) and June 5, 1987 (52 FR 21306).	LRS 30: 2153(1), LAC 33: V.109, LHWR Secs. 4901.D., as amended May 20, 1990, effective June 20, 1990; 4139 A.1(c), as amended May 20, 1989, effective June 20, 1989.
9. Amendment to part B Information Requirements for Disposal Facilities June 22, 1987 (52 FR 23447, as amended on September 9, 1987 (52 FR 33936).	LRS 30: 2180 A(1), LHWR Secs. 517 T.4(e) and (f), as amended August 20, 1987, effective September 20, 1987.

The Louisiana program revision application includes State regulatory changes that are more stringent than the Federal RCRA regulations. Federal regulations provide that the owner or operator provide additional information and engineering feasibility plan requirements under certain conditions as contained in 40 CFR 270.14. Louisiana regulations require that the owner or operator of a facility where hazardous waste constituents have been detected in the groundwater always submit an engineering feasibility plan for a corrective action program. The Federal regulations allow some variance of this requirement through 40 CFR 264.98(h) (5), and an owner or operator may submit a proposed permit schedule in lieu of submittal of the plan. In addition, the Federal regulations allow a permit to contain a schedule for future submittal of corrective action plans and groundwater monitoring program description (as required in 40 CFR 270.14(c)(8) (iii) and (iv) in lieu of actually providing the documents at that time. The Louisiana regulation does not

provide for the inclusion of such a schedule for future submittal of the required documents in the permit.

Other Louisiana regulations that are more stringent include those that allow qualified companies that treat, store or dispose of hazardous waste to use a corporate guarantee to satisfy liability assurance requirements as indicated in 40 CFR 264.147, 264.151, and 265.147. The Louisiana regulations require facilities outside Louisiana to use a corporate guarantee to satisfy liability assurance requirements, while the Federal regulations do not include this requirement.

The final area of the Louisiana regulations that are more stringent include regulations that require companies that generate, treat or store hazardous waste in tanks to comply with tank standards equivalent to those found in 51 FR 29430 (August 15, 1986). Federal regulations at 40 CFR 264.192(f) do not include a requirement that accounts for rainfall patterns. Louisiana regulations, however, require that in considering the potential adverse effects

of a release on groundwater quality for the granting of a variance based on a demonstration of no substantial present or potential hazard, the patterns of rainfall in the region be taken into account.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA subtitle C. See 40 CFR 271.1(i). As a result, State provisions which are "broader in scope" than the Federal program are not covered for purposes of EPA enforcement in Part 272. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

The State's list of chemical compounds at Louisiana Revised Statutes (LRS) 30:2180 A(1) and Louisiana Hazardous Waste Regulations (LHWR) sections 4901.E. as amended March 1990, effective July 20, 1990; 3105

as amended September 1989, effective May 20, 1990, which corresponds to 40 CFR Part 261.33 and Appendix VIII that were published in the FR through August 6, 1986, are broader in scope because the Louisiana Regulations include more chemical compounds than the Federal regulations. The additional State-listed chemical compounds are not part of the authorized program.

Another area of the Louisiana regulations deemed to be broader in scope are those dealing with small quantity generators. The Federal regulations require companies that generate, treat, or store hazardous waste in tanks to comply with tank standards equivalent to those published through August 15, 1986. These Federal regulations refer to a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month. The Louisiana regulations are broader in scope because they consider a generator to be one who generates less than 100 kilograms in a calendar month.

C. Decision

I conclude that Louisiana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana is granted final authorization to operate its hazardous waste program as revised.

Louisiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and implementing the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses Part 272 for codification of the decision to authorize Louisiana's program and for incorporation by reference of those provisions of Louisiana's statutes and regulations that EPA will enforce under section 3008, 3013 and 7003 of RCRA. EPA is reserving amending part 272, subpart T, until a later date.

Compliance with Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not

have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Parts 271 and 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 7, 1991.

Robert E. Layton, Jr.,
Regional Administrator.

[FR Doc. 91-20121 Filed 8-23-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-392; RM-7234]

Radio Broadcasting Services; Lometa, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Don Werlinger, allots Channel 270A to Lometa, Texas. See 55 FR 36298, September 5, 1990. Channel 270A can be allotted to Lometa, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.3 miles) east to avoid a short-spacing to Station KQXT(FM), Channel 270C1, San Antonio, Texas. The coordinates for the allotment of Channel 270A at Lometa are North Latitude 31-13-14 and West Longitude 98-21-15. This proceeding is terminated.

EFFECTIVE DATE: October 7, 1991. The window period for filing applications will open on October 8, 1991, and close on November 7, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 654-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-392, adopted August 12, 1991, and released August 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 270A, Lometa.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-20434 Filed 8-23-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-620; RM-7125]

Radio Broadcasting Services; Hayward, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a Petition for Reconsideration filed by Pine-Aire Broadcasting Corporation, Inc., thereby substituting Channel 222C3 for Channel 221A, Hayward, Wisconsin, and modifying the license for Station WRLS-FM. See 55 FR 38571, September 19, 1990. Canadian concurrence has been obtained for the allotment of Channel 222C3 at Hayward at coordinates 46-06-47 and 91-20-07. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 7, 1991.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM

Docket No. 89-620, adopted August 12, 1991, and released August 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 221A and adding Channel 222C3 at Hayward.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-20435 Filed 8-23-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 901, 904, 908, 909, 914, 915, 922, 933, 935, 942, 943, 952, 970 and 971

Acquisition Regulation; Miscellaneous Amendments (Number 2)

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department today adopts a final rule which amends the Department of Energy Acquisition Regulation (DEAR) primarily to perform housekeeping duties such as updating references, removing sections, some of which have been outdated by more recent changes in the Federal Acquisition Regulation (FAR), correcting editorial errors and clarifying some guidance. This action follows publication of a proposed rule on February 20, 1991 at 56 FR 6826. In the area of management and operating (M&O) contracts, the changes will require those contractors to comply with DOE Directives if they acquire utility services on DOE's behalf, but will simplify the review and approval of certain individual employee compensation rates under an M&O contract's personnel appendix. All of

these changes are summarized in the "Section by Section Analysis" appearing later in this document.

EFFECTIVE DATE: This rule will be effective September 25, 1991.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Procurement, Assistance and Program Management (PR-121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8247.
Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1900.

SUPPLEMENTARY INFORMATION:

- I. Section by Section Analysis
- II. Procedural Requirements
 - A. Review Under Executive Order 12291
 - B. Review Under the Regulatory Flexibility Act
 - C. Review Under the Paperwork Reduction Act
 - D. Review Under Executive Order 12612
 - E. National Environmental Policy Act
- III. Public Comments
- IV. Other Changes

I. Section by Section Analysis

A detailed list of changes made is as follows:

1. The authority citation for chapter 9 is restated.

2. Subsection 901.104-1, "Publication and code arrangement" is amended at (a)(2) by changing the word "of" to "in" between the words "form" and "the", and by adding the words "generally updated on an annual basis" immediately following the words "Code of Federal Regulations".

3. Section 901.105 is amended by the substitution of an updated listing of Office of Management and Budget (OMB) control numbers assigned to information collections contained elsewhere in the regulation.

4. Subsection 901.603-70 is amended for clarity by changing the word "present" to "existing", by adding the words "certificate of" before the word "appointment" and by adding the words "of appointment" after the word "certificate".

5. Subsection 904.601 is amended to reflect an organizational name change. Specifically, the "Office of Procurement Support" becomes the "Office of Procurement Information Systems/Property."

6. A new subpart 908.3 is added. It includes a new section 908.303, "General", which requires utility acquisitions to comply with DOE Directives and describes circumstances which are appropriate for delegating authority to conduct utility service

acquisitions. It also includes 908.307, "Precontract Acquisition" Reviews, which specifies review requirements for certain utility acquisitions.

7. Subsection 909.104-1 is removed as its paragraph (b) duplicates FAR 9.104(e) and its paragraph (g) duplicates 922.804-2(c), except for the second sentence of the present 909.104-1(g) which is moved to become a new second sentence at 922.804-2(c).

8. Subsection 914.406-3 is amended at paragraph (e) to remove an unnecessary reference to subparagraphs of a FAR citation.

9. Section 915.405-1 is revised to substitute the word "solicitations" for the word "solicitation" in the first line of the paragraph.

10. Subsection 915.970-8 is amended to correct an incorrect FAR citation. Specifically, the reference to "FAR 31.205-2(e)" should read "FAR 31.205-26(e)" at paragraph (b)(2)(i)(D) and the reference to "970.7001-4 and 970.7001-8" should read "FAR 30.414" at paragraph (d).

11. Part 922 is amended to add a new second sentence to paragraph (c) of 922.804-2. The text of the new sentence is the same as the second sentence of the current 909.104-1(g) which is being relocated to what is deemed a more relevant location.

12. Section 933.105 is amended to improve clarity regarding procedures to be followed if a subcontract level protest is received after being lodged with the General Services Board of Contract Appeals (GSBCA).

13. Section 935.010, "Scientific and technical reports," is revised to clarify that a copy of each scientific and technical report, not only the final report, is to be submitted to the DOE Office of Scientific and Technical Information. That office's name is also updated.

14. Subpart 942.14 is amended at 5 places to recognize an organization's name change.

15. Section 943.170 is amended at paragraph (i) to correct a citation by changing "FAR 15.507(b)" to "FAR 6.3."

16. Section 952.204-73 is amended at paragraph (c), question 7, to reflect more recent Department of Commerce regulations by deleting country code "P" and adding country code "S" and by deleting the reference "15 CFR part 370" and substituting the reference "15 CFR part 770".

17. Subsection 952.212-73 is revised to delete an obsolete organization name and publication number.

18. Subsection 952.214-27 is deleted as it is duplicative of FAR 52.214-27 and FAR 14.201-7(b).

19. Subsection 952.215-18 is removed as it is essentially duplicative of FAR 52.215-33.

20. Subsection 952.219-9 is amended to insert a missing number for a form.

21. Subsection 952.227-79, paragraph (b), is amended to correct a grammatical error. Specifically, the word "on" is substituted for the word "for" between the words "information" and "use".

22. Subsection 952.235-70 is amended, at the third sentence of the clause, by adding the words "contractor with the written consent of the" before the title "Contracting Officer" where that title first appears.

23. The text of 970.0803 is revised to better describe the review process if an M&O contractor is authorized to procure utility services.

24. Subsection 970.3102-2 is amended to increase the review and approval threshold for individual employee compensation, under an M&O contract's personnel appendix, from \$60,000 to \$80,000.

25-31. Subsections 970.5203-3, 970.5204-10, 970.5204-12, 970.5204-13, 970.5204-15, 970.5204-26 and 970.5204-31 are amended to correct grammatical errors and misspellings, and to correct erroneous citations.

32. Subsection 970.7104-3 is revised by adding "DOE Directives as explained at" between the words "with" and "970.0803" at the end of the sentence.

33. Subsection 970.7104-12, paragraph (a), is amended to add the words "except FAR 19.705-7 and the implementing clause at FAR 52.219-16 which need not be included in subcontracts issued by management and operating contractors" between "subpart 19.7" and the closing period. This is in keeping with the applicable law which states, at 15 U.S.C. 637(d)(4)(F)(i), that liquidated damages are applicable to prime contractors.

34. Subsection 970.7104-39 is amended to substitute "FAR section 3.102" in place of "FAR subpart 3.1" because the section reference is the more specific location for the subject matter being implemented.

35. Section 971.101 is revised to add a reference to other review requirements at 908.307.

36. Subsection 971.103 is amended to delete paragraph (a)(1)(ii) as it is obsolete due to changes in the FAR, to update an outdated title for a special type justification at paragraph (a)(1)(iii), and to correct an erroneous citation at paragraph (c)(2).

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order, titled "Federal Regulation," requires that certain regulations be reviewed by the OMB prior to their promulgation. OMB Bulletin 85-7 exempts all but certain types of procurement regulations from such review. This rule does not involve any of the topics requiring review under the bulletin, and accordingly, is exempt from such review. Separately, the Department has determined that there is no need for a regulatory impact analysis as the rule is not a major rule as that term is defined in section 1(b) of the Executive Order.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's rule will affect states which contract with the DOE. However, the DOE has determined that none of the revisions will have a substantial

direct effect on the institutional interests or traditional functions of the states.

E. National Environmental Policy Act

DOE has concluded that this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

III. Public Comments

No public comments were received following publication of the notice of proposed rulemaking at 56 FR 6826 on February 20, 1991.

IV. Other Changes

The Department had proposed that the dollar threshold at which M&O contractors must seek formal Departmental approval of individual compensation rates be increased from \$60,000 to \$70,000. This threshold and the conditions involved are at 970.3102-2(d). Since that time, the originator has suggested that the threshold could be increased to \$80,000 rather than the \$70,000 proposed. The higher threshold would decrease the administrative review burden of both the contractors and DOE. Consequently, this final rule, at 970.3102-2(d), increases the review threshold from \$60,000 to \$80,000 rather than from \$60,000 to \$70,000 as discussed in the earlier proposal.

List of Subjects in 48 CFR Ch. 9

Government Procurement.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC., on August 15, 1991.

Berton J. Roth,

Acting Director Office of Procurement,
Assistance and Program Management.

1. The authority citation for parts 901, 904, 908, 909, 914, 915, 922, 933, 935, 942, 943, 952, 970 and 971 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In 901.104-1, paragraph (a)(2) is revised to read as follows:

901.104-1 Publication and code arrangement.

(a) * * * (2) cumulative form in the Code of Federal Regulations, generally updated on an annual basis, and * * *

3. In 901.105, the listing of control numbers following the introductory paragraph is revised to read as follows:

901.105 OMB control numbers.

Dear	Title	Control No.
Special Contracting Methods		
917.72	Program Opportunity Notices for Commercial Demonstrations.	1910-4100
917.73	Program Research & Development (R&D) Announcements.	1910-4100
Application of Labor Laws to Government Acquisition		
922.804-2(b)(2)	Affirmative Action Compliance Requirements for Construction.	1910-4100
Bonds and Insurance		
928.170	Fidelity Bonds.....	1910-4100
Construction and architect-engineer contracts		
936.7301	Outline of agreement for rental of contractor owned construction equipment.	1910-4100
Termination of contracts		
949.505	Other termination clauses.	1910-4100
Solicitation provisions and contract clauses		
952.217-70	Acquisition of real property.	1910-4100
952.235-70	Key personnel.....	1910-4100
DOE management and operating (M&O) contractors		
970.5204-1	Security.....	1910-4100
970.5204-9	Accounts, records, and inspection.	1910-4100
970.5204-10	Foreign ownership, control or influence over contractors (FOCI).	1910-4100
970.5204-11	Changes.....	1910-4100
970.5204-12	Contractor's organization.	1910-4100
970.5204-13	Allowable costs & fixed fees management and operating contracts.	1910-4100
970.5204-14	Allowable costs & fixed fee (support contracts).	1910-4100
970.5204-19	Printing clause for M&O contracts.	1910-4100
970.5204-21	Property.....	1910-4100
970.5204-22	Contractor purchasing system.	1910-4100

Dear	Title	Control No.
970.5204-27	Consultant or other comparable employment services of contractor employees.	1910-4100
970.5204-29	Permits or licenses....	1910-4100
970.5204-31	Litigation and claims.	1910-4100
970.5204-32	Required bonds & insurance—exclusive of government property (cost-type contracts).	1910-4100
970.5204-38	Special clause for procurement of construction.	1910-4100
970.5204-45	Termination.....	1910-4100
970.5204-50	Cost and schedule control systems.	1910-4100

4. Section 901.603-70 is revised to read as follows:

901.603-70 Modification of appointment.

To modify a contracting officer's authority, the existing certificate of appointment shall be revoked and a new certificate of appointment issued.

PART 904—ADMINISTRATIVE MATTERS

904.601 [Amended]

5. Section 904.601, "Federal procurement data system," is amended at paragraph (c) by deleting the name "Office of Procurement Support" and inserting the name "Office of Procurement Information/Property" in the first sentence.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. A new subpart 908.3, is added to read as follows:

- 908.3 Acquisition of Utility Services.
- 908.303 General.
- 908.303-70 DOE Directives.
- 908.303-71 Use of Subcontracts.
- 908.307 Precontract Acquisition Reviews.

Subpart 908.3—Acquisition of Utility Services.

- 908.303 General.
- 908.303-70 DOE Directives.

Utility services (defined at FAR 8.301) shall be acquired in accordance with FAR subpart 8.3 and DOE directives in subseries 4540 (Public Services).

908.303-71 Use of subcontracts.

Utility services for the furnishing of electricity, gas (natural or manufactured), steam, water and/or sewerage at facilities owned or leased by DOE shall not be acquired under a subcontract arrangement, except as

provided for at 970.0803 or if the prime contract is with a utility company.

908.307 Precontract acquisition reviews.

Proposed solicitations and contracts (including interagency and intragency agreements and subcontracts), and modifications thereto, for the acquisition of utility services at facilities owned or leased by DOE, are required to be submitted for Headquarters review and approval as follows:

(a) Review by the Public Utilities Branch in accordance with (1) FAR section 8.307 and (2) DOE directives in subseries 4540 (Public Services); and

(b) Review by the Business Clearance Division in accordance with (1) DEAR subpart 971.1 and (2) the letter(s) of delegation of contracting authority issued to the Head of the Contracting Activity which contain conditions on the exercise of such authority.

Those offices shall coordinate their reviews and usually provide a single response addressing approval.

PART 909—CONTRACTING QUALIFICATIONS

909.104-1 [Removed]

7. Section 909.104-1, "General Standards," is removed.

PART 914—SEALED BIDDING

914.406-3 [Amended]

8. Section 914.406-3, "Other mistakes disclosed before award," is amended to remove the words "paragraphs (a) and (c) of".

PART 915—CONTRACTING BY NEGOTIATION

915.405-1 [Amended]

9. Section 915.405-1 is amended by substitution of the word "solicitations" for the word "solicitation".

915.970-8 [Amended]

10. Section 915.970-8 is amended to correct incorrect references, specifically, at paragraph (b)(2)(i)(D), the reference to "FAR 31.205-2(e)" should read "FAR 31.205-26(e)" and at paragraph (d), the reference to "930.7001-4 and 930.7001-8" should read "FAR 30.414".

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION^{1/4}

11. Section 922.804-2 is amended at paragraph (c) by the addition of a second sentence to read as follows:

922.804-2 Construction.

* * * * *

(c) * * * In the case of construction acquisition by DOE prime contractors, this determination shall be made only with the approval of the DOE contracting officer.

PART 933—PROTESTS, DISPUTES, AND APPEALS

12. Section 933.105 "Protests to GSBCA" is amended for the purpose of increased clarity by revising paragraph (a)(1)(i) to read as follows:

933.105 Protests to GSBCA.

(a)(1)(i) If a subcontract level protest against a purchase of ADPE is lodged with the GSBCA, the cognizant contracting officer will promptly notify the Office of the Assistant General Counsel for Procurement and Finance, Headquarters through local counsel.

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

13. Section 935.010 "Scientific and technical reports" is revised to read as follows:

935.010 Scientific and technical reports.

(c) All research and development contracts which require submission of scientific and technical reports, shall include an instruction requiring the contractor to submit all scientific and technical reports, and any other notices or reports relating thereto, to the following address: U.S. Department of Energy, Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831. The phrase "any other notices or reports relating thereto" does not include notices or reports concerning administrative matters such as contract cost or financial data and information.

(d) Contractors shall be required to submit with each report a completed DOE Form 1332.15, "DOE and Major Contractor Recommendations for Announcement and Distribution of Documents," except when the contract is with an educational institution, in which case the contractor shall be required to submit with each report a completed DOE Form 1332.16, "University Contractor, Grantee and Cooperative Agreement Recommendations for Announcement and Distribution of Documents."

PART 942—CONTRACT ADMINISTRATION

Subpart 942.14—[Amended]

14. Subpart 942.14 "Traffic and Transportation," is amended to update an organizational reference. The "Office of Operations and Traffic" is changed to

"Office of Transportation Management" wherever it appears in sections 942.1401, 942.1402(a)(2), 942.1403-1(a), and (c)(1), and 942.1403-2(a).

PART 943—CONTRACT MODIFICATIONS

943.170 [Amended]

15. Section 943.170, "Extension of contracts resulting from unsolicited proposals", is amended at the end of the final sentence of paragraph (i) to correct a FAR reference. The incorrect reference is to "FAR 15.507(b)" and is now corrected to read "FAR 6.3."

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.204-73 [Amended]

16. Section 952.204-73, "Foreign ownership, control, or influence over contractor (Representation)" is amended at paragraph (c), question 7, to remove country group code "P" while adding "S" and to correct the reference to "15 CFR part 370" to read "15 CFR part 770".

952.212-73 [Amended]

17. Section 952.212-73, "Cost and schedule control systems criteria," is amended to remove "Office of the Controller Publication CR-0015," from the final sentence of the paragraph of instruction and "DOE/CR-0015," from the first sentence of paragraph (a) of the clause.

952.214-27 [Removed]

18. Section 952.214-27, "Price reduction for defective cost or pricing data—modifications—sealed bidding," is removed.

952.215-18 [Removed]

19. Section 952.215-18, "Order of precedence," is removed.

952.219-9 [Amended]

20. Section 952.219-9, "Small business and small disadvantaged business subcontracting plan," is amended at paragraph (d)(10) by insertion of the missing form number "294" after "Standard Form (SF)."

952.227-79 [Amended]

21. Section 952.227-79, paragraph (b), is amended by changing "for" to "or" between the words "information" and "use".

952.235-70 [Amended]

22. Section 952.235-70 is amended, in the third sentence of the clause, by adding the words "contractor without the written consent of the" before the title "Contracting Officer" where that title first appears.

23. Section 970.0803 is revised to read as follows:

970.0803 Acquisition of utility services.

(a) Utility services defined at FAR 8.301 for the furnishing of electricity, gas (natural or manufactured), steam, water, and/or sewerage to facilities owned or leased by DOE shall be acquired directly by DOE and not by a contractor using a subcontractor arrangement, except as provided in (b) below.

(b) Where it is determined to be in the best interest of the Government, a Contracting Activity may authorize a management and operating contractor for a facility to acquire such utility service for the facility, after requesting and receiving concurrence to make such an authorization from the Director, Office of Project and Facilities Management (OPFM), at Headquarters. Any request for such concurrence should be included in the Utility Service Requirements and Options Studies required by DOE directives in subseries 4540 (Public Services). Alternatively, it may be made in a separate document submitted to the Director, OPFM early in the acquisition cycle. Any request shall set forth why it is in the best interest of the DOE to acquire utility service(s) by subcontract, i.e., what the benefits are, such as economic advantage.

(c) The requirements of FAR subpart 8.3, this section, and DOE directives in subseries 4540 shall be applied to a subcontract level acquisition for furnishing utility services to a facility owned or leased by DOE.

(d) Requirements for Headquarters review and approval of proposed solicitations, contracts, and subcontracts, and modifications thereto, for the acquisition of utility services are summarized at 908.307.

970.3102-2 [Amended]

24. Section 970.3102-2 is amended at paragraph (d) to change "\$60,000" to "\$80,000" where it appears twice.

970.5203-3 [Amended]

25. Section 970.5203-3 is amended by changing the words "used" to "use" and "delivered" to "deliver".

970.5204-10 [Amended]

26. Section 970.5204-10 is amended at paragraph (b) by changing the reference "925.204-74" to "952.204-74".

970.5204-12 [Amended]

27. Section 970.5204-12 is amended at paragraph (a) by changing "connecting" to "connection".

970.5204-13 [Amended]

28. Section 970.5204-13 is amended as follows:

a. Change the clause date from "June 1988" to "SEP 1991".

b. At paragraph (d)(8)(ii) to change "workmen's" to "workers".

c. At paragraph (e)(16), between the word "litigation" and the period symbol add the following words "(except where incurred pursuant to the contractor's performance of the Government-funded technology transfer mission and in accordance with the Litigation and Claims article)".

d. At (e)(17) by changing "other" to "others" the second time it appears.

e. At (e)(17)(iii) by changing "from" to "for".

f. At (e)(20) by changing "the" to "other".

970.5204-15 [Amended]

29. Section 970.5204-15 "Obligation of funds," is amended as follows:

a. Change the clause date from "APR 1984" to "SEP 1991".

b. At paragraph (b) by changing the word "article" to "clause" as it appears three times, and by removing the word "is" following the third use of the word "contract" in the first sentence.

c. At paragraph (e) by changing "article" to "clause".

970.5204-26 [Amended]

30. Section 970.5204-26, "Nuclear facility safety" at paragraph (d)(7) is amended by changing "of" to "on" between the words "persons" and "the".

970.5204-31 [Amended]

31. Section 970.5204-31 is amended at paragraph (b), Note 1, fifth sentence, by adding the words "or claim" after the word "action" as it appears three times in that sentence.

32. 970.7104-3 is revised to read as follows:

970.7104-3 Acquisition of Utility Services.

When authorized by DOE (subject to appropriate delegation) to acquire utility services, such acquisition shall be in compliance with DOE Directives as explained at 970.0803.

970.7104-12 [Amended]

33. Section 970.7104-12 is amended, in paragraph (a), by adding the words "except FAR 19.705-7 and the implementing clause at 52.219-16 (prescribed by FAR 19.708(b)(2), which need not be included in subcontracts issued by management and operating contractors" between "Subpart 19.7" and the closing period.

970.7104-39 [Amended]

34. Section 970.7104-39 is amended to substitute the reference "FAR section 3.102" in place of the reference to "FAR Subpart 3.1".

PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS

35. Section 971.101 is revised to read as follows:

971.101 Requirements—General.

Solicitations and contract awards which are: (a) In excess of the authority delegated to Heads of Contracting

Activities; (b) likely to provoke unusual public interest; or, (c) of a new or unusual nature shall be submitted to the Procurement Executive or designee for appropriate review and approval. Contract actions are those actions relating to the letting of contracts, subcontracts, agreements with other governmental agencies, and subsequent modifications, extensions, and settlements of terminations thereof. Questions of contract policy or procedure which arise in the course of negotiation and administration of such contract actions shall be submitted for advance Headquarters review and approval. Additional clearance requirements regarding utility service acquisitions are at 908.307.

36. Section 971.103, "Documentation submittals" is amended by removing the existing paragraph (a)(1)(ii) and redesignating paragraphs (a)(1)(iii) and (iv) as (a)(1)(ii) and (iii) and revising newly redesignated paragraph (a)(1)(ii) and paragraph (c)(2) to read as follows:

971.103 Documentation submittals.

(a) * * *

(1) * * *

(ii) If applicable, one copy of the Justification For Other Than Full and Open Competition shall be provided.

(C) * * *

(2) The supporting documentation should include a copy of the local independent review, if any, conducted in accordance with 971.203.

[FR Doc. 91-20036 Filed 8-23-91; 8:45 am]

BILLING CODE 6450-01-M

Proposed Rules

Federal Register

Vol. 56, No. 165

Monday, August 28, 1991

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 88-032P]

RIN 0563-AB00

Elimination of Jar Closure Requirements for Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations by eliminating the current requirements for jar closures. Under the present regulations, vacuum-packed containers that are sealed with quick-twist, screw-on, or snap-on lids must either not have annular space between the lid and the container, or the annular space must be sealed to protect it from filth or insects. The Agency is proposing this action because the requirement increases production costs and there is no evidence of continued public health benefit.

DATES: Comments must be received on or before October 25, 1991.

ADDRESSES: Comments should be sent to the Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "comments" under "SUPPLEMENTARY INFORMATION.")

FOR FURTHER INFORMATION CONTACT: Mr. William C. Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION: Comments

Interested persons are invited to submit comments concerning this action. Written comments should be sent to the Policy Office and should refer to Docket Number 88-032P. Requests to present oral comments, as provided by the Poultry Products Inspection Act, should be directed to Mr. William C. Smith so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this rule will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12291

The Administrator has determined that this proposed rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have 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.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) The effect of the proposal would be to remove a cost that currently restricts competition both large and small businesses. Certain establishments making products that are not subject to FSIS inspection could expand production lines to include meat and poultry products without having to invest in additional jar-closure equipment. However, the number of small entities known to the Agency that would be likely to benefit from the proposal is not substantial. Therefore, the proposed rule would not have a significant effect on a substantial number of small entities.

Background

As part of its responsibility to assure that meat and poultry products are

wholesome and not adulterated, the FSIS enforces regulations governing the packaging of processed meat and poultry products, including products in vacuum-packed glass containers. Section 317.19 of the Federal meat inspection regulations (9 CFR 317.19) and § 381.143 of the poultry products inspection regulations (9 CFR 381.143) are identically worded as follows: "Vacuum packed containers sealed with quick-twist, screw-on, or snap-on lids (or closures) shall not have an annular space between the inner edge of the lid's rim (lip or skirt) and the container itself or shall have such space sealed in a manner that will make it inaccessible to filth and insects." An annular space is the area between the glass finish and the lid of a jar.

The existing regulations were promulgated on June 10, 1974, by the Animal and Plant Health Inspection Service (APHIS—predecessor Agency to FSIS). They became effective on December 10, 1977, allowing time for affected manufacturers to comply. In the early 1970's, the most common closure for vacuum-packed product in glass jars was the quick-twist cap. This closure, commonly referred to as a "lug cap," is still widely used for products other than meat and poultry. The quick twist-cap-and-glass-jar combination has an annular space inherent in its design. The current regulations were developed following consumer complaints regarding insect infestation in the annular space of some baby food jars, apparently as a result of storage under insanitary conditions.

Today, the baby food industry uses the press-twist (PT) type of cap, which effectively eliminates the annular space. Vacuum-packed jars of various meat or poultry products other than baby food are sealed with PT caps or are packaged by some other method that is in compliance with the current regulations. For example, one widely used method involves the use of a plastic shrink band over the cap of a jar; the shrink band seals off the annular space.

The quick-twist cap is, however, still used on food products that do not contain meat or poultry, because the Food Drug Administration (FDA) did not promulgate rules requiring that the annular space of vacuum-packed glass jars be eliminated or sealed. When manufacturers of such food products wish to add a meat or poultry product to

their production, they must either convert their entire operation to new containers and closures or add a distinct production line for the meat and poultry product.

NFPA Petition

On July 11, 1988, the National Food Processors Association (NFPA), a national organization representing companies that process and package a wide range of food products, petitioned FSIS to revoke the jar closure regulations for meat and poultry products in vacuum-packed glass containers (9 CFR 317.19 and 381.143). Its petition maintains that the existing requirements are no longer necessary to prevent contamination and impose unwarranted costs on manufacturers wishing to prepare products with meat or poultry, as they would have to convert to new containers and closures. To support its position that the requirements are no longer necessary, the NFPA included a letter from the FDA stating that the FDA is not aware of any recent complaints of infestation under the lid space of jars with "lug-type" (quick-twist) closures that are regulated by the FDA.

To support its position that the existing FSIS requirements impose unwarranted costs for manufacturers, the NFPA cited the costs involved in purchasing new equipment to comply with the jar closure regulations. The option for applying secondary seals, such as a plastic shrink band over a quick-twist cap, does not provide a minimum-cost alternative. In such cases, the NFPA states that costs are affected by slowed production rates caused by the secondary seal operation and its associated procedures. These costs include "conditioning" measures to prevent yeast or mold contamination under the lids of jars equipped with secondary seals. Upon leaving the capping operation, packaged products must be placed in a holding area until the humidity on the surfaces of the jars has been reduced to the level at which secondary seals can be applied. This delay adds to production costs by increasing the implant storage requirements and lengthening the time before products can be shipped and marketed.

FSIS Response

There is an absence of recent data to demonstrate a contamination problem, associated with vacuum-packed products. If correct procedures have been followed and controls maintained, the processing and packaging will yield a safe, wholesome product. After the product has been shipped from an

official establishment, there should be no problem involving safety or wholesomeness if the product has been properly handled and stored.

FSIS has checked with FDA to confirm that there have been no recent complaints concerning FDA-regulated products since the NFPA petition of July 1988. Increased FSIS attention to the last two years has not uncovered any recent complaints.

No human illnesses have been traced to the use of quick-twist jar lids. Furthermore, most product in jars currently is distributed in cartons that have been shrink-wrapped in plastic film, further reducing the potential for contamination.

The absence of any recent data demonstrating a current problem was the major consideration in FSIS decision to proceed with this proposed rulemaking. Without such data showing a contamination problem, FSIS is proposing to eliminate the current jar closure regulations because they present an economic burden to certain manufacturers interested in expanding their product lines. With regard to the issue of costs, FSIS agrees that there are substantial costs involved in complying with the existing rule and associated with the disparity between the FDA and USDA regulations. For example, machines for applying secondary seals to such jars to bring them into compliance with the regulations now cost in the neighborhood of from \$70,000 to \$100,000.

List of Subjects

9 CFR Part 317

Meat inspection, Labeling, Marking devices, and Containers, Jar closure requirements.

9 CFR Part 381

Poultry products inspection, Labeling and containers, Jar closure requirements.

Proposed Rule

For the reasons set out in the preamble, parts 317 and 381 of the Federal meat and poultry products inspection regulations (9 CFR parts 317 and 381) would be amended as set forth below:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for 9 CFR part 317 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 et seq., 601 et seq.

§ 317.19 [Removed and Reserved]

2. Section 317.19 would be removed and reserved.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for 9 CFR part 381 would continue to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451-470; 601-695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

§ 381.143 [Removed and Reserved]

4. Subpart N of part 381 would be amended by removing and reserving § 381.143.

Dated: July 12, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-20344 Filed 8-23-91; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed amendment to policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) seeks public comment on its proposal to revise and amend its Policy on cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities (54 FR 7530; February 22, 1989). The policy statement would allow State representatives to observe NRC inspections at licensed facilities in adjacent States. "Adjacent States" are defined as States within the plume exposure pathway (within approximately a 10-mile radius) Emergency Planning Zone (EPZ) of a licensed facility in another State.

DATES: The comment period expires October 25, 1991. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments filed on or before that date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. Copies of comments received

may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frederick Combs, Assistant Director for State, Local and Indian Relations, State Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-0325.

SUPPLEMENTARY INFORMATION:

Discussion

On February 22, 1989 (54 FR 7530), the Commission published the policy statement "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities." The policy statement was intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. The policy statement allows State officials to accompany NRC on inspections and, under certain circumstances, enables States to enter into instruments of cooperation which would allow States to participate in NRC inspection activities.

NRC has received a request from the Commonwealth of Massachusetts for a copy of NRC's inspection plans for the Seabrook and Vermont Yankee plants, which would enable Massachusetts to observe NRC inspections of licensees in the adjacent States of Vermont and New Hampshire.

The inspection plan request has prompted this proposed revision in NRC's policy. In the "Summary of Comments and NRC Response" section of the published policy, NRC indicated " * * * After the Commission has gained some practical experience in implementing the present policy which is limited to cooperation between NRC and 'host' States, i.e., States in which an NRC licensed facility is located, the Commission may reconsider the question of whether and to what extent the policy statement should be broadened to encompass cooperative arrangements between NRC and 'adjacent' States" (54 FR 7530; February 22, 1989). NRC believes it is now appropriate to broaden the policy to permit a representative from an "adjacent" State, (i.e., a State within the plume exposure pathway emergency planning zone [within approximately a 10-mile radius] of an NRC-licensed facility located in another State) as well as a representative from a "host" State, to observe NRC inspections.

Most of the inspection observation activities to date have taken place in the

Northeastern States. Observations, or accompaniments, take place after the NRC and the State sign a protocol agreement (appendix A) which establish certain commitments on the part of the NRC and the State to be met during the course of the inspection activity. States that have protocol agreements in place for observation activities at nuclear power plants within their borders are: Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, Illinois and Ohio. Other States not only observed, but participated to some degree, in NRC inspections before the policy statement was established. These States—Illinois, Oregon, Washington and Pennsylvania—have Memoranda of Understanding with NRC for participation in NRC inspections. This revision does not affect those States with current participation agreements with NRC, nor would it affect those States who desire to enter into these agreements in the future. This revision addresses only the issue of adjacent States seeking to observe NRC inspections at a licensed facility in another State. The Commission does not feel it has enough experience with participation agreements in host States to expand this arena to adjacent States.

The State observations arranged to date have been successful. States have broadened their knowledge of power plant operations and NRC inspection functions and activities. Verbal feedback from the States involved in these inspections has been positive. Generally, these inspections have not been disruptive or inefficient and no licensee has reported being overburdened with the added presence of the State representative.

State observations of NRC inspections over the past few years may have assisted State officials in gaining confidence that their concerns regarding plant activities were being addressed. Further, State involvement in observation of inspections in Massachusetts, Maryland, Vermont, New York and Colorado seemed to allow the State to gain a better understanding of the NRC process and of how the issues raised by the States were being evaluated by NRC.

The only experience gained in adjacent State interactions involved Pennsylvania and Maryland officials during the Peach Bottom restart from March of 1987 until the end of the Philadelphia Electric Company's (PECO's) power ascension program in 1989. Officials from both States obtained access to the Peach Bottom site through arrangements with PECO.

Both States signed agreements with the NRC to be involved in NRC actions associated with restart; State officials observed NRC inspections, attended meetings of the restart panel and were routinely briefed by the NRC staff. Both then commented on the PECO Commitment to Excellence program. These cooperative efforts were considered successful by all parties involved.

The following list of host States and adjacent States (within the plume exposure emergency planning zone) along with these NRC-licensed facilities could be affected by the proposal policy revision:

Plant	State	Adjacent State(s)
Beaver Valley.....	PA	OH, WV
Catawba.....	SC	NC
Cooper.....	NE	MO
Farley.....	AL	GA
Ft. Calhoun.....	NE	IA
Grand Gulf.....	MS	LA
Hope Creek.....	NJ	DE
Milstone.....	CT	NY
Peach Bottom.....	PA	MD
Prairie Island.....	MN	WI
Quad Cities.....	IL	IA
Salem.....	NJ	DE
Seabrook.....	NH	MA, ME
Trojan.....	OR	WA
Vermont Yankee.....	VT	MA, NH
Yankee Rowe.....	MA	VT
Zion.....	IL	WI

A total of 17 utilities and 26 States could be affected by the proposed policy revision.

NRC proposes limiting adjacent States' observation to those States within the plume exposure pathway EPZ because: (1) A limit had to be set to allow NRC Regional Offices to manageably handle requests to observe which might be made by host States and adjacent States; (2) the plume exposure pathway EPZ was determined to be that area requiring possible immediate action in the event of an accident in order to reduce risk to the public. It is unlikely that any immediate protective actions would be required beyond the plume exposure pathway EPZ. Therefore, States with the most critical response efforts during emergency situations, and those with more immediate public health and safety risks, should be allowed to observe NRC inspections. These States could therefore become more familiar with plant safety issues.

Another issue associated with the proposed revision to the policy is limiting the number of State observers of NRC inspections and meetings.

Although the present "Protocol Agreement for State Observations of NRC Inspections," appendix A, allows

for only one observer under normal conditions, arrangements could be made for two observers (one from each State) to attend an NRC inspection. NRC has already had experiences with more than one State observer on special team inspections and no problems have been identified.

For example, during the Peach Bottom Integrated Assessment Team Inspection (IATI) to assess restart readiness (November 1988), both Maryland and Pennsylvania sent an observer to the inspections. Additionally, members of the Pennsylvania Governor's International Review Group for Peach Bottom provided input into the development of the IATI plan.

As usual, requests from States to observe an NRC inspection should originate from the Governor-appointed State Liaison Officer (SLO) to the appropriate NRC Regional office. When an adjacent State requests to be permitted to observe an inspection, the adjacent State SLO should also inform the host State SLO of the request so that both States are aware of the other's activities. This provision is set forth in the enclosed version of the protocol agreement, appendix A. Should the adjacent State not be able to attend the observation, arrangements may be made by the Region and the host State for information related to the inspection to be passed on to the adjacent State. The release of such information would be controlled by the protocol agreement.

Every effort would be made by NRC to minimize the effect on NRC or licensee resources. There is also a possibility that States would coordinate observations and share information in an effort to conserve State resources. The number of observers should be limited to the number of NRC inspectors. Team inspections should normally have no more than one observer from each State. When there is a conflict, preference would be given to the host State for routine inspections, but the NRC Regional Administrator should make the final determination as to whether more than one State observer should be involved in the inspection.

Under this proposal, the protocol agreement in appendix A would be revised to accommodate a request from an adjacent State, strongly encourage communication with the host State, and give preference to the host State should a conflict exist. An adjacent State would be subject to the same protocol for technical competence, behavior, access, information withholding, etc., as a host State.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended

and the Energy Reorganization Act of 1974, as amended, the NRC is proposing to adopt the following amendments to the final policy statement on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530 February 22, 1989).

Paperwork Reduction Act Statement

This policy statement amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This policy statement has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019 (3150-), Office of Management and Budget, Washington, DC 20503.

Proposed Amendment to the Policy Statement

In section III, Statement of Policy (54 FR 7530 at 7538, February 22, 1989), the final sentence in the second paragraph is revised to read as follows:

Additionally, at the State's request, representatives from a State in which the NRC-licensed facility is located (the host State) and from a State within the plume exposure pathway emergency planning zone (EPZ)—[within approximately a ten-mile radius]—of an NRC-licensed facility located in another State (the adjacent State) will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

In section III, Statement of Policy (54 FR 7530 at 7538, February 22, 1989), the third sentence in the third paragraph is revised to read as follows:

State participation in NRC programs would allow qualified State representatives from States in which an NRC-licensed facility is located, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC.

In section IV, Implementation (54 FR 7530 at 7538, February 22, 1989), the fifth and final sentences in the first paragraph are revised to read as follows:

Host State or adjacent State representatives are free to attend as observers any public meeting between the NRC and its applicants and licensees.

Requests from host States and adjacent States to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

The full text of the Policy Statement with proposed new wording is reprinted below.

Dated at Rockville, Maryland, this 21st day of August 1991.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.

Appendix A—Protocol Agreement for State Observation of NRC Inspections *NRC Protocol*

- The Regional State Liaison Officer (RSLO) will normally be the lead individual responsible for tracking requests for State observation, assuring consistency regarding these requests, and for advising the Regional Administrator on the disposition of these requests. The appropriate technical representative or Division Director will communicate with the State on specific issues concerning the inspection(s).

- Requests for observations of Headquarters-based inspections will also be coordinated through the RSLO. Headquarters-based inspections should be referred through the RSLO to a technical representative designated by the Region.

- NRC will process written requests to the Regional Administrator through the State Liaison Officer (SLO). Requests should identify the type of inspection activity and facility the State wishes to observe.

- Limits on scope and duration of the observation period may be imposed if, in the view of the Regional Administrator, they compromise the efficiency or effectiveness of the inspection. Regions should use their discretion as to which, if any, inspections will be excluded from observations.

- States will be informed they must not release information concerning the time and purpose of unannounced inspections.

- The Region will make it clear to the licensee that the State views are not necessarily endorsed by NRC. The

Region will also make it clear that only NRC has regulatory authority for inspection findings and enforcement actions regarding radiological health and safety.

State Protocol

- A State will make advance arrangements with the licensee for site access training and badging (subject to fitness for duty requirements), prior to the actual inspection.
- Normally, no more than one individual will be allowed to observe an NRC inspection.
- The State will be responsible for determining the technical and professional competence of its representatives who accompany NRC inspectors.
- An observer's communication with the licensee will be through the appropriate NRC team member, usually the senior resident inspector or the team leader.
- When informed of an unannounced inspection, a State must not release information concerning its time and purpose.
- An observer will remain in the company of NRC personnel throughout the course of the inspection.
- State observation may be terminated by the NRC if the observer's conduct interferes with a fair and orderly inspection.
- An observer will not be provided with proprietary or safeguards information. Observers will not remove any material from the site without NRC approval.
- The State observer, in accompanying the NRC inspectors, does so at his or her own risk. NRC will not be responsible for injuries or exposures to harmful substances which may occur to the accompanying individual during the inspection and will assume no liability for any incidents associated with the accompaniment.
- The State observer will be expected to adhere to the same conduct as NRC inspectors during an inspection accompaniment.
- If the State observer notices any apparent non-conformance with safety or regulatory requirements during the inspection, he/she will make those observations promptly known to the NRC team leader or lead inspector. Likewise, when overall conclusions or views of the State observer are substantially different from those of the NRC inspectors, the State will advise the team leader or lead inspector and forward those views, in writing, to the NRC Region. This will allow NRC to take any necessary regulatory actions.

- Under no circumstances should State communications regarding these inspections be released to the public or the licensee before they are reviewed by the NRC and the inspection report is issued. State communications may be made publicly available, similar to NRC inspection reports, after they have been transmitted to and reviewed by NRC.

Adjacent State Protocol

- An adjacent State is a State within the plume exposure pathway emergency planning zone (EPZ) (within approximately a 10 mile radius) of an NRC-licensed facility located in another State. A host State is a State in which an NRC-licensed facility is located. An adjacent State may request permission to observe NRC inspections at an NRC-licensed facility in a host State.
- The adjacent State SLO must communicate his/her request for observation to the Regional Administrator for the region in which the facility is located.
- The adjacent State SLO must also communicate his/her request to the host State SLO so that each State is aware of the other's intentions.
- If a host State and an adjacent State request observation of the same inspection, the Regional Administrator will make the final determination on the number of State observers who may attend the inspection. If there is a need to limit the number of observers, the Regional Administrator will routinely give preference to the host State observers.
- Adjacent State inspectors will abide by the same protocol in all aspects of the inspection as host States under this agreement.

respond in a timely manner to a State's requests for information and its recommendations concerning matters within the NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers. Additionally, at the State's request, representatives from a State in which the NRC-licensed facility is located (the host State) and from a State within the plume exposure pathway emergency planning zone [EPZ] (within approximately a 10-mile radius) of an NRC-licensed facility located in another State (the adjacent State) will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

The Commission recognizes that the involvement of qualified State representatives in NRC radiological health and safety programs has the potential for providing additional safety benefit. Therefore, the NRC will consider State proposals to enter into instruments of cooperation for State participation in inspections and inspection entrance and exit meetings. State participation in NRC programs would allow qualified State representatives from States in which an NRC-licensed facility is located, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC. State activities will normally be conducted under the oversight of an authorized NRC representative with the degree of oversight dependent upon the activity involved. In the proposal to enter into an instrument of cooperation, the State must identify those activities for which cooperation with the NRC is desired. The State must propose a program that: (1) Recognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with Federal standards and regulations; (3) specifies minimum education, experience, training, and qualifications requirements for State representatives which are patterned after those of NRC inspectors; (4) contains provisions for the findings of State representatives to be transmitted

Signature of State Observer _____ Date _____

Statement of Policy

It is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. The NRC and the States have complementary responsibilities in protecting public health and safety and the environment. Furthermore, the NRC is committed to the full and timely disclosure of matters affecting the public and to the fair and uniform handling of all agency interactions with the States, the public, and NRC licensees.

Accordingly, the NRC will continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States. The NRC will

to NRC for disposition; (5) would not impose an undue burden on the NRC and its licensees and applicants; and (6) abides by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

Consistent with section 274c of the Act, the NRC will not consider State proposals for instruments of cooperation that do not include the elements listed above, which are designed to ensure close cooperation and consistency with the NRC inspection program. As a practical matter, the NRC is concerned that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation. For purposes of this policy statement, an independent State inspection program is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative.

Instruments of cooperation between the NRC and the States, approved prior to the date of this policy statement will continue to be honored by the NRC. The NRC strongly encourages those States holding these agreements to consider modifying them, if necessary, to bring them into conformance with the provisions of this policy statement.

Implementation

As provided in the policy statement the NRC will routinely keep State Liaison Officers informed on matters of interest to the States. In general, all State requests should come from the State Liaison Officer to the appropriate NRC Regional Office. The NRC will make every effort to respond as fully as possible to all requests from States for information on matters concerning nuclear production or utilization facility safety within 30 days. The NRC will work to achieve a timely response to State recommendations relating to the safe operation of nuclear production or utilization facilities. Host State or adjacent State representatives are free to attend as observers any public meeting between the NRC and its applicants and licensees. The appropriate Regional Office will routinely inform State Liaison Officers of the scheduling of public meetings upon request. Requests from host States and adjacent States to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

NRC will consider State participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the specific inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement. NRC may develop inspection plans along with qualified State representatives using applicable procedures in the NRC Inspection Manual. Qualified State representatives may be permitted to perform inspections in cooperation with, and on behalf of, the NRC under the oversight of an authorized NRC representative. The degree of oversight provided would depend on the activity. For instance, State representatives may be accompanied by an NRC representative initially, in order to assess the State inspectors' preparedness to conduct the inspection individually. Other activities may be conducted as a team with NRC taking the lead. All enforcement action will be undertaken by the NRC.

The Commission will decide policy matters related to agreements proposed under this policy statement. Once the Commission has decided the policy on a specific type of agreement, similar State-proposed agreements may be approved, consistent with Commission policy, by the Executive Director for Operations in coordination with the Office of Governmental and Public Affairs. A State-proposed instrument of cooperation will be documented in a formal MOU signed by NRC and the State.

Once the NRC has decided to enter into an MOU for State involvement in NRC inspections, a formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any problems identified. Final agreements will be subject to periodic reviews and may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

Additionally, once State involvement in NRC activities at a nuclear production or utilization facility is approved by the NRC, the State is responsible for meeting all requirements of an NRC licensee and applicant related to personal safety and unescorted access of State representatives at the site.

[FR Doc. 91-20408 Filed 8-23-91; 8:45 am]

BILLING CODE 7560-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 500, 516, 543, 544, 545, 546, 552, 556, 563, 563b, 563f, 566, 571, 574, and 584

[No. 91-183]

RIN 1550-AA37

Applications Restructuring

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("OTS") is today proposing a comprehensive regulation that would fundamentally alter the role and processing of applications in the agency's regulation and supervision of the thrift industry. The proposal would: (i) Eliminate or streamline the existing application or notice requirement for many transactions or activities; (ii) establish "standard" and "expedited" application and notice processes that would increase the flexibility of savings associations with satisfactory MACRO, Community Reinvestment Act ("CRA"), and Compliance ratings to engage in certain new activities and discourage applications to engage in new activities by associations with lower MACRO, CRA, and Compliance ratings unless the proposed activity would clearly improve their financial or managerial condition or CRA or Compliance performance; and (iii) replace the application requirements on some activities with a notice requirement.

DATES: Comments must be received on or before October 25, 1991.

ADDRESSES: Send comments to Director, Information Services, Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Program Manager, (202) 906-5751, Policy; Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Kevin L. Petrasic, Assistant Chief Counsel, (202) 906-6452, Regulations and Legislation Division; or Patrick G. Berbakos, Director, (202) 906-6720; Corporate Activities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

OTS and its predecessor, the Federal Home Loan Bank Board (the "Board"),

historically relied heavily upon prior review of applications before granting approval to engage in a variety of activities. The purpose of requiring an application was to supervise and regulate the thrift industry in a timely, cost-effective manner. Instead, the process became unwieldy.

A number of changes have already been made to streamline the application process and speed up the time frames for rendering decisions. Effective October 9, 1987, the Board adopted a policy statement promulgating applications processing guidelines (12 CFR 571.12) that included maximum time periods for approval of completed applications filed with the Board. On January 30, 1990, OTS established central application filing requirements. OTS has established national standards and procedures through its Application Processing Handbook. Recently, in addition to steadily increasing the authority of its Regional Offices over applications, OTS has adopted a procedure that expedites the handling of policy and legal issues in applications. These issues are identified and stripped out of applications early in the review process and forwarded for decision by senior officials in Washington concurrently with Regional Office review.

Finally, OTS formed an application restructuring working group to recommend additional ways to expedite this process. The major initiative in that effort is the comprehensive proposal being published today. OTS solicits not only responses addressing these proposed changes but also suggestions as how it might further improve application restructuring. It seeks comments that suggest how to simplify and expedite the applications process while retaining adequate controls over activities presenting significant risks.

II. Reasons for Restructuring the Applications Process

The working group identified a number of concerns with the applications processing system, leading it to recommend a fundamental overhaul of the process. Among other things, these concerns included:

1. The OTS applications process may be more cumbersome, time-consuming, and costly than is necessary for the effective supervision of many activities giving rise to applications.

2. More effective and less cumbersome and costly means are available to regulate many activities and transactions of savings associations and their affiliates.

3. The financial and managerial resources of the applicant and the

materiality and risk of a particular transaction or activity should receive greater attention in deciding whether an application or notice should be required or approved.

4. The use of extensions of time in the applications review process in order to request more information or in conjunction with the resolution of policy or legal issues could be reduced by better defining the information relevant to the application decision; and

5. Duplication of efforts by Regional and Washington staff should be minimized as much as possible.

Because applications require substantial effort and expense by both the applicant and the regulatory, applications should be required only when they are the most effective and cost efficient means of: (i) Identifying and controlling risks that impair safety and soundness; and (ii) promoting compliance with applicable laws and policies. OTS has concluded that these goals can often be better achieved through the examination process, reporting requirements, offsite monitoring, and enforcement actions than through the present application process.

III. Principles Governing the Application Process

The working group identified and adopted four key principles that guide the proposals set forth today:

First, the primary responsibility for ensuring that a savings association meets articulated regulatory standards in its business activities must be borne by the institution, acting through its management and board of directors. The role of OTS is to determine through examination and supervisory monitoring whether the association is adhering to these standards and, if not, to ensure corrective action. OTS will vigorously pursue enforcement actions, including cease and desist orders, removal and prohibition orders, restitution, and civil money penalties, against the association and the individuals involved for failure to operate safely and soundly or to satisfy statutory or regulatory requirements.

Second, OTS's supervisory posture toward a savings association will be predicated upon the financial and managerial condition of the association and its compliance with governing statutory, regulatory, and supervisory requirements, including a special focus on its CRA and Compliance performance. The financial and managerial condition of the association, its CRA and Compliance performance, and the risks posed by the proposed activity will be the primary bases for

determining whether an institution will be required to receive prior approval of a proposed transaction. Accordingly, savings associations should recognize that they can obtain maximum business flexibility by achieving and maintaining a healthy condition. As necessarily follows, weaker institutions should recognize that OTS will carefully scrutinize and is likely to deny applications unless the proposed activity will clearly improve the applicant's financial or managerial condition or improve its CRA or Compliance performance without further impairing its financial condition or incurring additional or undue risks.

Third, OTS will strive for maximum internal efficiency and lower costs to the industry in supervision and regulation. Accordingly, OTS will eliminate the application requirement for all activities that the agency determines pose no significant risk to the institution. Additional important components of this principle include: (i) Decentralized applications decision-making so that the agency official that supervises the applicant makes the decision; (ii) prompt "stripping out" of major questions of law or policy so that they can be decided quickly and efficiently on a separate track from the remainder of the application; and (iii) separate review of any securities filings in connection with applications solely for purposes of determining the adequacy of the disclosure. Approval of applications will be conditioned upon the separate clearance of any required disclosures.

Finally, apart from its overall policymaking function and establishment of national standards and guidelines, the primary role of OTS Washington headquarters in the application process generally will be its oversight of Regional Offices. The review of the application process at the Regional level will be an integral part of the agency's internal audit function, and the Regions will be evaluated for how well they achieve the agency goal of prudent utilization of applications as a supervisory tool.

IV. The Proposal

OTS is today proposing a comprehensive regulation to streamline the applications process. It believes that the benefits resulting from this approach will include time and monetary savings: (i) For the industry through a reduction in the administrative burden stemming from the preparation and filing of low-risk applications and the elimination of delay in obtaining regulatory approval; and (ii) for the supervisory staff, which

will be free to shift resources toward areas of greater risk.

As set forth more fully in the following sections, OTS is today proposing to modify its current applications-related regulations in the following ways:

1. Restructure application processing procedures, which will include the delegation of most application decisions to the Regional Offices;

2. Eliminate some application requirements and pre-transaction or activity notices and applications entirely;

3. Establish "expedited" and "standard" treatments for requests to engage in some activities, differentiating on the basis of associations' financial and managerial strengths and statutory and regulatory compliance records;

4. Replace some application requirements with notice requirements for all associations; and

5. Streamline some notice requirements.

A. Restructuring of Application Processing Procedures

A new part 516 is being added in order to centralize the application processing guidelines and procedures. Former § 500.32, Offices of the Office of Thrift Supervision; information and submittals, is being redesignated as new § 516.1. That redesignated section has been substantially revised. Applications will be filed with the Regional rather than the Washington office. The requirements of former § 571.12, Application processing guidelines, now appear at § 516.2. These guidelines are also being amended in order to decrease the current review period under the new § 516.2 for all applications from 90 to 60 days. The definitions of a "standard" and "expedited" treatment of applications, described in greater detail in paragraph C below, are being codified in a new § 516.3.

By Director's Order, the Director of OTS will delegate the authority to approve and deny applications to its Regional Offices. With the approval of the Director, this authority may be subdelegated where appropriate. The only applications issues that will fall outside the purview of Regional Directors are those related to significant, new, or unresolved issues of law or policy. However, these matters will generally be addressed within the context of the Regional Office's review of the specific application filing.

B. Elimination of Applications

A number of OTS's existing regulations contain application requirements that OTS has determined

are not essential to effective supervision of these activities. This proposal would remove the application or notice requirement from the regulations listed below. Where applicable, it also clarifies that savings associations retain the authority to conduct the activities in question in accordance with existing laws, regulations and policies:

1. *Section 545.96—Agency Offices.* Section 545.96 is amended by removing paragraph (d) in order to remove the notice requirement for the opening or closing of an agency office.

2. *Section 545.92(f)—Final Location of Branch Office.* Section 545.92(f) is amended by removing the requirement for approval of the permanent location of a branch office.

3. *Section 545.92(f)—Temporary Change of Location.* Section 545.92(f) is amended by removing the requirement for approval of the temporary location of a branch office.

4. *Section 545.77—Real Estate for Office and Related Facilities.* Section 545.77 is amended by removing the requirement that a Federal savings association file an application with OTS before making an investment in real estate (improved or unimproved) to be used for office and related facilities that would cause the outstanding aggregate book value of all such investments to exceed the association's regulatory capital requirement. An association may engage in such investment activities in accordance with the existing laws, regulations, and policies of OTS.

5. *Section 563.4—Brokered Deposits.* Section 563.4 is being removed and the section designation reserved for future use. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") added a new section 29 to the Federal Deposit Insurance Act. This new section prohibits the acceptance or renewal of brokered deposits by any undercapitalized insured depository institution (bank or thrift) after December 7, 1989 except on specific application to, and waiver of the prohibition by, the Federal Deposit Insurance Corporation ("FDIC"). OTS believes that § 563.4 is no longer necessary in light of section 29 and the FDIC final rule concerning unsafe and unsound banking practices in which the FDIC set forth application requirements for a waiver from the brokered deposit prohibition. 55 FR 39135 (Sept. 25, 1990).

6. *Section 566.3—Liquidity Deficiencies and Penalties.* Sections 566.3, 566.4(a), and 566.5 are being removed and § 566.4(b) is being revised in order to remove the automatic liquidity deficiency penalty provisions and application provisions for a compromise, remission, or reduction for

good cause shown of the penalty. The regulation will continue to require that savings associations maintain records of compliance with the liquidity regulations. Under section 6(d) of the Home Owners' Loan Act, as amended by FIRREA, the Director may assess a penalty for any deficiency in compliance with the liquidity requirements.

Pursuant to that section, the Director may alternatively institute appropriate enforcement proceedings against the association for any failure to comply with the liquidity regulations. OTS believes that automatic liquidity deficiency penalty provisions and accompanying applications for waivers such penalties are not the most effective means of addressing violations of these regulations.

7. *Section 563.45—Disclosure.* The proposal revises the Form AR required by § 563.45 by deleting the waiver available for disclosure of certain affiliated person transactions under Item 6(e) of that form.

8. *Section 584.9—Prohibited Acts.* The proposal would remove paragraphs (b), (c), and (d) from § 584.9. OTS has determined that the regulation should be substantially revised to eliminate the notice or application to this agency because the authority in this area is within the jurisdiction of the FDIC.

9. *Section 563.43—Restriction on Real and Personal Property Transactions with Affiliated Persons.* The proposal revises § 563.43, which imposes restrictions on real and personal property transactions with affiliated persons, by removing the application requirement under such provision. This is consistent with the standards of other banking regulatory agencies in their respective administration of sections 23A, 23B, and 22(h) of the Federal Reserve Act. In removing the application requirement under this provision, OTS is not reducing the criteria by which a transaction subject to this section will be evaluated. Instead, the initial burden of determining whether a transaction is fair to and in the best interests of a savings association or subsidiary is shifted from OTS to the board of directors of the savings association or subsidiary.

Transactions subject to the restrictions of section 563.43 must still be adequately documented for review through the examination process. It remains OTS's intent to discourage transactions with affiliates and affiliated persons for those thrift institutions that require more than the normal amount of supervision, unless it is demonstrated that the transaction clearly improves the financial condition

of the subject institution. OTS continues to consider this one of the most important areas for review during examinations. Violations will be strictly dealt with through formal and informal enforcement proceedings. OTS is reviewing this entire area and anticipates future rulemaking may further affect this regulation.

C. "Expedited" and "Standard" Applications Processes

OTS has determined that it is desirable and appropriate to distinguish among savings associations in the application process depending upon their financial and managerial conditions and their records of compliance with applicable statutes and regulations, including the CRA.

Savings associations with adequate capital, in good financial condition, with qualified management, and with satisfactory or better CRA and Compliance ratings will be afforded "expedited treatment" by OTS in considering their requests or intentions to engage in certain activities. These associations will be given maximum flexibility to engage in a variety of activities free of application requirements altogether or will only be required to file a notice in connection with the commencement of a particular activity, depending on the activity at issue. Any additional risks to safety and soundness posed by these activities will primarily be addressed through other supervisory means, such as the examination process or offsite monitoring. In a situation that raises particular supervisory concerns, OTS may require an application from a savings association that would otherwise qualify for expedited treatment. Additionally, after reviewing a notice submitted by an association eligible for expedited treatment, OTS may determine that it requires additional information and/or the submission of an application. Notices submitted by savings associations eligible for expedited treatment are deemed "applications" for purposes of statutory and regulatory requirements referring to applications.

This proposal defines a savings association that is eligible for expedited treatment as any thrift institution that has not been notified, pursuant to RB 3a-1, that it requires more than normal supervision; that meets or exceeds its minimum capital requirements; and that has composite MACRO, CRA, and Compliance ratings of 1 or 2 or satisfactory or better.

"Standard" treatment of requests to engage in new activities will be given to applications from a savings association

requiring more than normal supervision; any savings association having a composite MACRO or Compliance rating of 3, 4 or 5; one that is failing any one of its minimum capital requirements; or a savings association with a CRA rating of less than satisfactory. Savings associations receiving standard treatment will still be required to file the necessary applications under the applicable regulations. The proposal sets forth the explicit presumption, however, that applications by such an association to engage in a new activity will be denied unless the applicant demonstrates that the proposed activity would clearly improve its financial or managerial condition and, where applicable, its compliance with the requirements of the CRA or other consumer-related statutes and regulations (without further impairing its financial condition). Consequently, savings associations are strongly encouraged to consult with supervisory personnel before filing an application.

All new notice requirements created by this regulation for activities or transactions subject to CRA publication requirements remain subject to those publication requirements. The notice period will allow sufficient time for interested parties to submit comments to OTS regarding outstanding CRA concerns. Publication requirements will run concurrently with the filing of notice with the Office. If a substantial CRA protest is filed with OTS in response to a notice filing, OTS may object to the filing and the transaction may be made subject to additional application requirements or disapproved.

The following proposed revisions are intended to reflect these new standards:

1. Section 545.92—Branch Offices.

Section 545.92 is being amended to allow for expedited treatment for a qualifying Federal savings association that wishes to open a branch office. Such an association need only satisfy notice requirements and provide OTS with 30 days' notice of its intention to open a branch office. All other savings associations must continue to comply with the application requirements of § 545.92. Additionally, a new paragraph (j) is added to § 545.92; it will require simultaneous publication of notice of the association's filing for establishment of a branch office.

2. Section 545.95—Change of Office Location and Redesignation of Offices.

Section 545.95 is being amended to allow for expedited treatment of a qualifying Federal savings association that wishes to change a location of a branch office. Such an association need only notify OTS of its intention to

change the location of a branch office. All other savings associations must continue to comply with the application requirements of § 545.95.

3. Section 556.5—Establishment of Branch Offices. Technical revisions to § 556.5 are proposed to reflect the changes made in § 545.92. All other savings associations must continue to comply with the application requirements of §§ 545.92 and 556.5.

The regulation still lists considerations that are to be used by associations in determining whether or not to engage in such trust powers; OTS will use these criteria to determine whether to approve an application by a savings association subject to standard treatment. Associations qualifying for expedited treatment are to exercise all fiduciary powers in accordance with the existing laws, regulations, and policies of OTS and are subject to certain documentation requirements prescribed by OTS.

4. Section 563.75—Mandatorily Redeemable Preferred Stock and Section 563.81—Issuance of Subordinated Debt Securities. Sections 563.75 and 563.81 are being combined and amended to allow savings associations eligible for expedited treatment to issue mandatorily redeemable preferred stock or subordinated debt securities, includable in supplementary capital under part 567, to submit a 30-day advance written notice of their intention to issue these securities. As with all notices, OTS retains the option to object.

OTS recognizes that the primary issue for savings associations in the issuance of these securities is often whether or not the instrument can count as capital. The revisions in these regulations allowing associations eligible for expedited treatment to provide notice to the agency do not imply that, if the thirty-day time frame expires without objection, the association may automatically count these securities as supplementary capital under 12 CFR 567.5. All regulatory requirements for inclusion of a particular instrument in calculating a savings association's capital, including those set forth in part 567, must still be satisfied. OTS encourages and expects savings associations to consult with their Regional Offices before issuing capital instruments if they are concerned that characteristics of the instrument may affect its eligibility for inclusion in capital. If necessary, OTS will require the association to file an application.

OTS also wishes to make clear that any securities disclosure requirements in conjunction with a public offering of

these securities are unaltered by this proposal.

OTS is also considering whether § 550.2, which contains application requirements for Federal savings associations that wish to offer fiduciary services, should be amended to establish "standard" and "expedited" treatment for qualifying savings associations.

D. Replacement of Applications with Notice Requirements

OTS is proposing to replace the current application requirements in the following regulations with a simpler and more straightforward notice requirement for all savings associations:

1. *Section 584.1(d)—Holding Company Deregistration.*

2. *Sections 544.2 and 552.4—Standard Charter Amendments (excluding name change) and New Charters for Federal Associations.*

3. *Sections 544.5 and 552.5—Standard Federal Mutual or Stock Savings Association Bylaws.*

4. *Section 563.1—Form of Account.*

The standard charter and by-law amendments regulations are being amended so that charter and by-law amendments will be pre-approved (and the association will only be required to provide 30-day advance notice to OTS), unless the charter and by-law amendments contain an anti-takeover provision or otherwise present a significant issue of law or policy. If either of these conditions exists, Regional Offices will be required to notify the Washington office for resolution. Savings associations are required to maintain all appropriate documentation in this area. As proposed, §§ 544.2(a)(2)(i), 544.5(c)(2)(ii), 552.4(a)(2)(i), and 552.5(b)(ii) would require the savings association to request OTS approval of a proposed charter or bylaw amendment that raises a significant issue of law or policy. OTS is considering, and seeks comment on, requiring similar notification for all other transactions where the savings association has identified such issues. Such notification, which would supplement OTS's own review for such issues, would expedite the "stripping out" of such issues for decision and thus the entire process.

OTS is also proposing to revise § 563.1, which currently requires an application for any new form of account or security by a savings association. The proposal replaces the existing application requirement with a 30-day prior notice requirement. In addition, such notices will be reviewed and acted upon at the Regional level instead of by the Chief Counsel's Office. Under the

proposal, if OTS does not reject or object to a notice within 30 days after its submission under this provision, the association may issue the new form of account or security. However, associations should be aware that the failure of OTS to reject or otherwise object to a notice under this provision does not mean that OTS has approved the form of account or security. In this regard, it is incumbent upon the association to ensure that the form of account or security complies with all applicable statutory and regulatory requirements, including any requirements of state law, and the association's charter and bylaws.

E. Streamlining Notice Requirements.

The agency is proposing to streamline the notice requirement contained in § 545.74(c)(4), which applies to securities brokerage services offered through a service corporation.

OTS has not seen evidence that this activity has resulted in substantial losses by savings associations. It therefore proposes that the notice requirement associated with the initiation of this pre-approved service corporation activity should only consist of: (i) The submission of a certification by the Board of Directors of the association that the association has established a securities brokerage subsidiary and will comply with all of the terms outlined at § 545.74(c)(4); and (ii) a copy of whatever materials the association has submitted to the FDIC pursuant to 12 CFR 303.13.

The association should maintain all of the necessary documentation and records for OTS to determine in its examination of the association that it is complying with all of the regulatory requirements. The streamlined notice requirement established in this proposal in no way affects the authority of OTS and the FDIC, exercising their responsibilities under section 28 of the Federal Deposit Insurance Act, to require more extensive documentation if they deem it necessary to protect the safety and soundness of the deposit insurance fund.

V. Paperwork Reduction Act

The regulations addressed in this proposal contain a number of information collections under the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). The proposal would reduce the burden imposed under some of the regulations, as well as eliminate the burden from others. Therefore, several of the collections of information have been submitted to the Office of Management and Budget for review, in order to amend the burdens imposed as

they are currently reflected in their respective inventories. In the instances where the burden would be removed altogether, corrective action worksheets have been filed.

Comments on the collections should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

The collections of information in this proposed regulation are found in the sections of OTS's regulations listed below. In addition, the burden estimates are outlined for those information collections being amended.

12 CFR 544.2 and 552.4

This filing constitutes an amendment to the collection of information currently approved under OMB Control No. 1550-0018.

The likely respondents include any savings association requesting to amend its charter.

The information is used by OTS to evaluate the merits of the request in light of the applicable statutory and regulatory criteria and OTS policy.

Estimated total annual reporting burden: 310 hours.

Estimated average annual burden hours per respondent: 2.

Estimated number of respondents: 155.

Estimated annual frequency of responses: 1.

12 CFR 544.5 and 552.5

This filing constitutes an amendment to the collection of information currently approved under OMB Control No. 1550-0017.

The likely respondents include any savings association requesting to amend its bylaws.

The information is used by OTS to evaluate the merits of the request in light of the applicable statutory and regulatory criteria and OTS policy.

Estimated total annual reporting burden: 600 hours.

Estimated average annual burden hours per respondent: 2.

Estimated number of respondents: 300.

Estimated annual frequency of responses: 1.

12 CFR 545.74(c)(4)

This filing constitutes an amendments to the collection of information currently approved under OMB Control No. 1550-0013.

The likely respondents include any savings association requiring approval

prior to operating a service corporation to engage in activities not preapproved by regulation. The regulation also requires a recordkeeping requirement for securities brokerage services.

The information is used by OTS to evaluate the merits of the request in light of the applicable statutory and regulatory criteria and OTS policy.

Estimated total annual reporting burden: 210 hours.

Estimated average annual burden hours per respondent: 2.

Estimated number of respondents: 105.

Estimated annual frequency of responses: 1.

12 CFR 545.77(b)

A corrective action worksheet has been filed to delete this collection of information.

12 CFR 545.92 and 545.95

The likely respondents are savings associations subject to standard treatment, as defined in § 518.3(a) of OTS's regulations, which desire to establish or change a location of a branch office.

The information is needed by OTS in order to determine whether the application meets OTS's criteria for approval for permission to establish a branch office or for relocation of existing branch offices.

Estimated total annual reporting burden: 612 hours.

Estimated average annual burden hours per respondent: 2.

Estimated number of respondents: 306.

Estimated annual frequency of responses: 1.

12 CFR 545.96(d)

This collection of information is being removed from this section. It was previously exempt pursuant to 5 CFR 1320.7(j)(1).

12 CFR 563.4

The collection of information is being removed from this section.

12 CFR 563.43

The collection of information contained in this section is currently approved under OMB Control No. 1550-0011.

The likely respondents include any savings associations involved in transactions subject to the restrictions of 12 CFR 563.43 who must adequately document for review all such transactions.

The information is used by savings associations for internal management control purposes and by OTS examiners to determine whether the savings

associations are being operated safely, soundly, and in regulatory compliance.

Estimated total annual reporting burden: 4,400 hours.

Estimated total annual recordkeeping burden: 8,800 hours.

Estimated average annual burden hours per respondent: 2.

Estimated average annual burden hours per recordkeeper: 4.

Estimated number of respondents: 2,200.

Estimated frequency of responses: 2.

12 CFR 563.45

This filing constitutes an amendment to the collection of information currently approved under OMB Control No. 1550-0002.

The likely respondents include savings associations that are required to maintain records, which in reasonable detail, accurately reflect transactions between savings associations and their subsidiaries and affiliates or affiliated persons.

The information is used by savings associations for internal management control purposes and by OTS examiners to determine whether the savings associations are being operated safely, soundly and in regulatory compliance.

Estimated total annual reporting burden: 4,000 hours.

Estimated average annual burden hours per respondent: 40.

Estimated number of respondents: 100.

Estimated annual frequency of responses: 1.

12 CFR 563.75 and 563.81

This filing constitutes an amendment to the collection of information currently approved under OMB Control No. 1550-0030.

The likely respondents include any savings association that is required to submit an application for approval prior to issuing subordinated debt securities or mandatorily redeemable preferred stock. Any savings association eligible for expedited treatment pursuant to 12 CFR 518.3(a), is required to submit thirty-day advance written notice of its intention to issue securities.

The information is used by OTS to determine if the proposed issuance conforms to the criteria in the regulation and would not be financially detrimental to the association.

Estimated total annual reporting burden: 2,200 hours.

Estimated average annual burden hours per respondent: 100.

Estimated number of respondents: 20.

Estimated annual frequency of responses: 1.

12 CFR 566.4(b)

The likely respondents include all savings associations, which are required to maintain records verifying their compliance with OTS's liquidity regulations.

The information is used by savings associations for internal management control purposes and by OTS examiners to determine whether the savings associations are being operated safely, soundly and in regulatory compliance.

Estimated total annual reporting burden: 31,200 hours.

Estimated average annual burden hours per respondent: 12.

Estimated number of respondents: 2,600.

Estimated annual frequency of responses: 1.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities.

VII. Executive Order 12291

The Office has determined that this proposal does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

List of Subjects

12 CFR Part 500

Organization and functions (Government agencies).

12 CFR Part 518

Applications, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 543, 546, 556

Savings associations.

12 CFR Part 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

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

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping

requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563f

Antitrust, Holding companies, Savings associations.

12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 574 and 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend chapter V, title 12, Code of Federal Regulations, as follows:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

1. A new part 516 is added to subchapter A to read as follows:

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

Sec.
516.2 Applications processing guidelines.
516.3 Definitions.

Authority: 5 U.S.C. 552, 559; sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 516.2 Applications processing guidelines.

(a) *General.* To ensure the timely processing of applications and notices, the Office hereby sets forth guidelines for the processing of completed applications and notices (hereinafter collectively referred to as "applications") filed with the Office. This section does not apply to applications or requests related to transactions pursuant to sections 13 (c) or (k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c), (k); or requests submitted in connection with cease-and-desist orders, temporary cease-and-desist orders, removal and/or prohibition orders, temporary suspension orders, supervisory agreements or directives, consent merger agreements, or documents negotiated in settlement of litigation (including requests for termination or modification of, or for approval pursuant

to, such orders, agreements, or documents), or similar litigation or enforcement matters. Requests submitted in connection with cease-and-desist orders, removal and/or prohibition orders, supervisory agreements or directives, merger agreements, and other documents negotiated in settlement of litigation ("enforcement documents") are not covered by this section. However, the fact that a regulation involving an application may be mentioned in an enforcement document does not mean that this section does not apply to that application. Requests to engage in activities that are restricted by enforcement documents and requests for termination or modification of such documents are not covered by this section. Applications submitted pursuant to a regulatory requirement that the prior approval of the Office be obtained before engaging in a proposed activity, however, are covered, whether or not mentioned in an enforcement document. If the application or request is unique to the enforcement document, then it is not covered by this section. Requests for reconsideration, modification, or appeal of final agency actions of the Office are not covered by this section. In addition, where other regulations of the Office establish specific procedures for processing of applications or set forth specific time periods for automatic approval of applications unless such applications are disapproved or objections are raised, the provisions of those regulations are controlling with respect to the matters to which they pertain. Where a regulation sets forth a procedure for processing an application but does not contain a time period pursuant to which such application is to be processed, the application will be processed under the procedure established by the regulation, but will be subject to the time periods contained in this section.

(b) *Applications submitted for review.* An application submitted to the Office for processing shall be submitted on the designated form of application and shall comply with all applicable regulations and guidelines governing the filing of such applications.

(c) *Accepting applications for processing.* (1) Within 30 calendar days of receipt of a properly submitted application for processing, the Office shall:

(i) Request in writing any additional information necessary to complete the application;

(ii) Deem the application to be complete; or

(iii) Return the application if it is deemed by the Office to be materially deficient and/or substantially incomplete.

Failure by the Office to act as described in paragraph (c)(1)(i), (c)(1)(ii) or (c)(1)(iii) of this section within 30 calendar days of receipt of an application for processing shall result in the filed application's being deemed complete, thereby commencing the period for review. If an application includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 30 calendar days of receipt of a properly submitted application for processing, the Office requests in writing additional information about the waiver request, or denies the waiver request in writing.

(2) Failure by an applicant to respond fully to a written request by the Office for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or disapproval of a notice. If an application is deemed withdrawn, the application may be resubmitted for processing, but it will be deemed a new filing under the applicable statute or regulation.

(3) An applicant may request in writing a brief extension of the 30-day period for responding to a request for additional information described in paragraph (c)(2) of this section prior to the expiration of the 30-day time period. The Office, at its option, may grant an applicant a limited extension of time in writing. Failure by an applicant to respond fully to a written request for additional information by the expiration of the extended period permitted by the Office may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or disapproval of a notice.

(4) The period for review by the Office of an application will commence on the date that the application is deemed complete. The Office shall notify an applicant in writing as to whether the application is deemed complete within 15 calendar days after the timely filing of any additional information furnished in response to any initial or subsequent request by the Office for additional information. If the Office fails to so notify an applicant within such time, the application shall be deemed to be complete as of the expiration of such 15-day period. If additional information furnished in response to a written request by the Office for additional

information includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 15 calendar days after the timely filing of such additional information the Office:

(i) Requests in writing additional information about the waiver request; or
(ii) Denies the waiver request in writing.

(5) After additional information has been requested and supplied, the Office may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the applicant at the time of the application, was concealed, or pertains to developments subsequent to the time of the Office's initial request for additional information. With regard to information of a material nature that was not reasonably available from the applicant, was concealed at the time an application was deemed to be complete, or pertains to developments subsequent to the time an application was deemed to be complete, the Office may request in writing such additional information as it considers necessary and, at its option, may deem the application not to be complete until such additional information is furnished. Upon receipt of such additional information, the Office shall:

(i) Request in writing further additional information to complete the application;

(ii) Deem the application to be complete and commence a new review period of the completed application; or

(iii) Deem the application to be materially deficient and/or substantially incomplete and return it to the applicant. In the case of an application or notice that raises a significant issue of policy or law, actions taken by the Region shall not commence any of the periods for review of a completed application described in paragraph (d) of this section.

(6) Where a regulation prescribes a procedure for submission of protests to an application or notice and a protest is filed, the automatic approval timeframes specified herein shall be temporarily suspended until a record sufficient to support a determination on the protest is developed.

(7) The Office, at its discretion, may deem an application to be materially deficient and/or substantially incomplete in the event that the applicant or an affiliate of the applicant is or becomes subject to an investigation, examination, administrative proceeding by a federal

or state or municipal court, department, agency or commission or other governmental entity, or a self-regulatory trade or professional organization that is pertinent to the standards applicable to the Office's evaluation of the application or relates to a determination the Office is required to make in connection with the application under the applicable statute or regulation.

(d) *Failure by the Office to approve or deny an application or to disapprove a notice.* (1) If, upon expiration of the applicable period for review of any complete application to which this section applies, or any extension of such period, the Office has failed to approve or deny such application (or, in the case of a notice, to disapprove such notice), the application shall, without further action, be deemed to be approved, or, in the case of a notice, not disapproved by the Office. For purposes of the previous sentence, the period for review of all applications shall be 60 calendar days beginning from the application's deemed complete date, including any application or notice submitted pursuant to part 574 of this chapter.

(2) In the event that more than one application is being submitted in connection with a proposed transaction or other action, the applicable period for review of all such applications shall be the review period for the application having the longest period for review.

(e) *Extension of time for review.* The period for review of an application deemed to be complete may be extended by the Office for 30 days beyond the time period for review set forth in paragraph (d) of this section. The Office shall notify an applicant at least 20 days prior to the expiration of the period for review of a complete application that such review period is being extended for 30 days and shall state the general reason(s) therefor.

(f) *Extension of time for Office's review of applications raising significant issues of law or policy.* In those situations in which an application presents a significant issue of law or policy, the applicable period for review of such application also may be extended by the Office beyond the time period for review set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section until such time as the Office acts upon the application. In such cases, written notice shall be provided to an applicant not later than the expiration of the time period set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section that the period for review is being extended in accordance with this

paragraph (f), which notice shall also state the general reason(s) therefor.

§ 516.3 Definitions.

(a) *Expedited treatment.* (1) A savings association is eligible for "expedited" treatment by the Office if all of the following conditions exist:

(i) The savings association has a composite MACRO rating of 1 or 2;

(ii) The savings association has a Community Reinvestment Act ("CRA") rating of 1 or 2 or satisfactory or better;

(iii) The savings association has a Compliance rating of 1 or 2;

(iv) The savings association is meeting all of its minimum capital requirements under part 567 of this chapter; and

(v) The savings association has not been notified by supervisory personnel, pursuant to Regulatory Bulletin 3a-1, that it requires more than normal supervision. Copies of regulatory bulletins may be obtained from the Office of Communications, Information Services Division, at the address listed in § 500.32(a) of this subchapter.

(2) A savings association that qualifies for expedited treatment under paragraph (a)(1) of this section shall be given maximum flexibility to engage in a variety of activities upon filing a notice with the Office using OTS Form No. [To be determined.] Such notices are deemed to be applications for purposes of statutory and regulatory references to "applications."

(3) The Office may require complete applications from savings associations that otherwise qualify for expedited treatment in situations raising supervisory concern or a significant issue of law or policy and may request additional information from such associations when necessary.

(b) *Standard treatment.* (1) A savings association will receive "standard" treatment if any of the following conditions exist:

(i) The savings association has a composite MARCO rating of 3, 4 or 5;

(ii) The savings association has a CRA rating lower than the top two ratings available;

(iii) The savings association has a Compliance rating of 3, 4, or 5;

(iv) The savings association has inadequate capital, including failing any one of its minimum capital requirements under part 567 of this chapter; or

(v) The savings association has otherwise been identified by supervisory personnel as an association in need of more than normal supervision.

(2) Savings associations receiving standard treatment shall be required to file complete applications and notices

under the applicable regulations of this chapter with the Office. Such applications will be denied unless the savings association affirmatively demonstrates that the application will improve its financial and/or managerial condition or improve its compliance with the CRA or other consumer-related statutes without adversely affecting its financial or managerial resources.

(c) **MACRO rating.** A savings association's MACRO rating is its Management, Asset Quality, Capital Adequacy, Risk Management, and Operating Results rating as of the most recent rating update (as determined either on-site or off-site by the most recent examination) of which the savings association has been notified in writing.

(d) **CRA rating.** Through June 30, 1989, savings associations received one of five CRA ratings: Outstanding (1), Good (2), Satisfactory (3), Needs Improvement (4), or Unsatisfactory (5). For examinations begun between July 1, 1989 and June 30, 1990, savings associations received numerical ratings of 1 through 5. During this period, ratings of 1 and 2 were considered satisfactory or better and 3, 4, and 5 were less than satisfactory. Savings associations examined for CRA performance after July 1, 1990 receive one of four ratings: Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance.

(e) **Compliance rating.** A savings association's Compliance rating is determined pursuant to OTS Compliance Rating System which measures an association's compliance with civil rights, consumer protection, and public interest regulations, including the Bank Secrecy Act, Bank Protection Act, Equal Employment Opportunity, Economic Sanctions, and Advertising.

PART 500—[AMENDED]

2. The authority citation for part 500 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 500.32 [Redesignated as § 516.1]

3. Section 500.32 is redesignated as new § 516.1, and newly designated § 516.1 is amended by revising paragraph (c) to read as follows:

§ 516.1 Offices of the Office of Thrift Supervision; information and submittals.

(c) **Filings.** Applications, notices or other filings, as provided for in the Office's regulations shall be submitted to the appropriate Regional Office, unless specifically noted otherwise in

the procedures for a particular filing. The original and two conformed copies shall be filed for each application or notice. All copies should be clearly captioned as to the type of filing and should contain all exhibits and other pertinent documents. Application forms, notice forms and instructions are available from each Regional Office. Additional copies, in addition to the three required for every application are required for the following applications:

(1) Merger or branch purchase applications filed pursuant to § 563.22 of this chapter require four additional copies of the application. The copies should be labeled, respectively, "Department of Justice Copy," "Comptroller Copy," "Federal Reserve Copy," and "FDIC Copy."

(2) Any acquirer filing a notice pursuant to § 574.3(b) of this chapter shall file three additional copies of the notice, and shall label such copies "FDIC Copy," "Comptroller Copy," and "Federal Reserve Copy," respectively. In addition, any acquirer filing a notice pursuant to § 574.3(b) of this chapter with respect to acquisition of a state-chartered association shall file an additional copy of the notice with the Office labeled "State Supervisor Copy."

(3) In the case of a notice filed pursuant to § 574.3(b) of this chapter involving a merger (including a merger involving an interim association), the applicant shall file four additional copies of the application with the Office and shall label such copies "FDIC Copy," "Comptroller Copy," and "Federal Reserve Copy," and "Department of Justice Copy," respectively.

(4) In the case of an application filed on Form H-(e)2 (other than an application pursuant to §§ 574.3(b)(1)(iv) or 574.8 of this chapter), the applicant shall file one additional copy of the application with the Office and shall label such copy "Department of Justice Copy."

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 543—[AMENDED]

4. The authority citation for part 543 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*)

§ 543.1 [Amended]

5. Section 543.1 is amended by removing the words "District Director"

and "District Director, or his or her designee" where they appear in paragraph (b) and by inserting in lieu thereof, the word "District Office"; and by removing the words "his or her" contained in the third sentence of paragraph (b).

6. Section 543.2 is amended by revising paragraph (a) to read as set forth below; by removing paragraph (b) and reserving the paragraph designation for future use; by removing the phrase "District Director, or his or her designee" wherever it appears in paragraph (d) and by inserting in lieu thereof the word "Office"; by revising the last sentence of paragraph (d)(3); by removing the words "Director's Office" where they appear in paragraph (d)(4) and inserting the words "Office"; by removing the words "District Director" and the phrases "District Director or his or her designee", "District Director, or his or her designee", and "District Director, his or her designee, or any other person designated by the Director" wherever they appear in paragraphs (e) and (f) and by inserting in lieu thereof the word "District Office"; by revising the introductory texts of paragraphs (g) and (g)(1) to read as set forth below and by removing paragraph (h)(3). The revised text reads as follows:

§ 543.2 Application for permission to organize.

(a) **General.** Recommendations by employees of the Office regarding applications for permission to organize a Federal savings association are privileged, confidential, and subject to § 505.4 of this chapter.

(b) [Reserved]

(d) **Public notice and inspection.** * * *

(3) * * * The Office may also give notice to any other person believed to have an interest in the application.

(g) **Approval.** (1) Factors that will be considered are:

7. Section 543.8(b) is revised to read as follows:

§ 543.8 Conversion of State mutual charter to Federal charter.

(b) Recommendations regarding applications for issuance of Federal charters are privileged, confidential and subject to § 505.4 of this chapter.

8. Section 543.9(a) is revised to read as follows:

§ 543.9 Application for conversion to Federal mutual charter.

(a) *Filing.* Any state savings and loan association type or state savings bank type institution desiring to convert into a Federal savings association shall, after approval by its board of directors, file an application on forms obtained from the Office. The applicant shall submit any financial statements or other information the office may require, and pay all costs, determined by the Office, of consideration of the application.

* * * * *

PART 544—[AMENDED]

9. The authority citation for part 544 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

10. Section 544.2 is amended by revising paragraph (a), the introductory text of paragraph (b), and the second sentence of paragraph (c), and by removing paragraphs (d) and (e) to read as follows:

§ 544.2 Charter amendments.

(a) *General.* In order to adopt a charter amendment, a Federal mutual savings association must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) *Form of filing—(i) Application requirement.* If the proposed charter amendment would:

(A) Render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management; or

(B) Involve a significant issue of law or policy;

Then, the association shall file the proposed amendment with and obtain the prior approval of the Office.

(ii) *Notice requirement.* If the proposed charter amendment does not involve a provision that would be covered by paragraph (a)(2)(i) of this section, then the association shall submit the proposed amendment to the Office at least 30 days prior to the date the charter amendment is to be effective.

(b) *Preliminary approval.* Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section shall

automatically have preliminary approval from the Office 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment. This automatic approval does not apply if, prior to the expiration of such 30-day period, the Office notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the Federal mutual charter as set forth in § 544.1 of this part, shall have preliminary approval at the time of filing with the Office, provided the association follows the requirements of its charter in adopting such amendments:

* * * * *

(c) *Reissuance of charter.* * * * Such requests for reissuance shall contain signatures required under § 544.1 of this part, together with such supporting documents as may be needed to demonstrate that the amendments were properly adopted. * * *

11. Section 544.3 is amended by revising the introductory text to read as follows:

§ 544.3 Adoption of new Federal charter by a Federal savings association.

If the board of directors of a Federal mutual savings association proposes to amend its charter to read in the form of any other Federal mutual savings association charter, the amendment may be approved by a majority vote of members present at any duly called regular or special meeting of members. In the case of a Federal stock association, the board of directors of which proposes to amend its charter to read in the form of any other Federal stock association charter, the amendment may be approved by the stockholders by a majority of the total votes eligible to be cast at a legal meeting. In either case, after such vote, the association shall submit the following petition together with any requested change in the association's title or location of home office, and the Office thereafter will issue a charter in the form sought, upon approval by the Office of a change in such name or location:

* * * * *

12. Section 544.5 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 544.5 Federal mutual savings association bylaws.

(a) *General.* A Federal mutual association shall operate under bylaws that contain provisions that comply with all requirements specified by the Office in this section and that are not otherwise inconsistent with the provisions of this section, the association's charter, and all other applicable laws, rules, and regulations. Bylaws may be adopted, amended or repealed by a majority of the association's board of directors. *Provided that,* a bylaw provision inconsistent with the provisions of this section may be adopted with the approval of the Office.

* * * * *

(c) *Form of Filing—(1) Application requirement.* Any bylaw amendment that contains any of the following shall be submitted to the Office:

(i) Render more difficult or discharge a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management;

(ii) Involve a significant issue of law or policy; or

(iii) Be inconsistent with the requirements of this section or with applicable laws, rules, regulations or the association's charter.

For purposes of this paragraph (c), bylaw provisions that adopt the language of the model bylaws set forth at the appendix to this part shall be deemed to comply with the requirements of this section.

(2) *Notice requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (c)(1) of this section, then the association shall submit the amendment to the Office at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(d) *Effectiveness.* Any bylaw filed pursuant to paragraph (c)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment. This automatic effective date does not apply if, prior to the expiration of such 30-day period, the Office notifies the association that such amendment is rejected or that such amendment raises a significant issue of law or policy.

PART 545—[AMENDED]

13. The authority citation for part 545 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended by (12 U.S.C. 1464); sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

14. Section 545.74 is amended by revising paragraph (b)(7); by revising the introductory text of paragraph (c); by removing the phrase "District Director or his or her designee" in paragraph (c)(4)(i)(D) and by inserting, in lieu thereof, the phrase "District board of directors of the savings association"; by revising paragraphs (c)(3)(vi), (c)(4)(iii), and (e); and by removing paragraphs (f) and (g) to read as follows:

§ 545.74 Service corporations.

(b) General.

(7) The association shall notify the FDIC and the Office not less than 30 days prior to the establishment, or acquisition of any service corporation, and not less than 30 days prior to the commencement of any new activity through a service corporation. This notice requirement is in addition to any application that may be required under paragraph (c) of this section.

(c) Permitted activities. A service corporation in which a Federal savings association may invest is permitted to engage in such activities reasonably related to the activities of Federal savings associations as the Office may approve. In addition, a service corporation may engage in the following activities without prior Office approval, provided the notice to the FDIC and the Office required by paragraph (b)(7) of this section has been given:

(b) Real estate services.

(vi) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites: *Provided*, That any development, subdivision, and construction of improvements is to be completed within eleven years after acquisition of the real estate, unless such period is extended by the Office upon written application by the service corporation, which application shall be supported by information evidencing that the service corporation will proceed or has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction; and *Provided further*, That acquisition of an option to purchase is not an acquisition for the purpose of

determining the periods provided for in paragraph (c)(3)(vi) of this section;

(4) Securities brokerage services.

(iii) Any association that intends to acquire or establish a service corporation to engage in preapproved securities brokerage activities shall furnish to the Office, at least 30 days prior to the commencement of operations, written notice containing a full description of the brokerage services to be provided and a certification from the board of directors of such association that such services will be in compliance with all of the requirements of paragraph (c)(4) of this section. In addition, the association shall retain complete records of all executed contractual agreements and memoranda between the service corporation and broker-dealers, investment advisors, the parent savings association, and their affiliates, pro forma income statements for a three year period, any required professional opinions, and a reasoned legal opinion from counsel that the securities brokerage services qualify as preapproved under paragraph (c)(4) of this section.

(e) Disposal of investment. Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for, or exceeds limitations on, a service corporation in which a Federal savings association may invest, or whenever the capital stock ownership requirements of this section are not met, a Federal savings association having an interest in the service corporation, including any subsidiary thereof, shall dispose of its investment promptly unless, within 90 days after the Office mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with, or the capital stock ownership requirements are met.

15. Section 545.77 is revised to read as follows:

§ 545.77 Real estate for office and related facilities.

A Federal savings association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the Federal savings association's present needs or its reasonable future needs for office and related facilities.

16. Section 545.82 is amended by revising the heading of paragraph (f), paragraph (f)(1) introductory text, and paragraph (f)(3) to read as follows:

§ 545.82 Finance subsidiaries.

(f) Notification to the Office. (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of any additional securities by an existing finance subsidiary, the board of directors of the parent Federal savings association, or a duly authorized executive committee thereof, shall submit written notification to the Office specifying:

(3) Any Federal savings association subject to standard treatment as provided in § 516.3(b) of this chapter, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through an existing finance subsidiary without the prior written approval of the Office. To obtain the written approval of the Office, the board of directors of the Federal savings association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (f)(1) of this section, as well as any additional information required by the Office.

17. Section 545.92 is amended by revising paragraphs (a), (b), (c), (e), (f), and (h)(1), by removing paragraph (h)(3), and by adding a new paragraph (j) to read as follows:

§ 545.92 Branch offices.

(a) General. A branch office of a Federal savings association is any office other than its home office, agency office, data processing or administrative office, or a remote service unit. Except as limited by this section, any business of a Federal savings association may be transacted at a branch office.

(b) Eligibility. Savings associations eligible for expedited treatment pursuant to § 516.3(a) of this chapter may establish a branch office without prior approval subject to the procedures in paragraph (f) of this section. A savings association subject to standard treatment as defined in § 516.3(b) of this chapter shall not establish a branch office without prior approval pursuant to such section. A savings association subject to standard treatment as defined in § 516.3(b) of this chapter may apply for a branch regardless of the number of branch applications it has unless

otherwise currently restricted under an agreement between the Office and a state agency that regulates state-chartered savings associations.

(c) *Application form; filing; completion; supervisory objection.* Applicants shall obtain Office-approved applications and notice forms and related instructions from the Office.

(e) *Approval by the Office.* (1) The Office shall approve an application only if the overall policies, condition, and operation of the applicant afford no basis for supervisory objection and the proposed branch will open within twelve months of approval unless otherwise allowed by the Office. In considering whether to approve an application, the Office will assess and take into account an association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, pursuant to part 563e of this chapter; assessment of an association's record of performance may be the basis for denying an application. An application may also be denied on the basis of restrictions imposed pursuant to an existing agreement between the Office and a state agency that regulates state-chartered savings associations.

(2) An application shall be deemed to be approved 30 days after notification that the application is complete, if no substantial protest based on part 563e of this chapter has been filed and the applicant has not been notified that objection has been taken on grounds set forth in paragraph (e)(1).

(f) *Notice requirements.* Savings associations that qualify for expedited treatment must submit the notice required by § 516.3(a) of this chapter within three days of the publication of notice pursuant to paragraph (j) of this section. The notice shall include the proposed office location. Such notice shall be deemed to be approved 30 days after its billing with the Office unless a substantial protest has been filed or the savings association is notified that objection has been taken. If a substantial protest based on part 563e of this chapter has been filed, a savings association may not open a branch office until the Office provides notification of its approval.

(h) *Maintenance of branch office after conversion, consolidation, purchase of bulk assets, merger or purchase from receiver.* (1) An existing association which converts to a Federal savings association may maintain an existing office, and a Federal savings association

which acquires offices through consolidation, purchase of bulk assets, merger or purchase from the receiver of an association may maintain any acquired office, except to the extent the approval by the Office of the conversion, consolidation, merger, or purchase specifies otherwise.

(j) *Publication.* Notice shall be published in a newspaper printed in the English language and having a general circulation in the community in which the home office of the association is located and in the community to be served. If it is determined that the primary language of a significant number of adult residents of either community is a language other than English, the institution will be required to publish the notification simultaneously in the appropriate language. Notice shall be made in substantially the following form:

Notice of Establishment of a Branch Office or Change of Location of an Office

This is to inform the public that under 12 CFR 545.92 or 12 CFR 545.95 of the Regulations of the Office of Thrift Supervision ("Office") [Association Corporate Title, City, Town, State and Zip Code] [has filed/intends to file] [an] [application/notice] with the Office for permission to establish a branch office to be located [address of branch office].

Anyone may write in favor of or protest against the [application/notice] within 10 days of the publication of this notice. An additional 7 days to submit comments may be obtained if written request is received by the Office within this 10-day period. Three copies of all submissions must be sent to the Regional Director [giving name and address] of the Office of Thrift Supervision Regional Office where the [application/notice] is being filed.

Anyone sending a protest deemed substantial by the Office may request an oral argument by submitting a written request to the Office during the 10-day period. For a protest to be considered substantial, it must be written and received on time, the reasons for the protest must be consistent with the regulatory basis for denial of the establishment of a branch office and the protest must be supported by the information specified in 12 CFR 543.2(e)(4).

You may look at the notice and all comments filed at the OTS Regional Office unless any such material are exempt by law from disclosure. If you have any questions concerning these procedures, contact the OTS Office of [Region], at [location].

§ 545.93 [Amended]

18. Section 545.93 is amended by removing the phrase "District Director or his or her designee" where it appears in paragraphs (b) and (c) inserting in lieu thereof the word "District Office".

19. Section 545.93 is amended by removing the phrase "District Director

or his or her designee", and by inserting, in lieu thereof, the word "District Office".

20. Section 545.95 is revised to read as follows:

§ 545.95 Change of office location and redesignation of offices.

(a) *Eligibility.* A savings association eligible for expedited treatment pursuant to § 516.3(a) of this chapter may change the permanent location of its home office or any approved branch office, or redesignate a home or branch office subject to the procedures set out in § 545.92(f) of this part. A savings association subject to standard treatment pursuant to § 516.3(b) of this chapter may change the permanent location of its home office or any approved branch office, or redesignate a home or branch office subject to the procedures set out in §§ 545.92 (c), (d), and (e) of this part.

(b) *Processing of application.* (1) Processing of an application for a change of office location or redesignation of a home or branch office shall follow the procedures set forth in § 4545.92 of this part, except that:

(i) The applicant shall publish the required newspaper notice of application in the applicant's home office community, the community to be served by the new office, and the community where the office is to be closed or the home office is to be redesignated as a branch; and

(ii) The applicant shall post notice of the application for seventeen days from the date of first publication in a prominent location in the office to be closed or redesignated.

(2) The Office may approve an amendment to an association's charter in connection with approval of a home office relocation or redesignation under this section.

(c) *Short-distance relocations.* (1) Notwithstanding paragraph (a) of this section, an association may change the permanent location of a home or branch office, without applying for approval by the Office, to a site within the market area and short-distance relocation area of the office site that has been approved in accordance with § 545.92 of this part or paragraph (a) of this section. The short-distance relocation area of an office site is:

(i) The area within a 1,000-foot radius of the site if it is located within a central city of a Metropolitan Statistical Area ("MSA") designated by the U.S. Department of Commerce;

(ii) The area within a one-mile radius of the site if it is located within a MSA designated by the U.S. Department of

Commerce but not within a central city; or

(iii) The area within a two-mile radius of the site if it is not located within a MSA.

(2) An association shall notify the Office in writing at least 30 days before such an office relocation and may proceed with the relocation unless, within 30 days of receipt of the notice, the Office notifies the association that the relocation does not satisfy the criteria set forth in the first sentence of this paragraph (c), in which case the association must file an application and obtain approval by the Office in accordance with paragraph (b) of this section.

21. Section 545.96 is amended by revising paragraph (b) and by removing paragraph (d) to read as follows:

§ 545.96 Agency.

(b) *Additional services.* Except for payment on savings accounts, offering of any services not listed in paragraph (a) of this section may be approved by the Office.

PART 546—[AMENDED]

22. The authority citation for part 546 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3 as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

§ 546.2 [Amended]

23. Section 546.2 is amended by removing the phrases "Director, or any person(s) who have delegated authority to approve the merger on behalf of the Director" where it appears in paragraph (d)(2) and "Director, or any person(s) who have delegated authority to approve or deny a merger on behalf of the Director" where it appears in paragraph (e), and by inserting, in lieu thereof, the word "Office".

24. Section 546.4 is amended by revising paragraph (c) and the concluding text of the section to read as follows:

§ 546.4 Voluntary dissolution.

(c) Dissolution in a manner proposed by the directors which they consider best for all concerned.

The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the Office for approval. The Office will approve

the plan if the Office believes dissolution is advisable and the plan best for all concerned, but if the Office considers the plan inadvisable, the Office may either make recommendations to the association concerning the plan or disapprove it. When the plan is approved by the association's board of directors and by the Office, it shall be submitted to the association's members at a duly called meeting and, when approved by a majority of votes cast at that meeting shall become effective. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Office may require, shall immediately be filed with the Office. When the Office receives such evidence satisfactory to the Office, it will terminate the corporate existence of the dissolved association and the association's charter shall thereby be canceled.

PART 552—[AMENDED]

25. The authority citation for part 552 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

26. Section 552.2-1 is amended by revising the introductory text of paragraph (b)(1) and paragraph (i) to read as follows:

§ 552.2-1 Procedure for organization of a Federal stock association.

(b) *Conditions of approval.* * * *

(1) Factors that will be considered on all applications for permission to organize a Federal stock association are:

(i) *Failure of completion.* If organization of a Federal stock association is not completed within six months after the Office approves the application, or within such additional period as the Office for good cause may grant, the charter shall become null and void and all subscriptions to capital stock shall be returned.

§ 552.2-2 [Amended]

27. Section 552.2-2 is amended by removing the words "or its delegate" wherever it appears in paragraph (b); by removing the phrase "the Director or his or her designee in his or her discretion" where it appears in paragraph (c) and by inserting in lieu thereof the word "Office"; and by removing paragraph (d).

28. Section 552.4 is amended by revising paragraph (a) and the introductory text of paragraph (b); by removing the phrase "opinion, acceptable to the Office, of counsel" where it appears in paragraph (c) and inserting in lieu thereof the phrase "opinion of counsel, acceptable to the Office"; by removing the last sentence of paragraph (d); and by removing paragraphs (e) and (f) to read as follows:

§ 552.4 Charter amendments.

(a) *General.* In order to adopt a charter amendment, a Federal stock association must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment; and

(2) *Form of filing.*—(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, the removal of incumbent management, or involve a significant issue of law or policy, the association shall file the proposed amendment with and obtain the prior approval of the Office; and

(ii) *Notice requirement.* If the proposed charter amendment does not involve a provision that would be covered by paragraph (a)(2)(i) of this section, then the association shall submit the proposed amendment to the Office at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the association's shareholders.

(b) *Preliminary approval.* Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section shall automatically have preliminary approval from the office 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment, unless prior to the expiration of such 30 day period the Office notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the Federal stock charter as set forth in § 552.3 of this part, shall have preliminary approval at the time of filing with the Office, provided the association follows the requirements of its charter in adopting such amendments:

29. Section 552.5 is revised to read as follows:

§ 552.5 Bylaws.

(a) *General.* At its first organizational meeting, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended or repealed by either a majority of the shareholders or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the association in accordance with the requirements of §§ 552.6, 552.6-1, 552.6-2, 552.6-3 and 552.6-4 of this part and shall not contain any provision that is inconsistent with those sections or with applicable laws, rules, regulations or the association's charter, except that a bylaw provision inconsistent with §§ 552.6, 552.6-1, 552.6-3 and 552.6-4 of this part may be adopted with the approval of the Office.

(b) *Form of Filing.*—(1) *Application requirement.* Any bylaw amendment that contains the following shall be submitted to the Office for approval:

(i) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; or

(ii) Be inconsistent with §§ 552.6, 552.6-1, 552.6-2, 552.6-3 and 552.6-4, with applicable laws, rules, regulations or the association's charter or involve a significant issue of law or policy.

Bylaw provisions that adopt the language of the model bylaws set forth at the appendix to part 552 shall be deemed to comply with the requirements of this section.

(2) *Notice requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (b)(1) of this section, then the association shall submit the amendment to the Office at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(c) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (b)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment, unless prior to the expiration of such 30 day period the Office notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (b)(1) of this section.

30. Section 552.6-3 is amended by revising the first three sentences of paragraph (a) to read as follows:

§ 552.6-3 Certificates for shares and their transfer.

(a) *Certificates for shares.* Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Office. The certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. * * *

31. Section 552.10 is revised to read as follows:

§ 552.10 Annual reports to stockholders.

A Federal stock association not wholly-owned by a holding company shall, within ninety days after the end of its fiscal year, mail to each of its stockholders entitled to vote at its annual meeting an annual report containing financial statements which satisfy the requirements of rule 14a-3 under the Securities Exchange Act of 1934. (17 CFR 240.14a-3). Concurrently with such mailing a certification of such mailing signed by the chairman of the board, the president or a vice president of the association, together with copies of the report, shall be transmitted by the association to the Office.

32. Section 552.13 is amended by revising paragraph (i) and by removing paragraph (m) to read as follows:

§ 552.13 Combinations Involving Federal stock associations.

(i) *Disclosure.* The Office may require, in connection with a combination under this section, such disclosure of information as the Office deems necessary or desirable for the protection of investors in any of the constituent associations. * * *

PART 556—[AMENDED]

33. The authority citation for part 556 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 98 Stat. 1505, as amended, (12 U.S.C. 1701j-3); secs. 902-920, as added by sec. 2001, 92 Stat. 3728-3741, as amended (15 U.S.C. 1693-1693r).

34. Section 556.5 is amended by revising paragraphs (b)(2)(ii) introductory text and (d)(1); by removing

the phrases "the District Director or his or her designee" and "he or she" wherever they appear in paragraph (d)(2) and by inserting in lieu thereof the words "the Office"; and by removing the last sentence of paragraph (d)(2) to read as follows:

§ 556.5 Establishment of branch offices.

(b) *Supervisory clearance*—(1) * * *
(2) *Regulatory capital.* * * *

(ii) *Exception.* If an applicant fails to meet any of the regulatory capital criteria, the Office will not grant supervisory clearance unless:

(d) *Protest and oral argument.*—(1) *Protest.* Protests to applications/notices for branches will have to be persuasive and factually documented to influence the Office's decisions.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—[AMENDED]

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

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 276 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

36. Section 563.1 is revised to read as follows:

§ 563.1 Form of account.

(a) *Notice requirement.* A saving association shall file with the Office, at least 30 days prior to commencing operations or the issuance of a new form of account or security by the savings association, forms of all accounts and securities proposed to be issued by the savings association, its charter and bylaws, and any amendments thereto. No savings association shall issue:

(1) Any form of account (except NOW accounts as defined in § 541.9 of this chapter) without complying with the requirements of paragraph (b) of this section;

(2) Any security that has not been submitted to the Office at least 30 days prior to its issuance by the savings association; or

(3) Any class of account having preference as to time or amount in the event of liquidation over any other class

of account, without complying with the requirements of paragraphs (b) and (c) of this section. Provided, however, that where there may be a change from one type of account to another, a reasonable time may be allowed to effect such change. Such time period shall be determined by the Office.

(b) *Filing and recordkeeping requirements.* (1) At least 30 days prior to issuing any form of account or security, a savings association shall file with the Office:

(i) The form of account or security; and

(ii) An opinion of its legal counsel that the form of account or security complies with the requirements of applicable law and regulations and the savings association's charter and bylaws. For any account or security issued in negotiable instruments form, the opinion must state expressly that the form so qualifies under applicable law.

(2) Filing shall be made by delivering a copy of the form of account or security and the accompanying legal opinion to the Office. The savings association shall retain a copy of the legal opinion for as long as accounts in that form are outstanding. In addition, each savings association shall cause a true copy of its charter and bylaws, including all amendments thereto, to be available to accountholders at all times in each office of the savings association, and shall upon request deliver to any accountholders a copy of such charter and bylaws, including all amendments thereto. The filing requirements of paragraph (b)(1) (i) and (ii) of this section shall not apply if a savings association issues a form of account that has been approved by the Office for use by savings associations; however, such filing requirements shall apply to the issuance of any form of security by a savings association regardless of whether such form of security has been previously approved by the Office for use by savings associations.

37. Section 563.10 is amended by removing the words "District Director" in paragraph (b)(1), and inserting, in lieu thereof, the word "Office"; and by revising the heading of paragraph (c) and introductory text of paragraph (c)(1) to read as follows:

§ 563.10 Earnings-based accounts.

(c) *Permission for increased issuance.* (1) The Office may grant permission to a savings association to issue earnings-based accounts in an amount of up to 20 percent of the savings association's assets, upon consideration by the Office of the following factors:

38. Section 563.22 is amended by revising paragraph (c)(2); by removing the words "District Director" where they appear in the heading and text of paragraph (e)(1), and by inserting in lieu thereof the word "Office"; and by removing and reserving paragraphs (d)(1), (e)(2), (e)(3), and (f) to read as follows:

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

(c) * * *
(2) Application for approval under this section shall be upon forms prescribed by the Office and shall contain such information as the Office may require, including appropriate information regarding the fairness and legal, economic, managerial, financial, disclosure, accounting and tax aspects of the transaction.

(d) * * *

(1) [Reserved]

(e) * * *

(2)-(3) [Reserved]

(f) [Reserved]

39. Section 563.37(c) is revised to read as follows:

§ 563.37 Operation of service corporation, liability of savings association for debt of service corporation.

(c) *Notice of new activity or acquisition or establishment of a service corporation.* Every savings association shall notify the Office and the FDIC not less than 30 days prior to the establishment or acquisition of any service corporation and not less than 30 days prior to the commencement of any new activity through a service corporation. The Notice requirement of this paragraph (c) is in addition to any application that may be required under § 545.74 of this chapter.

40. Section 563.38 is amended by revising the first three sentences of paragraph (b) to read as follows:

§ 563.38 Salvage power of savings association to assist service corporation.

(b) *Applications for approval.* Each application by a savings association to the Office for its approval to make any such contribution, loan, investment, guarantee, or assumption of liability shall establish, to the satisfaction of the Office, in a written statement, that the action it proposes is for the protection of the savings association's investment and is consistent with safe, sound, and economical home financing. The

application shall describe and discuss alternative solutions to the service corporation's financial problem including solutions which do not involve increased investment by the savings association, and contain such other information as the Office may require. * * *

41. Section 563.43 is amended by revising the first sentence of paragraph (d) and paragraph (e) and (f) to read as follows:

§ 563.43 Restrictions on loans, other investments, and real and personal property transactions involving affiliated persons.

(d) *Waiver.* The restrictions in paragraph (b) and (c) of this section may be waived in supervisory cases if the Office determines that the terms of the transaction in question are fair to, and in the best interests of, the savings association or subsidiary. * * *

(e) *Restrictions.* No savings association or subsidiary thereof may, directly or indirectly, purchase or lease from, jointly own with, sell or lease to, an affiliated person of the association any interest in real or personal property unless the transaction is determined by an independent majority of the board of directors of the association to be fair to, and in the best interests of, the savings association or subsidiary.

(f) *Conditions.* Transactions permitted under paragraph (e) of this section shall:

(1) Be supported by an independent appraisal not prepared by an affiliate, affiliated person, or employee of the savings association or subsidiary; and

(2) Be approved in advance by a resolution indicating that the terms of such transactions are fair to, and in the best interests of, the savings association or subsidiary. Such resolution must be duly adopted with full disclosure by at least a majority of the entire board of directors (with no director having an interest in the transaction voting on such resolution) of the association or subsidiary (or alternatively by a majority of the total votes eligible to be cast by the voting members of the savings association at a meeting called for such purpose, with no votes cast by proxies not solicited for such purpose). For purposes of this paragraph (f), full disclosure must include the affiliated person's source of financing for the real property involved in the transaction, including whether the savings association or any subsidiary thereof has a deposit relationship with any financial institution or holding company affiliate thereof providing the financing.

§ 563.45 [Amended]

42. Section 563.45 is amended in Form AR at the end of the section by removing Instruction 9 to Item 6(e).

43. Section 563.74(e) is revised to read as follows:

§ 563.74 Mutual capital certificates.

* * * *

(e) *Filing requirements.* The application for issuance of mutual capital certificates shall be publicly filed with the Office.

* * * *

§ 563.75 [Removed]

44. Section 563.75 is removed.

45. Section 563.80(e)(2) is revised to read as follows:

§ 563.80 Borrowing limitations.

* * * *

(e) * * *

(2) The Office shall have ten (10) business days after receipt of such filing to object to the issuance of such securities. The Office shall object if the terms or covenants of the proposed issue place unreasonable burdens on, or control over, the operations of the association. If no objection is taken, the savings association shall have one hundred twenty (120) calendar days within which to issue such securities.

* * * *

46. Section 563.81 is amended by revising the section title; by revising paragraphs (a), (b), (c), the introductory text of paragraph (d), paragraphs (d)(1)(iv), (d)(2), the first sentence of paragraph (g), and paragraphs (h) and (k); by inserting the phrase "or mandatorily redeemable preferred stock" after the word "debt" in the introductory text of paragraph (d)(1); by removing the word "State" appearing in paragraph (d)(1)(iii) and by substituting in lieu thereof the phrase "In connection only with a certificate evidencing subordinated debt, state"; by adding the phrase "or dividends, as appropriate" after the word "interest" appearing in paragraph (d)(1)(v); by removing the word "Set" appearing in the introductory text of paragraph (d)(i)(vi) and inserting in lieu thereof the phrase "In connection only with a certificate evidencing subordinated debt, set"; by removing paragraph (e) and reserving the paragraph designation for future use; by removing the word "applicant" wherever it appears in paragraph (f) and by substituting in lieu thereof the words "savings associations"; and by removing paragraphs (i) and (j) and reserving the paragraph designations for future use to read as follows:

§ 563.81 Issuance of subordinated debt securities and mandatorily redeemable preferred stock.

(a) *General*—(1) *Savings associations receiving standard treatment.* No savings association subject to standard treatment of its applications, as defined at § 516.3(b) of this chapter, shall issue subordinated debt securities or mandatorily redeemable preferred stock pursuant to this section or amend the terms of such securities unless it has obtained the written approval of the Office. Approval of the issuance under this section, in order to meet the requirements of § 567.5 of this subchapter, may be obtained either before or after the securities are issued, but no approval shall be granted unless issuance of the securities and the form and manner of filing of the application are in accordance with the provisions of this section.

(2) *Savings associations receiving expedited treatment.* No Savings association eligible for expedited treatment, as defined at § 516.3(a) of this chapter, shall issue subordinated debt securities or mandatorily redeemable preferred stock pursuant to this section for inclusion in regulatory capital or amend the terms of such securities unless it provides 30 days advance notice to the Office of its intent to include such securities in regulatory capital. Notice of an issuance of subordinated debt securities or mandatorily redeemable preferred stock under this section, in order to qualify as supplementary capital under § 567.5(b)(2) of this subchapter, may be made either before or after such securities are issued, but will only be includable in regulatory capital (to the extent permitted by § 567.5(b)) if the issuance of the securities and the filing of the notice are in accordance with the provisions of this section and the savings association certifies, in writing, to the Office that all regulatory requirements have been met. The office reserves the right to determine after the 30 day notice period has expired that the issuance does not comply with the requirements of this section or those of part 567 for inclusion in capital.

(b) *Eligibility requirements.* In determining whether an issuance of subordinated debt securities or mandatorily redeemable preferred stock is includable in the regulatory capital of a savings association pursuant to this section, the Office will consider the following factors:

(1) Whether the issuance of such securities by the savings association is authorized by applicable law and regulation and is not inconsistent with

any provision of the savings association's charter or bylaws;

(2) Whether, in the opinion of the Office, the overall policies, condition and operation of the savings association do not afford a basis for supervisory objection to the application or notice. The Office shall establish Guidelines that shall identify supervisory bases that may be used to object to the inclusion of specific subordinated debt and preferred stock issuances as regulatory capital. Such Guidelines shall constitute illustrative but not exclusive bases for supervisory objection to subordinated debt and mandatorily redeemable preferred stock applications and notices. Such bases for supervisory objection may include, but are not limited to instances where:

(i) Regulatory capital, without regard to the amount of any subordinated debt and mandatorily redeemable preferred stock to be included in regulatory capital, does not meet the requirements of § 567.2 of this subchapter;

(ii) Actual and expected losses have not been offset by specific and general valuation allowances to the extent required pursuant to § 563.160 and § 563.172 of this part; and

(iii) Actual and anticipated income from operations, after distribution of earnings to the holders of savings accounts, payment of dividends on outstanding equity securities and payment of interest on borrowings but before income taxes, is not demonstrably sufficient for payment of dividends and redemption price, discount and related expenses of the proposed issuance.

The Office may modify such Guidelines from time to time, as appropriate, and any such changes shall be effective for those applications and notices filed after the date of the changes to the Guidelines and for those applications and notices submitted to the Office but not yet deemed "complete."

(3) Whether the issuance of such securities by the savings association in the transaction and any related transactions will result in a transfer of risk from the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be, to parties other than savings associations. In this connection, the issuance of subordinated debt securities shall not be deemed to result in a sufficient transfer of risk if such securities or any indenture or related agreement pursuant to which they are issued provides for events of default or includes other provisions that could result in a mandatory prepayment of principle by declaration or otherwise, other than

events of default arising out of the obligor's failure to make timely payment of interest and principal, its 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 events of default relating to certain events of bankruptcy or insolvency, receivership and similar events.

(c) *Form of application or notice; supporting information.* An application for approval of the issuance of subordinated debt securities or mandatorily redeemable preferred stock by a savings association subject to standard treatment pursuant to § 516.3(b) of this chapter, or a notice of the issuance of subordinated debt securities or mandatorily redeemable preferred stock by a savings association, eligible for expedited treatment pursuant to § 516.3(a) of this chapter pursuant to this section shall be in the form prescribed by the Office. The form of application and instructions for a savings association subject to standard treatment, and instructions for a notice by a savings association subject to expedited treatment, may be obtained from the Office. Information and exhibits shall be furnished in support of an application or notice in accordance with the applicable instructions, setting forth all of the terms and provisions relating to the proposed issuance and showing that all of the requirements of this section have been or will be met.

(d) *Requirements as to securities.* Subordinated debt securities and mandatorily redeemable preferred stock issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements, not including paragraphs (d)(1)(i)(A) and (d)(1)(ii) of this section which are not eligible for waiver, are waived by the Office:

(1) *Form of certificate.* * * *

(iv) State or refer to a document stating that, in connection with a certificate evidencing subordinated debt, no voluntary prepayment of principal shall be made and that no payment of principal shall be accelerated and, in connection with a certificate evidencing mandatorily redeemable preferred stock, no voluntary redemption, other than scheduled redemptions, shall be made without the approval of the Office if the savings association is failing to meet its regulatory capital requirements under § 567.2 of this subchapter or, if after giving effect to such payment, the

association would fail to meet such regulatory capital requirements;

(2) *Limitation as to term.* No subordinated debt security or mandatorily redeemable preferred stock issued by a savings association pursuant to this section shall have an original period to maturity or required redemption of less than seven years. During the first six years that such a security is outstanding, the total of all required sinking fund payments, other required prepayments, required reserve allocations, required purchase-fund payments, required reserve allocations and required redemptions with respect to the portion of such six years as have elapsed shall at no time exceed the original principal amount or original redemption price, thereof multiplied by a fraction of the numerator of which is the number of years which have elapsed since the issuance of the security and the denominator of which is the number of years covered by the original period to maturity or required redemption.

(e) [Reserved]

(g) *Limitation on offering period.* Following the date of approval of an application by a savings association subject to standard treatment by the Office, or the earlier of the date of non-objection by the Office of a notice by a savings association eligible for expedited treatment or 30 days after submission of a notice by such a savings association, unless the Office has rejected such notice or issued a request for additional information on such notice, the association shall have an offering period of not more than one year in which to complete the sale of the subordinated debt securities or mandatorily redeemable preferred stock issued pursuant to this section. * * *

(h) *Reports.* Within 30 days after completion of the sale of the subordinated debt securities or mandatorily redeemable preferred stock issued pursuant to this section, the savings association shall transmit a written report to the Office stating the number of purchases, the total dollar amount of securities sold, and the amount of net proceeds received by the savings association. The association's report shall clearly state the amount of subordinated debt or mandatorily redeemable preferred stock, net of all expenses, that the association intends to be counted as regulatory capital.

(i) [Reserved].

(j) [Reserved].

(k) *Conditions of approval and acceptance for subordinated debt and*

mandatorily redeemable preferred stock applications and notices. Subordinated debt and mandatorily redeemable preferred stock applications and notices 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 Office pursuant to 12 CFR 563g.2, and where such offering circular has not yet been declared effective prior to the date of approval and acceptance of the subordinated debt application or notice, the offering circular in the form declared effective shall not disclose any material adverse information concerning the savings association's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the application or notice;

(2) The savings association shall submit to the Office, no later than 30 days from the completion of the sale of the securities, certification of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities;

(3) The savings association shall submit to the Office no later than 30 days from the completion of the sale of the securities, the report(s) required by paragraph (h) of this section and the following additional items:

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

(ii) A certificate from the principal executive officer of the savings association which states that to the best of his or her knowledge, none of the securities issued pursuant to the subject application or notice were sold to any association whose accounts are insured by the Savings Association Insurance Fund, or a corporate affiliate thereof, except as permitted by 12 CFR 563.81;

(4) That as of the date of approval and acceptance, there have been no material changes with respect to the information disclosed in the application or notice as submitted to the Office;

(5) The savings association receive prior written approval and acceptance from the Office for any post-approval amendment to the 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 Office's regulations as may then be in effect or would result in a transfer of risk to the savings association or the

Savings Association Insurance Fund or the Bank Insurance Fund, as appropriate; 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 savings association following adoption of the amendment;

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

(7) Before any offers or sales of the securities are made on the premises of the association or its affiliates, the savings association shall submit to the Office a set of policies and procedures for such sale of the securities satisfactory to the Office.

47. Section 563.93 is amended by removing the words "Director" and "District Director" in paragraphs (b)(6)(iii), (h) and the appendix, everywhere they appear and inserting, in lieu thereof, the word "Office"; and by revising paragraphs (d)(3)(iii), (g)(6), and (h) to read as follows:

§ 563.93 Lending limitations.

(d) *Exceptions to the general limitation—(1)* * * *

(3) *Loans to develop domestic residential housing units.* * * *

(iii) The Office permits, subject to conditions it may impose, the savings association to use the higher limit set forth under paragraph (d)(3) of this section;

(g) *Temporary transition authority to exceed the general limitation. (1)* * * *

(6) The Office retains the discretion to restrict, for reasons of safety and soundness, a savings association's authority to engage in expanded lending activities pursuant to this transitional rule.

(h) *More stringent restrictions.* The Office may impose more stringent restrictions on a savings association's loans to one borrower if the Office determines that such restrictions are necessary to protect the safety and soundness of the savings association.

48. Section 563.131 is amended by removing the phrases "the savings

association's District Director" in paragraph (a)(1), "its District Director" in paragraphs (b) and (d), and "the District Director" in paragraph (e), wherever they appear, and by substituting in lieu thereof the phrase "the Office"; and by revising the introductory text of paragraph (c) to read as follows:

§ 563.131 Liability growth.

(c) To obtain the prior written approval from the Office a savings association shall submit a written growth plan. A growth plan shall cover a period of time not to exceed 1 year and shall include the following information:

49. Section 563.132 is amended by removing the phrase "its parent savings association's District Director" in paragraph (a)(1)(ii) "the District Director" in paragraph (c)(4), "it's District Director" in paragraph (c)(2), wherever they appear and by inserting in lieu thereof the phrase "the Office"; by remaining paragraph (c)(5), and by revising the heading of paragraph (c), the introductory text of paragraph (c)(5), and by revising the heading of paragraph (c)(3) to read as follows:

§ 563.132 Securities issued through subsidiaries.

(c) *Notification to the Office.* (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of securities through a subsidiary as described in paragraph (a)(1)(ii) of this section the Board of Directors of the parent savings association, or a duly authorized executive committee thereof, shall submit written notification to the Office specifying:

(3) Any savings association that is subject to standard treatment as defined in § 516.3(b) of this chapter shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through a subsidiary described in paragraph (a)(1)(ii) of this section without the prior written approval of the Office. The board of directors of the association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (c)(1) of this section, as well as any additional information required by the Office.

50. Section 563.133 is amended by removing the phrases "the District

Director" and "the District Director or his or her designee" wherever they appear in paragraph (b) and by inserting in lieu thereof the phrase "the Office" and by revising paragraphs (a) and (c) to read as follows:

§ 563.133 Sale of Federal Home Loan Mortgage Corporation preferred stock.

(a) A savings association that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 567.2 and 567.3 of this subchapter, notwithstanding any previously granted capital forbearances, shall not sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the Office. The Office may impose any conditions deemed appropriate in granting such approval.

(c) Except as approved by the Office, a savings association that fails to satisfy its fully phased-in regulatory capital requirement as set forth in §§ 567.2 and 567.3 of this subchapter, notwithstanding any previously granted capital forbearances, shall not be permitted to declare a dividend, repurchase its own stock, or take any equivalent action that might impair its ability to attain its fully phased-in regulatory capital requirement unless it has first subtracted any gain realized from the sale of Federal Home Loan Mortgage Corporation preferred stock from its earnings.

§ 563.134 [Amended]

51. Section 563.134 is amended by removing the phrase "its District Director" wherever it appears in paragraphs (c) and (e) and by inserting in lieu thereof the word "Office".

52. Section 563.233 is amended by removing paragraph (e)(4) and by revising paragraph (e)(1) to read as follows:

§ 563.233 Accounting principles and procedures.

(e)(1) A savings association seeking to delay its compliance with the uniform accounting standards set forth in this section or part 567 of this subchapter shall file a plan with the Office.

PART 563b—[AMENDED]

53. The authority citation for part 563b continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); sec. 3 as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4 as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); secs. 3,

12-14, 23, 48 Stat. 882, 892, 894-895, 901, as amended (15 U.S.C. 78c, 1-n, w).

54. Section 563b.3 is amended by revising the last sentence of paragraph (i)(3)(i) to read as follows:

§ 563b.3 General principles for conversions.

(i) *Acquisition of the securities of converting and converted savings associations—*

(3) *Prohibition on offers to acquire and acquisitions of stock for three years following conversion.* (i) * * * In obtaining the prior written approval of the Office under this paragraph (i), the criteria for approval under paragraph (i)(5) of this section should be addressed in the application, notice, or rebuttal required by part 574 of this subchapter for the acquisition of stock of a savings association, as set forth in § 574.6(j) of this subchapter.

§ 563b.8 [Amended]

55. Section 563b.8 is amended by removing paragraph (w).

56. Section 563b.28 amended by removing paragraph (c) and reserving the paragraph designation for future use; and by revising paragraph (a) to read as follows:

§ 563b.28 Procedural requirements.

(a) *Filing of voluntary supervisory conversion application.* A savings association seeking to convert pursuant to this subpart shall file, with the Office, the information and documents specified in § 563b.27 of this part.

(c) [Reserved].

§ 563b.29 [Amended]

57. Section 563b.29 is amended by removing the phrase "General Counsel or his or her designee" where it appears in paragraph (a) and by inserting in lieu thereof the word "Office".

§ 563b.41 [Amended]

58. Section 563b.41 is amended by removing paragraph (c) and reserving the paragraph designation for future use.

PART 563f—[AMENDED]

59. The authority citation for part 563f continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 201, 92 Stat. 3672, as amended (12 U.S.C. 3201 et seq.).

60. Section 563f.7 is revised to read as follows:

§ 563f.7 Exemptions and extensions of time.

Exemptions under § 563f.4 of this part shall be granted if all relevant conditions specified are met. Extensions under § 563f.6 of this part shall be granted unless the Office determines that the extension would be so contrary to the best interests of the depository institutions as to outweigh the disruption caused by the earlier departure of management officials in interlocking relationships. Applications made pursuant to this section should be submitted to the Regional Office for the Region that has supervisory responsibility over the depository institution or depository holding company wherein the management official is, or would be in a prohibited management interlock position.

PART 566—[AMENDED]

61. The authority citation for part 566 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 6, 48 Stat. 134, as amended (12 U.S.C. 1465); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 701, as added by sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1691); sec. 702, as added by sec. 503, 88 Stat. 1522 (15 U.S.C. 1691a).

§ 566.3 [Removed and Reserved]

62. Section 566.3 is removed and the section designation reserved for future use.

63. Section 566.4 is revised to read as follows:

§ 566.4 Records.

Each savings association shall maintain records verifying its compliance with liquidity requirements prescribed by the Office, and make them available to the Office, or its representative, during supervisory examinations and at other times as the Office may direct. For any deficiency in compliance with the liquidity requirements of this part, the Office may institute appropriate enforcement proceedings.

§ 566.5 [Removed and Reserved]

64. Section 566.5 is removed and the section designation reserved for future use.

PART 571—[AMENDED]

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

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.12 [Removed and Reserved]

66. Section 571.12 is removed and reserved.

PART 574—[AMENDED]

67. The authority citation for part 574 continues to read as follows:

Authority: Sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 2(7), 64 Stat. 876, as amended (12 U.S.C. 1817).

68. Section 574.3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 574.3 Acquisition of control of savings associations.

(c) *Exempt transactions.* (1) * * *

(ii) Control of a savings association acquired in connection with a reorganization which involves solely the acquisition of control of that association by a newly formed company which is controlled by the same acquirors that controlled the savings association for the immediately preceding three years, and entails no other transactions, such as an assumption of the acquirors' debt by the newly formed company; *Provided*, That the acquirors have filed with the Office an H-(e)4 notification as provided in § 574.6 of this part and the Office does not object to the acquisition within 30 days of the filing date.

69. Section 574.4 is amended by revising the introductory text of paragraph (f)(1) to read as follows:

§ 574.4 Control.

(f) *Safe harbor.* * * *

(1) In order to qualify for the safe harbor, an acquirer must submit a certification to the Office, which shall be signed by the acquirer or an authorized representative thereof and shall read as follows:

70. Section 574.5 is amended by revising paragraph (a)(1) to read as follows:

§ 574.5 Certification of ownership and other reports.

(a) *Acquisition of stock.* (1) Upon the acquisition of beneficial ownership which exceeds, in the aggregate, 10 percent of any class of stock of a

savings association or additional stock above 10 percent of the stock of a savings association occurring after December 26, 1985, an acquirer shall file with the Office a certification as described in this section.

71. Section 574.6 is amended by revising paragraphs (b) and (d)(2) and by adding a new paragraph (j) to read as follows:

§ 574.6 Procedural requirements.

(b) *Filing requirements—(1) Applications, notices, and rebuttals.* (i) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions shall be filed with the Region in which the savings association or associations involved in the transaction have their home office or offices. Unsigned copies shall be confirmed. Each copy shall include a summary of the proposed transaction.

(ii) All companies submitting applications under § 574.3 of this part shall comply with section 7A of the Clayton Act (15 U.S.C. 18A) and regulations issued thereunder (parts 801, 802, and 803 of title 16 of the *Code of Federal Regulations*).

(iii) Any person or company may amend an application, notice or rebuttal submission, or file additional information, upon request of the Office or, in the case of the party filing an application, notice, or rebuttal, upon such party's own initiative.

(2) *H-(e)4 Information filing.* Any information filing required to be made to claim that a reorganization is exempt from prior written approval of the Office under § 574.3(c)(1)(ii) of this part shall be clearly labeled "H-(e)4 Information Filing".

(d) Notice published pursuant to paragraph (d) of this section shall be published in a manner that is conspicuous to the average reader and shall be made in substantially the following form:

Notice of Filing of Application or Notice for Acquisition of a Savings Association

This is to inform the public that under section 574.3 of the Regulations of the Office of Thrift Supervision ("OTS") for Acquisitions of Savings Associations [Acquirer] [has filed/intends to file] an [application/notice] with OTS, for permission to [acquire control of/purchase a qualified stock issuance of] savings association, located in [location], on [date, or intended date of filing].

Anyone may write in favor of or protest against the [application/notice] and in so

doing may submit such information as he or she deems relevant. Three copies of all submissions must be sent to DTS [give name and address] within 20 calendar days of the filing of the [application/notice]. Up to an additional 20 calendar days to submit comments may be obtained upon a showing of good cause, if a written request is received by the Office within the initial 20-day period.

You may inspect the non-confidential portion of the [application/notice] and non-confidential portions of all comments filed with the OTS by contacting [give name and address.] If you have any questions concerning these procedures, contact the OTS at [_____] _____.

(j) *Additional procedures for acquisitions of converting and recently converted savings associations.* Applications, notices and rebuttals involving acquisitions of the stock of a converting or recently converted savings association under § 563b.3(i)(3) of this chapter shall also address the criteria for approval set forth at § 563b.3(i)(5) of this chapter.

§ 574.7 [Amended]

72. Section 574.7 is amended by removing paragraph (f) and by reserving the paragraph designation for future use.

§ 574.9 [Removed]

73. Section 574.9 is removed.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—[AMENDED]

74. The authority citation for part 584 continues to read as follows:

Authority: Sec. 2, 48 Stat. 126, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended; (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468).

75. Amend § 584.1 by revising paragraphs (a)(4) and (e) to read as follows:

§ 584.1 Registration, examination and reports.

(a) * * *

(4) *General.* Registration statements, annual reports, and the H-(b)12 are to be filed with the Office. Copies of forms to be used in submitting registration statements, annual reports, and the H-(b)12 may be obtained from any Regional office.

(e) *Reports.* Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Office such reports as may be required by the

Office. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Office may prescribe. Each report shall contain information concerning the operations of such savings and loan holding company and its subsidiaries as the Office may require.

76. Amend § 584.2-1 by revising paragraph (c)(1) to read as follows:

§ 584.2-1 Prescribed services and activities of savings and loan holding companies.

(c) *Procedures for commencing services or activities.* (1) Before a savings and loan holding company subject to restrictions on its activities pursuant to § 584.2(b) of this part or a subsidiary thereof may commence performing or engaging in a service or activity prescribed by paragraph (b) of this section, either *de novo* or by an acquisition of a going concern, it shall file a notice of intent to do so in a form prescribed by the Office. The activity or service may be commenced unless, before the close of the period specified immediately below, the Office finds that the activity or service proposed would not be, under the circumstances, a proper incident to the operations of savings associations or would be detrimental to the interests of savings account holders. The period for review shall be 30 calendar days after the date of receipt of such notice, in the case of a *de novo* entry, or 60 calendar days, in the case of an acquisition of a going concern.

77. Section 584.2-2 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 584.2-2 Permissible bank holding company activities of savings and loan holding companies.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the Office. The Office shall act upon such application pursuant to the guidelines set forth in § 571.12 of this chapter.

78. Section 584.5 is revised to read as follows:

§ 584.5 Advance notice of proposed dividend declarations.

No subsidiary savings association of a saving and loan holding company may declare any dividend on its guaranty,

permanent, or other nonwithdrawable stock without first giving to the Office not less than 30 days' advance notice of the proposed declaration by its directors of any such dividend. Such notice shall be in form prescribed by the Office in § 584.10(b). The 30-day notice period begins to run from the date of receipt of such notice by the Office and receipt of such notice will be promptly acknowledged. Any such dividend declared within the 30 day notice period or declared without providing the notice required by this section is invalid and confers no right or benefit upon any holder of such stock.

§ 584.9 [Amended]

79. Section 584.9 is amended by removing and reserving paragraphs (b), (c), and (d).

Dated: March 25, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-19517 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

Internal Revenue Service

26 CFR Part 1

[PS-7-90]

RIN 1545-A042

Nuclear Decommissioning Fund Qualifications Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains corrections to the notice of proposed rulemaking published in the Federal Register for Monday, August 19, 1991 (56 FR 41102), relating to the qualification requirements of nuclear decommissioning funds that combine their assets for investment purposes.

FOR FURTHER INFORMATION CONTACT: Peter Friedman at 202-566-3553 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background

The proposed rulemaking that is the subject of these corrections provided rules under section 468A of the Internal Revenue Code of 1986. Section 468A, relating to nuclear decommissioning costs, was added to the Internal Revenue Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 609).

Need for Correction

As published, the proposed regulations contain errors concerning the due date of requirements to attend and outlines for the public hearing scheduled for Wednesday, October 2, 1991.

Correction of Publication

Accordingly, the publication of the proposed rulemaking (PS-7-90), which was the subject of FR Doc. 91-19577, is corrected as follows:

Paragraph 1. On page 41102, in the first column, the "DATES" portion of the preamble should have read as follows:

DATES: Written comments must be received by October 3, 1991. Requests to appear and outlines of oral comments must be received by September 18, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

Par. 2. On page 41103, in the third column, the last two sentences of the "Comments and Requests for a Public Hearing" portion of the preamble are removed and the following three sentences added in their place to read as follows:

"Comments must be received by October 3, 1991. Requests to appear and outlines of oral comments must be received by September 18, 1991. See notice of hearing published elsewhere in this issue of the Federal Register."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-20297 Filed 8-23-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[INTL-054-91; INTL-178-86]

RIN 1545-AP81; 1545-AI32

Transfers of Stock on Securities by U.S. Persons to Foreign Corporations, and Foreign Liquidations and Reorganizations; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to transfers of stock or securities by U.S. persons to foreign corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the Internal Revenue Code; and proposed regulations setting forth rules for exchanges described in section 332, 351,

354, 355, 356, or 361 that involve one or more corporations.

DATES: The public hearing will be held on Friday, November 22, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, November 8, 1991.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:TR [INTL-054-91; INTL-178-86], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations proposing amendments to the Income Tax Regulations under section 367(a) of the Internal Revenue Code; and proposed regulations that contain proposed amendments to the Income Tax Regulations under section 367(b) of the Code. These regulations appear in the proposed rules section of this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, November 8, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-19785 Filed 8-23-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 7

[INTL-054-91; INTL-178-86]

RIN 1545-AP81; RIN 1545-AI32

Transfers of Stock or Securities by U.S. Persons to Foreign Corporations, and Foreign Liquidations and Reorganizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to transfers of stock or securities by United States persons to foreign corporations pursuant to the corporate organization, reorganization or liquidation provisions of the Internal Revenue Code. These regulations would provide the public with guidance necessary to comply with the Tax Reform Act of 1984. This document also contains proposed Income Tax Regulations setting forth rules for exchanges described in section 332, 351, 354, 355, 356, or 361 that involve one or more foreign corporations. Changes to the applicable law were made by the Tax Reform Act of 1976. These regulations would provide guidance for taxpayers engaging in the specified exchanges in order to determine the extent to which gain or income shall be recognized and the effect of the transaction on earnings and profits, basis of stock or securities, and basis of assets.

DATES: Written comments must be received by October 25, 1991, and requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for November 22, 1991 at 10 a.m., must be received by November 8, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to appear and outlines of oral comments for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL-054-91 and INTL-178-86), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: With respect to §§ 1.367(a)-3 and 1.367(a)-8, Elizabeth U. Karzon of the Office of Associate Chief Counsel

(International), within the Office of Chief Counsel, Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attention: CC:CORP:T:R (INTL-054-91), room 5228, Washington, DC 20044 (202-566-6442, not a toll-free call); and, with respect to §§ 1.367(b)-0 through 1.367(b)-6, Bernard T. Bress of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attention: CC:CORP:T:R (INTL-178-86), room 5228, Washington, DC 20044, (202-566-3452, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in §§ 1.367(a)-3 (c), 1.367(a)-8 (b) through (e), 1.367(b)-1(c), and § 1.367(b)-5(d)(3). The information collected in such sections is required by the Internal Revenue Service in order to assure compliance with the regulations under sections 367(a) and 367(b) relating to exchanges described therein. The likely respondents are business corporations that are affected by such exchanges.

The following estimates are an approximation of the average time expected to be necessary for the collection of information required by this regulation. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 2400 hours.

The estimated annual burden per respondent varies from .5 hours to 8 hours, depending on individual circumstances, with an estimated average of 4 hours.

Estimated number of respondents: 600.

Estimated annual frequency of responses: One.

Background

This document contains proposed amendments to the Income Tax Regulations under section 367(a) of the Internal Revenue Code. On May 16, 1986, the Federal Register published proposed and temporary regulations under sections 367 (a) and (d) and 6038B. The regulations were published to provide the public with guidance necessary to comply with changes made to the Internal Revenue Code by the Tax Reform Act of 1984. A public hearing was held on December 1, 1986. Subsequently, Notice 87-85, 1987-2 C.B. 395, was issued, which set forth substantial changes that would be made to the rules in § 1.367(a)-37 concerning transfers of stock and securities of domestic and foreign corporations, effective with respect to transfers occurring after December 16, 1987.

In addition, this document contains proposed amendments to the Income Tax Regulations under section 367(b) of the Internal Revenue Code. These proposed regulations set forth the extent to which a foreign corporation shall be considered to be a corporation in connection with an exchange described in section 332, 351, 354, 355, 356 or 361. Section 367(b) was enacted in its current form by the Tax Reform Act of 1976. On December 27, 1977, proposed and temporary regulations § 7.367(b)-1 through 7.367(b)-12 were adopted (T.D. 7530, 1978-1 C.B. 92). On October 2, 1979, proposed and temporary regulations § 7.367(b)-13 was adopted (T.D. 7546, 1979-2 C.B. 146). A public hearing was held on February 27, 1980. The 1977 and 1979 regulations were subsequently amended on December 23, 1982 (T.D. 7863, 1983-1 C.B. 80), May 15, 1986 (T.D. 8087, 1986-1 C.B. 175), March 3, 1989 (T.D. 8243, 1989-1 C.B. 108), and January 12, 1990 (T.D. 8280, 1990-1 C.B. 80). (The 1977, 1979, 1982, 1986, 1989 and 1990 regulations are collectively sometimes referred to as the "temporary regulations.") In addition, on September 19, 1989, proposed and temporary regulations under section 985 were adopted and provided in part for the recognition of gain or loss attributable to currency movements with respect to a foreign corporation's paid-in capital, to the extent provided under section 367(b) or future final regulations under section 985 (T.D. 8263, 1989-2 C.B. 145).

Furthermore, several notices issued by the Internal Revenue Service described changes with respect to the regulations under section 367(b). Notice 88-71, 1988-2 C.B. 374, provided in part that the section 367(b) regulations' ordering rules for certain post-exchange distributions

out of earnings and profits of a foreign corporation are not effective for taxable years beginning after December 31, 1986, to the extent superseded by the Tax Reform Act of 1986. Notice 89-30, 1989-1 C.B. 670, provided in part that regulations under section 367(b) would be issued to prevent the double counting of earnings and profits that might otherwise result from certain post-exchange distributions and stock sales. Notice 89-79, 1989-2 C.B. 392, provided in part that, if a foreign corporation makes the election described in section 953(d) (which is treated as a transfer of assets to a domestic corporation in an exchange to which section 354 applies for purposes of section 367, except that pre-1988 taxable year earnings and profits are not included in income by the corporation's shareholders), and if the foreign corporation subsequently becomes an actual domestic corporation, then the corporation's shareholders are required to include in income the pre-1988 taxable year earnings and profits of the corporation to the extent provided in section 367(b) and the regulations under that section.

After consideration of all comments received regarding the proposed regulations and related notices, proposed regulations §§ 1.367(a)-3 and 7.367(b)-1 through 7.367(b)-11 and 7.367(b)-13 are removed, and new regulations §§ 1.367(a)-3, 1.367(a)-8, and 1.367(b)-1 through 1.367(b)-6 are proposed as set forth in this document. The provisions thereof and the changes from the temporary regulations and notices are discussed below.

Explanation of Provisions

Section 1.367(a)-3

The temporary regulations under § 1.367(a)-3T provide that a transfer of stock or securities by a United States person to a foreign corporation in connection with an exchange described in section 367(a) is subject to section 367(a)(1) and the regulations under that section unless one of several enumerated exceptions applies. Extensive modifications to these exceptions were announced in Notice 87-85, 1987-2 C.B. 395. These proposed regulations generally reflect the rules announced in that notice. Specifically, the exceptions in § 1.367(a)-3T(d)(3) (relating to stock transfers to another corporation organized in the same country), § 1.367(a)-3T(e)(2) (relating to stock transfers involving stock as an operating asset) and § 1.367(a)-3T(e)(3) (relating to stock transfers in connection with the consolidation of an integrated business) have been eliminated from the proposed regulations, as have the anti-

abuse rules in § 1.367(a)-3T(h). The exceptions in § 1.367(a)-3T(d)(4) and (f) (relating to stock transfers in which United States transferors obtain a limited interest) have been significantly liberalized and have become the sole basis for an exception to current taxation. In general, if one or more United States persons transfer foreign stock or securities to a foreign corporation, the transfer will not be subject to section 367(a)(1), if each United States transferor that obtains a five percent or greater interest in the transferee foreign corporation enters into a 5 or 10-year gain recognition agreement, depending on the amount of stock received by all United States transferors in the transferee foreign corporation. If one or more United States persons transfers stock or securities of a domestic corporation to a foreign corporation, the transfer will not be subject to section 367(a)(1), provided appropriate gain recognition agreements have been entered into, but only if no single United States person (applying attribution rules) owns in the aggregate more than 50 percent of either the total voting power or the total value of the stock of the transferee foreign corporation.

The proposed regulations do not follow Notice 87-85, however, to the extent that the notice provides that no exception to section 367(a)(1) will apply to the transfer of stock of a foreign corporation in which the United States transferor is a United States shareholder unless the United States transferor receives back stock in a controlled foreign corporation. The proposed regulations under this section permit such transfers to the extent that the United States transferor otherwise complies with the provisions of this section and § 1.367(a)-8. For additional rules in respect of such a transfer, see the regulations under section 367(b).

The rules relating to transfers of foreign stock or securities described in section 351 that are also described in section 368(a)(B) have also changed. Under the temporary regulations such transfers are generally subject to the regulations under §§ 7.367(b)-4 and 7.367(b)-7 and not section 367(a)(1) and § 1.367(a)-3T. In the proposed regulations, all such transfers of stock to a foreign corporation shall be subject to § 1.367(a)-3 and § 1.367(a)-8, and such transfers shall concurrently be subject to the regulations under section 367(b), except to the extent that the foreign transferee is treated as not a corporation under section 367(a)(1).

The temporary regulations under § 1.367(a)-3T(g) also provide the terms

and conditions of gain recognition agreements required under § 1.367(a)-3T. In the proposed regulations, the general terms and conditions of such gain recognition agreements are located in a new section, § 1.367(a)-8, which specific rules particular to stock transfers, such as rules relating to deemed dispositions of stock, remain under § 1.367(a)-3.

With respect to deemed dispositions of stock, the proposed regulations modify the temporary regulations in the following manner. In general, a taxable disposition by the transferred corporation of its assets will be treated as a disposition of the stock of the transferred corporation and trigger gain only if substantially all (within the meaning of section 368(a)(1)(C)) of the assets are considered disposed of rather than simply a substantial portion thereof. A nontaxable disposition by the transferred corporation of substantially all of its assets will not trigger gain if the United States transferor enters into a new agreement as required by that section. The deemed disposition rules will also not apply to a disposition of substantially all the assets of a transferred corporation if the transferred corporation is a domestic corporation that, immediately before the transfer, is at least 80 percent controlled by another domestic corporation. In such a case, the domestic transferred corporation will simply recognize gain on the sale of substantially all of its assets and the gain recognition agreement will terminate and cease to have effect.

The temporary regulations under § 1.367(a)-1T(c)(2) treat certain reorganizations as indirect stock transfers to foreign corporations. Special rules under § 1.367(a)-3T(g)(8) govern the application of the gain recognition provisions to these indirect stock transfers. The proposed regulations under this section revise and clarify the treatment of these transfers and provide extensive examples. The regulations explain that if gain is triggered by a subsequent disposition of the stock indirectly transferred, the amount of the gain required to be included in the income of the United States person that made the indirect transfer is that person's gain realized but not recognized under section 354 on the initial exchange. The regulations also clarify that the recharacterization of these transfers as outbound stock transfers applies only for purposes of this section. Most importantly, however, the new rules encompass additional transactions that have the effect of direct stock transfers. Comments are

invited regarding the scope of these rules.

Section 1.367(a)-3 is proposed to be effective for transfers occurring on or after [the date which is 30 days after these regulations are published as final regulations in the Federal Register]. However, taxpayers may elect to apply § 1.367(a)-3 to all transfers occurring after December 16, 1987, and before [the date which is 30 days after these regulations are published as final regulations in the Federal Register]. However, taxpayers may elect to apply § 1.367(a)-3 to all transfers occurring after December 16, 1987, and before [the date which is 30 days after these regulations are published as final regulations in the Federal Register]. Because there is no comparable election with respect to § 1.367(a)-8, if the taxpayer chooses to apply § 1.367(a)-3 to all transfers during that period, it will continue to be subject to the corresponding rules of § 1.367(a)-3T (g), rather than the rules of § 1.367(a)-8. To the extent that a transfer of stock or securities is subject to the temporary regulations under section 367(b), such temporary regulations will apply as if the taxpayer had not made an election to apply § 1.367(a)-3 retroactively. Thus, for example, an exchange of stock described in both sections 368(a)(1)(B) and 351 will be subject to § 1.367(a)-3 and §§ 7.367(b)-4 and 7.367(b)-7. In addition, if a taxpayer chooses to apply the final regulations retroactively, § 1.367(a)-3(c)(4) (the exception to the deemed disposition rule involving an 80 percent-controlled corporation) will apply to any gain recognition agreement entered into under the temporary regulations under § 1.367(a)-3T. For rules applicable to transfers before the effective date of this section, see the temporary regulations under § 1.367(a)-1T(c)(2) and § 1.367(a)-3T, as modified by rules announced in Notice 787-85, 1987-2 C.B. 395, with respect to transfers after December 16, 1987.

Section 1.367(a)-8

Section 1.367(a)-8 provides general terms and conditions for gain recognition agreements entered into with respect to transferred stock or securities. However, the section is drafted in a manner that will allow its terms and conditions to be applied whenever a gain recognition agreement might be required by future regulations under section 367 or any other Code section. The general terms and conditions in this section have not changed significantly from the terms and conditions set forth in § 1.367(a)-3T (g) and Notice 87-85. New rules have been added, however, to clarify the definition

of a disposition for purposes of this section and the consequences of both taxable and nontaxable dispositions by the United States transferor of the transferee foreign corporation prior to the occurrence of a triggering event under the gain recognition agreement. A "reasonable cause" exception to the rules governing a taxpayer's failure to comply with terms of these provisions has also been included at the request of commentators.

The section maintains the amended return requirement, which requires a United States transferor to amend its return upon a subsequent disposition of stock of the transferred corporation and recognize thereon the gain realized by not recognized at the time of the initial transfer. The Service is considering a number of other options, however, with respect to the consequences of a triggering event. These options relate to (1) the amount of gain to be recognized by a United States transferor upon a triggering event (for example, the gain realized by the transferee foreign corporation on the disposition of the stock of the transferred corporation or the gain realized but not recognized on the initial transfer); (2) the year in which gain is to be included in the income of the United States transferor (either the year of the triggering event or the year of the initial transfer); and (3) whether an interest charge is appropriate if the amount of gain recognized is the gain realized but not recognized in the year of the initial transfer. Comments are invited on these issues.

Section 1.367(a)-8 is proposed to be effective for transfers occurring on or after [the date that is 30 days after these regulations are published as final regulations in the Federal Register]. For matters covered in § 1.367(a)-8 for periods before this effective date, the corresponding rules of § 1.367(a)-3T (g) and Notice 87-85 apply.

Section 367(b) Principles

The following are the general principles that were taken into account in developing the proposed regulations under section 367(b).

(1) *Prevention of the repatriation of earnings or basis without tax.* The United States generally does not tax a foreign corporation on this foreign source earnings and profits. If the foreign corporation is owned in whole or in part, directly or indirectly, by a United States person, in certain circumstances the United States does not tax the United States person on the foreign corporation's earnings and profits until those earnings and profits are repatriated (for example, through the payment of dividends) or the United

States person disposes of an interest in the foreign corporation. One of the principles of the proposed regulations under section 367(b) is that the repatriation of a United States person's share of earnings and profits of a foreign corporation through what would otherwise be a nonrecognition transaction (for example, a liquidation of a foreign subsidiary into its domestic parent in a transaction described in section 332, or an acquisition by a domestic corporation of the assets of a foreign corporation in a reorganization described in section 368) should generally cause recognition of income by the foreign corporation's shareholders. A domestic acquirer of the foreign corporation's assets should not succeed to the basis or other tax attributes of the foreign corporation except to the extent that the United States tax jurisdiction has taken account of the United States person's share of the earnings and profits that gave rise to those tax attributes.

(2) *Prevention of material distortion in income.* Another objective of the regulations under section 367 (b) is to prevent the occurrence of a material distortion in income. For this purpose, a material distortion in income includes a distortion relating to the source, character, amount or timing of any item, if such distortion may materially affect the United States tax liability of any person for any year. Thus, for example, the regulations generally operate to prevent the avoidance of provisions such as section 1248 (which requires inclusion of certain gain on the disposition of stock as a dividend). For this purpose, the concept of "avoidance" includes a transaction that results in a material distortion in income even if such distortion was not a purpose of the transaction.

(3) *Minimization of complexity.* The regulations under section 367(b) also generally attempt to minimize complexity to the extent not inconsistent with principles (1) and (2) described above, in order to reduce taxpayer compliance burdens and the Treasury's administrative costs, and to improve enforcement of the tax laws. In addition, in some cases the regulations adopt a rule that has the effect of minimizing complexity even though the rule is to some extent a departure from principles (1) and (2) described above. In those instances in which minimizing complexity results in a departure from principles (1) and (2), the taxpayer is sometimes treated more favorably and sometimes less favorably than if the regulations had not taken complexity into account.

(4) *Permissibility of deferral.* To the extent not inconsistent with principles (1), (2), and (3) described above, the regulations under section 367(b) generally do not operate to accelerate the recognition of income that is realized but which would not otherwise be recognized by reason of a nonrecognition provision of the Internal Revenue Code.

Section 1.367(b)-0

A table of contents is added to the section 367(b) regulations.

Section 1.367(b)-1

The proposed regulations under section 367(b) apply to any "section 367(b) exchange," defined as an exchange described in section 332, 351, 354, 355, 356, or 361, with respect to which the status of a foreign corporation as a corporation is relevant for determining the extent to which income shall be recognized or for determining the effect of the transaction of earnings and profits, basis of stock or securities, or basis of assets. The regulations do not apply, however, to the extent that a foreign corporation is treated as not a corporation by reason of section 367(a)(1). In the case of a United States person's transfer of property to a foreign corporation in a transaction that is described in section 367(a) but in which gain is not required to be recognized under that section, section 367(b) may apply to the transfer because the rule of section 367(a)(1) is inapplicable (that is, section 367(a)(1) does not apply to treat the foreign transferee corporation as not a corporation for purposes of determining the extent to which gain is recognized on the transfer). In the case of a transfer in which some but not all of the United States transferor's gain is recognized under section 367(a), section 367(b) may apply to the transfer to require recognition of all or a portion of the gain not recognized under section 367(a), because as to this gain the rule of section 367(a)(1) is inapplicable.

The proposed section 367(b) regulations treat a foreign corporation as a corporation except to the extent specifically provided to the contrary. Thus, in the case of a transaction not specifically addressed by the regulations, no gain recognition or other special adjustments are imposed even if the transaction otherwise meets the definition of a section 367(b) exchange.

The temporary regulations provide that, if a taxpayer fails to comply with the regulations' requirements, then the Commissioner will make a determination whether a foreign corporation is considered a corporation based on all the facts and

circumstances. This rule is not adopted in the new regulations. Such a rule implicitly permits a taxpayer to elect whether to comply with the regulations or to seek taxable exchange treatment. When such an election is appropriate, the new regulations make the availability of a taxable exchange election explicit. (Conversely, under the new regulations the taxpayer never has the right to fail to comply with the regulations. The taxpayer may elect to treat a foreign corporation as not a corporation only as specifically provided in the regulations.) In addition, in the case of a failure to comply with the regulations' requirements, the rule of the temporary regulations lead to uncertainty as to the remedies that the Commissioner might impose, which include making the transaction fully taxable, not taxable at all, or taxable only for certain purposes. It is preferable to prescribe the proper treatment of the transaction in the regulations, and to require that taxpayers and the Commissioner alike treat the transaction in the prescribed manner.

The proposed regulations require that a notice be filed by any person that realizes income in a section 367(b) exchange. The temporary regulations also impose recordkeeping requirements relating to the amount of certain adjustments to earnings and profits and the amount that is attributed to a United States person's stock in a foreign corporation. These special record-keeping requirements are not continued in the new regulations.

Section 1.367(b)-2

The proposed section 367(b) regulations provide definitions of the terms "controlled foreign corporation," "section 1248 shareholder," "section 1248 amount," and "all earnings and profits amount." These terms are used in various provisions of the regulations in connection with determining the extent to which a foreign corporation shall be treated as a corporation.

Certain of these terms are also found in the temporary regulations, although in some cases the language differs from the language in the temporary regulations. In particular, the prior definition of the term "all earnings and profits amount" has been revised to clarify the intended scope of the term. As indicated below, the clarified definition of "all earnings and profits amount" will be applied prospectively only, but will be effective for exchanges that occur on or after August 26, 1991.

In various provisions the new regulations require that a shareholder of a foreign corporation include an amount in income as a deemed dividend. Rules

are provided for the treatment of the deemed dividend, which is generally treated as an actual dividend for purposes of the Internal Revenue Code.

Special rules are provided regarding the section 367(b) consequences of four types of transactions: reorganizations described in section 368(a)(1)(F) in which the transferor is a foreign corporation, the deemed conversion of a foreign corporation to a domestic corporation under section 269B, an election by a foreign corporation to be treated as a domestic corporation under section 953(d), and an election under section 1504(d) to treat a foreign corporation as a domestic corporation. Each of these transactions is treated as an actual asset transfer for purposes of section 367(b).

A cross-reference is provided to various provisions relating to the recognition of exchange gain or loss, and a rule is provided for the treatment of previously taxed earnings. In addition, a look-through rule is provided for applying the section 367(b) regulations in the case of a corporation whose stock is owned by a partnership, trust or estate.

Section 1.367(b)-3

This section applies to a domestic corporation's acquisition of the assets of a foreign corporation in a section 332 liquidation or an asset acquisition described in section 368(a)(1).

One of the principles of the section 367(b) regulations is to prevent the repatriation of earnings and profits without tax. The proper measure of the earnings and profits that should be subject to tax is the all earnings and profits amount. Thus, the proposed regulations generally require that the exchanging shareholder of the foreign acquired corporation include in income as a deemed dividend the all earnings and profits amount with respect to the stock of the foreign acquired corporation.

Another principle of the section 367(b) regulations is to prevent the repatriation of basis without tax. In implementing this principle, the regulations generally require the recognition of exchange gain (or loss) to the extent that the shareholder's capital account in the foreign acquired corporation has appreciated (or depreciated) as a result of changes in currency exchange rates. Such appreciation in effect becomes basis when the foreign corporation's functional currency asset bases are translated into dollar bases at the spot rate on the date of the transaction, pursuant to section 985. Comments are invited as to how the regulations may

more fully describe how to determine a shareholder's capital account, particularly when the shareholder has acquired its stock in the foreign acquired corporation by purchase rather than in connection with the corporation's formation.

Notwithstanding the above-stated principles, the regulations make certain departures from the requirement to include in income the all earnings and profits amount and to recognize exchange gain or loss with respect to capital. In lieu of such treatment, an exchanging shareholder may elect to recognize the gain that it realizes in the exchange, as if it sold the stock for its fair market value. If such an election is made, the regulations require a reduction in basis (or other tax attributes) that corresponds to the difference between the all earnings and profits amount as compared to the gain actually recognized by the electing shareholder. Because the foreign acquired corporation's earnings and profits to the extent of such difference are not taken into account by the United States tax jurisdiction as income, the United States tax jurisdiction does not take into account of the corresponding basis (or other tax attributes) to which those earnings and profits gave rise.

As another departure from the requirement to include in income the all earnings and profits amount and to recognize exchange gain or loss with respect to capital, the regulations instead simply require full recognition of gain in the stock of the foreign acquired corporation if the exchanging shareholder is a United States person that is not a United States shareholder. Such a United States person may not own a sufficient interest in the foreign acquired corporation to obtain the relevant earnings and profits information needed to compute the all earnings and profits amount with respect to the stock that it exchanges. Similarly, the foreign acquired corporation may not have adequate information about such a shareholder's realized gain to compute the proper attribute reduction. Thus, the asset bases (or other tax attributes) of the foreign acquired corporation are not reduced, even if the gain recognized by the exchanging United States person is less than the all earnings and profits amount with respect to the stock exchanged by the United States person.

An exchanging domestic corporate shareholder will be eligible to claim a foreign tax credit, subject to the rules of section 902, with respect to a dividend included in income under the regulations. The regulations also provide

for the carryover to the domestic acquiring corporation of unused foreign tax credits allowable to the foreign acquired corporation under section 906. The domestic acquiring corporation does not succeed to any other foreign taxes paid or incurred by the foreign acquired corporation.

Section 1.367(b)-4

This section applies generally to a foreign corporation's acquisition of the stock or assets of a foreign corporation in a section 332 liquidation or a section 368(a)(1) (B), (C), (D), (E), (F), or (G) reorganization.

One of the principles of the section 367(b) regulations is to prevent the occurrence of a material distortion in income. Thus, for example, as noted above, the regulations generally operate to prevent the avoidance of provisions such as section 1248 (which requires inclusion of certain gain on the disposition of stock as a dividend). The temporary regulations attempt to achieve this objective through an "attribution" regime, under which special earnings accounts were established and maintained to keep track of, and attribute to particular shareholders, particular earnings of a foreign corporation after a section 367(b) exchange. Even before 1987, commentators suggested that the attribution regime was too complex, and often produced distortions as severe as those it was intended to prevent. The Tax Reform Act of 1986 may have compounded these problems. See, e.g., Notice 88-71, 1988-2 C.B. 374.

In the interest of minimizing regulatory complexity, the attribution regime of the temporary regulations is not continued in the new section 367(b) regulations. If the transaction is of a type that is relatively likely to result in a material distortion in income, the regulations require that the exchanging shareholder include the section 1248 amount in income as a deemed dividend. Even in such cases, however, if the foreign acquired corporation is not directly owned by a United States person prior to the exchange (i.e., if it is a second tier or lower foreign subsidiary), there will often be no immediate United States tax liability arising from the acquisition because the regulations generally exclude the deemed dividend from foreign personal holding company income. If the transaction is not of a class that is relatively likely to result in a material distortion in income, and in which the exchanging shareholder therefore is not required to include the section 1248 amount in income as a deemed dividend, section 1248 (and section

367(b)) will be applied to post-transaction exchanges in such a manner that the section 1248 amount is preserved, but without attempting to keep track of the particular earnings and profits attributable to a particular shareholder as under the attribution regime of the temporary regulations.

Section 1.367(b)-5

This section applies generally to a section 355 distribution if the distributing corporation or the controlled corporation is a foreign corporation.

In the case of a section 355 distribution of stock or securities of a foreign corporation by a domestic corporation, only one type of transaction is subject to income recognition under the proposed section 367(b) regulations. If the distributee is an individual, then the domestic distributing corporation's gain in the distributed stock or securities (and the foreign controlled corporation's earnings which that gain reflects) leaves United States corporate tax jurisdiction. (In contrast, if the controlled corporation were a domestic corporation, then its earnings and profits would generally have been subject to United States corporate tax jurisdiction when earned.) To prevent the potential loss of United States corporate tax jurisdiction, the domestic distributing corporation is required to recognize its gain realized on the distribution to an individual. Although the same potential loss of United States corporate tax jurisdiction is also present in the case of a distribution of stock or securities of a foreign corporation by a domestic distributing corporation to a foreign person, this case is addressed by section 367(e)(1) and the regulations under that section, and therefore need not be addressed under section 367(b).

If the distributing corporation is a controlled foreign corporation, a distribution described in section 355 creates the potential for a material distortion in income. This potential for a material distortion in income is minimized if the distribution is not permitted to reduce the amount that would have been included in income as a dividend under section 1248 if the distributee had sold its stock in the distributing corporation immediately before the transaction, as compared to the amount that would be included in income as a dividend if the distributee sold its stock in the distributing corporation and the controlled corporation immediately after the transaction (without regard to whether such a sale would have caused the transaction to fail to qualify as a section

355 exchange). The temporary regulations attempt to prevent this potential distortion through an attribution regime; however, for the reasons discussed above, the attribution regime has not been adopted in the new regulations. Instead, in the case of a distribution by a controlled foreign corporation pro rata to its shareholders, the regulations adjust the distributee's basis in the distributing corporation or the controlled corporation to prevent the avoidance of section 1248. No income recognition is required under the section 367(b) regulations in such a case except to the extent that the basis adjustment would otherwise result in a basis less than zero. In the case of a distribution by a controlled foreign corporation that is not pro rata to its shareholders, except as discussed below (in connection with a taxable distribution election), the regulations require that the distributing corporation's shareholders include in income as a deemed dividend the amount necessary to preserve the application of section 1248 after the transaction as compared to before the transaction. To the extent that the application of section 1248 would not otherwise be affected by the transaction, the section 367(b) regulations do not impose income recognition.

The regulations generally treat a shareholder of the distributing corporation as a distributee without regard to whether it actually receives a distribution of stock in the transaction. In the case of a non pro rata distribution by a controlled foreign corporation, the distributing corporation may distribute stock or securities of the controlled corporation only to some of the shareholders of the distributing corporation. In this case, although there is a section 367(b) exchange (because it is a transaction described in section 355 in which the status of a foreign corporation as a corporation is relevant for determining the extent of income recognition or the effect of the transaction on earnings and profits or basis), a shareholder of the distributing corporation may not actually participate in the exchange. If such a non-participating shareholder would otherwise be required to include an amount in income as a deemed dividend under paragraph (d)(2), the regulations instead permit the shareholder to elect to treat the transaction as a taxable distribution as to all persons affected by the transaction. Although the availability of such an election may provide a benefit to such a non-participating shareholder, the availability of the election also poses a

hazard to the other shareholders of the distributing corporation. Such other shareholders may be adversely affected by the distributing corporation's recognition of gain on the stock or securities that it distributes and by their receipt of stock or securities in the controlled corporation as a taxable dividend with respect to, or in a taxable redemption of, their stock or securities in the distributing corporation.

Comments are invited as to whether the availability of the taxable distribution election is useful or whether its potential benefits to the non-participating shareholder are outweighed by the potential adverse effects on the other shareholders.

The regulations also provide rules for allocation of the earnings and profits of a foreign transferor corporation in the case of a section 355 distribution in connection with a section 368(a)(1)(D) reorganization and for the coordination of that provision with the branch profits tax regulations and the regulations under section 312.

Section 1.367(b)-6

In general, the section 367(b) regulations are proposed to be effective for exchanges that occur on or after [the date that is 30 days after the date the regulations are published as final regulations in the Federal Register]. The definition of "all earnings and profits amount" in § 1.367(b)-2(d), however, is proposed to be effective for exchanges that occur August 26, 1991. Comments are invited as to the utility of an election to apply the entire final regulations retroactively to exchanges that occur on or after August 26, 1991.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that the proposed rules will not have a significant impact on a substantial number of small entities. Few small entities would be affected by these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments (preferably a signed original and eight copies) that are received by the Internal Revenue Service. All copies will be available for

public inspection and copying. Written comments must be received by August 26, 1991, and requests to speak (with outlines of oral comments) at the public hearing scheduled for November 22, 1991, must be received by November 8, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of §§ 1.367(a)-3 and 1.367(a)-8 is Elizabeth U. Karzon, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. The principal author of §§ 1.367(b)-0 through 1.367(b)-6 is Bruce N. Davis, formerly of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from that office and other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.361-1 through 1.367(e)-2T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 7

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the notice of proposed rulemaking published on May 16, 1986, and appearing at 51 FR 17990, to the extent that it proposed by cross-reference the rules of § 1.367(a)-1T(c)(2) and § 1.367(a)-3T (but only to that extent), and proposed regulations §§ 7.367(b)-1 through 7.367(b)-11 and 7.367(b)-13, is hereby withdrawn and in its place new amendments to 26 CFR part 1 are proposed as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * §§ 1.367(a)-3 and 1.367(a)-8 are also issued under 26 U.S.C. 367(a) * * * §§ 1.367(b)-0 through 1.367(b)-6 are also issued under 26 U.S.C. 367(b).

§ 1.367(a)-1T [amended]

Par. 2. Section 1.367(a)-1T is amended as follows:

1. Paragraph (c)(2) is removed.

2. Paragraphs (c)(3) through (c)(7) are redesignated as paragraphs (c)(2) through (c)(6), respectively.

Par. 3. New § 1.367(a)-3 is added to read as follows:

§ 1.367(a)-3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general.* This section provides rules concerning the transfer of stock or securities by a United States person to a foreign corporation in an exchange described in section 367(a). In general, a transfer of stock or securities by a United States person to a foreign corporation that is described in sections 351, 354 (pursuant to a reorganization described in section 368(a)(1)(B)), or section 361 (a) or (b) is subject to section 367(a)(1) and, therefore, is treated as a taxable exchange, unless one of the exceptions set forth in paragraph (b) of this section applies to the transfer or paragraph (e) of this section applies. No other transfers of stock or securities by a United States person to a foreign corporation are subject to section 367(a)(1). See, however, paragraph (d) of this section for certain indirect transfers to foreign corporations. For additional rules relating to an exchange involving a foreign corporation in connection with which there is a transfer of stock, see section 367(b) and the regulations under that section. For rules regarding a transfer of property (including stock or securities) that is compelled by foreign government action, see § 1.367(a)-4T(f). For additional rules regarding a transfer of stock or securities in an exchange described in section 361 (a) or (b), see section 367(a)(5) and the regulations under that section.

(b) *Certain transfers to which section 367(a)(1) does not apply.*—(1) *General rule.* Except as provided in section 367(a)(5), a transfer of stock or securities by a United States person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section shall not be subject to section 367(a)(1) if—

(i) The United States person owns less than five percent (applying to attribution rules of section 958) of both the total voting power and the total value of the stock of the transferee foreign corporation immediately after the transfer, or

(ii)(A) Paragraph (b)(2) or (b)(3) of this section applies to the transfer, and

(B) The United States person enters into a gain recognition agreement in the form provided in § 1.367(a)-8, as modified and supplemented by paragraph (c) of this section, with respect to the transferred stock or securities.

(2) *United States transferors obtain less than a fifty percent interest in transferee.* This paragraph (b)(2) applies to the transfer if all United States transferors (including persons described in paragraph (b)(1)(i) of this section) own in the aggregate less than fifty percent (applying the attribution rules of section 958) of both the total voting power and the total value of the stock of the transferee foreign corporation immediately after the transfer. If a United States person cannot determine whether the condition in the preceding sentence is satisfied, the condition will be deemed not to be satisfied.

(3) *United States transferors obtain a fifty percent or greater interest in transferee.* This paragraph (b)(3) applies to a transfer if all United States transferors (including persons described in paragraph (b)(1)(i) of this section) own in the aggregate fifty percent or more (applying the attribution rules of section 958) of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer. This paragraph (b)(3) shall not apply to a transfer of stock or securities of a domestic corporation, however, if any United States person (alone or, if such person is a corporation, in combination with the other members of its affiliated group, as defined in section 1504(a) but without regard to the exceptions in section 1504(b)) owns more than fifty percent (applying the attribution rules of section 958) of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer.

(c) *Agreement to recognize gain.* A United States transferor's agreement to recognize gain required under paragraph (b)(1)(ii)(B) of this section must meet the requirements specified for gain recognition agreements under § 1.367(a)-8, with the following modifications and additions.

(1) *Term of the agreement and waiver of period of limitation.* In the case of a transfer of stock or securities to which paragraph (b)(2) of this section applies, the term of the gain recognition agreement shall be 60 months, rather than the 120-month period specified in § 1.367(a)-8(b)(2)(i), and the waiver described in § 1.367(a)-8(c) shall extend the period for assessment of the tax to a date not earlier than the close of the eighth full taxable year following the taxable year of the transfer.

(2) *Description of stock or securities transferred.* The United States transferor must include, as part of its description of property transferred as required by § 1.367(a)-8(b)(1)(ii), the following information:

(i) The type or class, amount, and characteristics of the stock or securities transferred, as well as the name, address, and place of incorporation of the issuer of the stock or securities, and the percentage (by voting power and value) that the stock (if any) represents of the total stock outstanding of the issuing corporation;

(ii) The name, address and place of incorporation of the transferee foreign corporation, and the percentage of stock (by voting power and value) that the United States transferor and other members of its affiliated group (as defined in section 1504(a) but without regard to the exceptions in section 1504(b)) own (applying the attribution rules in section 958) in the transferee foreign corporation immediately after the transfer; and

(iii) If stock or securities are transferred in an exchange described in section 361 (a) or (b), a statement that the conditions set forth in the second sentence of section 367(a)(5) and any regulations under that section have been satisfied.

(3) *Deemed dispositions of stock or securities by transferee.* For purposes of § 1.367(a)-8(b)(2)(i), and except as provided in paragraph (c)(4) of this section, a transferee foreign corporation will be treated as having disposed of the stock or securities of the transferred corporation if, within the term of the gain recognition agreement, the transferred corporation makes a disposition of substantially all (within the meaning of section 368(a)(1)(C)) of its assets, including stock in a subsidiary corporation (other than a compulsory transfer as described in § 1.367(a)-4T(f) that was not reasonably foreseeable at the time of the initial transfer). The preceding sentence shall not apply, however, to a distribution, including a liquidating distribution, of assets of the transferred corporation to the transferee foreign corporation, provided that the transferee corporation does not dispose of substantially all (within the meaning of section 368(a)(1)(C)) of the assets formerly held by the transferred corporation within the remaining period during which the gain recognition agreement is in effect. For purposes of this paragraph (c)(3), if the assets of a corporation include the stock of a subsidiary corporation, a disposition of substantially all of the assets of the subsidiary corporation shall be treated as a disposition of the stock or securities of the subsidiary corporation.

(4) *Nonrecognition deemed dispositions of stock of the transferred corporation.* A disposition by the

transferred corporation of all or a portion of its assets in a transaction in which gain or loss would not be required to be recognized by the transferred corporation under United States income tax principles, or would be recognized solely by reason of section 357 (c), will not be treated as a disposition within the meaning of paragraph (c)(3) of this section if the transferred corporation receives in exchange stock or securities in a corporation, or an interest in a partnership or trust, that acquired the assets of the transferred corporation (or receives stock in a corporation that controls the corporation acquiring the assets). The preceding sentence shall only apply, however, if the United States transferor complies with requirements comparable to those of § 1.367 (a)-8(d)(2) through (d)(4), providing for notice, an agreement to recognize gain in the case of a direct or indirect disposition of the assets previously held by the transferred corporation, and an assurance that necessary information will be provided to appropriate parties.

(5) *Deemed sale resulting in termination of agreement.* Notwithstanding paragraph (c)(3) of this section, if the transferred corporation is a domestic corporation and the United States transferor is a domestic corporation owning, immediately prior to the transfer, an amount of stock of the transferred corporation (or, in the case of an indirect stock transfer, an amount of stock of the corporation described in paragraph (d)(2)(v) of this section) meeting the requirements of section 1504(a)(2), then the gain recognition agreement shall terminate and cease to have effect if, during the term of such agreement, the transferred corporation disposes of substantially all of its assets in a transaction in which all realized gain is recognized currently.

(d) *Indirect stock transfers in certain nonrecognition transfers—(1) In general.* For purposes of this section, a United States person who exchanges, under section 354, stock or securities in a domestic or foreign corporation for stock or securities in a foreign corporation in connection with one of the following transactions (or who is deemed to make such an exchange under paragraph (d)(1)(vi) of this section) shall be treated as having made an indirect transfer of such stock or securities to a foreign corporation that is subject to the rules of this section.

(i) *Mergers described in section 368(a)(1)(A) and (a)(2)(D).* A United States person exchanges stock or securities of a corporation (the "acquired corporation") for stock or securities of a foreign corporation that

controls the acquiring corporation in a reorganization described in section 368 (a)(1)(A) and (a)(2)(D).

(ii) *Mergers described in section 368 (a)(1)(A) and (a)(2)(E).* A United States person exchanges stock or securities of a corporation (the "acquiring corporation") for stock or securities in a foreign corporation that controls the acquired corporation in a reorganization described in section 368 (a)(1)(A) and (a)(2)(E).

(iii) *Triangular reorganizations described in section 368 (a)(1)(B).* A United States person exchanges stock of the acquired corporation for voting stock of a foreign corporation that is in control (as defined in section 368 (c)) of the acquiring corporation in connection with a reorganization described in section 368 (a)(1)(B).

(iv) *Triangular reorganizations described in section 368 (a)(1)(C).* A United States person exchanges stock or securities of a corporation (the "acquired corporation") for voting stock or securities of a foreign corporation that controls the acquiring corporation in a reorganization described in section 368(a)(1)(C).

(v) *Reorganizations described in section 368(a)(1)(C) and (a)(2)(C).* A United States person exchanges stock or securities of a corporation (the "acquired corporation") for voting stock or securities of a foreign acquiring corporation in a reorganization described in section 368 (a)(1)(C) and (a)(2)(C). In the case of a reorganization in which some but not all of the assets of the acquired corporation are transferred pursuant to section 368 (a)(2)(C), the transaction shall be considered to be an indirect transfer of stock or securities subject to this paragraph (d) only to the extent of the assets so transferred (and other assets shall be treated as having been transferred in an asset transfer).

(vi) *Successive transfers of property to which section 351 applies.* A United States person transfers property to a foreign corporation in an exchange described in section 351, and such assets transferred to the foreign corporation by such person are, in connection with the same transaction, transferred to a second corporation that is controlled by the foreign corporation in one or more exchanges described in section 351. For purposes of paragraph (d)(1) and other applicable provisions of this section and § 1.367 (a)-8, the initial transfer by the United States person shall be deemed to be a transfer of stock described in section 354.

(2) *Special rules for indirect transfers.* If a United States person is considered

to make an indirect transfer of stock or securities described in paragraph (d)(1) of this section, the rules of this section and § 1.367 (a)-8 shall apply to the transfer. For purposes of applying the rules of these sections—

(i) The "transferee foreign corporation" shall be the foreign corporation that issues stock or securities to the United States person in the exchange.

(ii) The "transferred corporation" shall be the acquiring corporation, except that in the case of a reorganization described in paragraph (d)(1)(iii) of this section, the "transferred corporation" shall be the acquired corporation; in the case of a reorganization described in paragraph (d)(1)(v), the "transferred corporation" shall be the transferee corporation in the exchange described in section 368 (a)(2)(C); and in the case of a section 351 transfer described in paragraph (d)(1)(vi) of this section, the "transferred corporation" shall be the transferee corporation in the final section 351 transfer. The "transferred property" shall be the stock or securities of the transferred corporation, as appropriate in the circumstances.

(iii) The amount of gain that United States person is required to include in income in the year of a disposition (or a deemed disposition) of some or all of the stock or securities of the transferred corporation shall be the proportionate share (as determined under § 1.367 (a)-8 (b)(2)) of the United States person's gain realized but not recognized in the initial exchange of stock or securities under section 354.

(iv) The United States transferor's agreement to recognize gain, as provided in paragraph (c) of this section and § 1.367(a)-8, shall include appropriate provisions, consistent with the principles of these rules, requiring the transferor to recognize gain in the event of a direct or indirect disposition of the stock or assets of the transferred corporation. For example, in the case of a reorganization described in paragraph (d)(1)(iii) of this section, a disposition of the transferred stock shall include an indirect disposition of such stock by the transferee foreign corporation, such as a disposition of such stock by the acquiring corporation on a disposition of the stock of the acquiring corporation by the transferee foreign corporation.

(v) For purposes of applying paragraphs (c)(3) and (5) of this section (relating to certain asset dispositions), only the following assets shall be taken into account—

(A) In the case of a reorganization described in paragraph (d)(1)(i) or (iv) of

this section, the assets of the acquired corporation;

(B) In the case of a reorganization described in paragraph (d)(1)(ii), the assets of the acquiring corporation immediately prior to the transaction;

(C) In the case of a reorganization described in paragraph (d)(1)(v), the assets of the acquired corporation that are subject to a transfer described in section 368(a)(2)(C); and

(D) In the case of a transfer described in paragraph (d)(1)(vi), the transferred assets.

(vi) If, pursuant to any of the transactions described in paragraph (d)(1) of this section, a domestic corporation transfers assets to a foreign corporation (other than in an exchange described in section 354), the rules of section 367(a)(3) and the regulations thereunder shall apply in addition to the rules of this section. The preceding sentence, however, shall not apply in the case of a domestic acquired corporation that transfers its assets to a foreign acquiring corporation, to the extent that such assets are retransferred to a domestic corporation in a transfer described in section 368(a)(2)(C) or paragraph (d)(1)(vi) of this section. If the transfer of an asset is subject to tax under section 367(a)(3), the rules of this paragraph (d) shall apply only to a ratable portion of the gain realized but not recognized by the United States person in the section 354 exchange. Such portion shall be determined by reference to the aggregate gain realized but not recognized on the transfer of assets described in paragraph (d)(2)(v) of this section, relative to the aggregate gain realized (whether or not recognized) on the transfer of all of such assets. (For purposes of a transaction described in paragraph (d)(1)(ii) of this section, the preceding sentence shall be applied by reference to the aggregate built-in gain of the acquiring corporation's assets immediately prior to the transaction.)

(vii) If, in a transaction described in paragraph (d)(1)(v) of this section, some but not all of the assets of the acquired corporation are transferred pursuant to section 368(a)(2)(C), the rules of this paragraph (d) shall apply only to a ratable portion of the gain realized but not recognized by the United States person in the section 354 exchange. Such portion shall be determined by reference to the aggregate gain realized but not recognized on the transfer of assets pursuant to section 368(a)(2)(C), relative to the aggregate gain realized but not recognized on the transfer of all of the acquired corporation's assets.

(3) *Examples.* The rules of this paragraph (d) are illustrated by the following examples.

Example 1. F, a foreign corporation, owns all the stock of Newco, a domestic corporation. A, a domestic corporation, owns all the stock of W, also a domestic corporation. A does not own any stock in F (applying the attribution rules of section 958). In a reorganization described in section 368(a)(1)(A) and (a)(2)(D), Newco acquires substantially all of the properties of W, and A receives 40% of the stock of F in an exchange described in section 354. F is treated as the transferee foreign corporation, and Newco is treated as the transferred corporation. A's exchange of W stock for F stock under section 354 will not be subject to section 367(a)(1) if A enters into a five year gain recognition agreement with respect to the stock of Newco. If F disposes (within the meaning of § 1.367(a)-8(b)(2)(i)) of all or a portion of Newco's stock within the five-year term of the agreement, A will be required to include in income in the year of the disposition its proportionate share of the gain realized on the initial section 354 exchange.

Example 2. If, in *Example 1*, A had owned more than fifty percent (as provided in paragraph (b)(3) of this section) of either the total voting power or the total value of the stock of F immediately after the transfer, A would have been required to include in income in the year of the initial exchange the amount of gain realized on such exchange.

Example 3. The facts are the same as in *Example 1*, except that, during the third year of the gain recognition agreement Newco disposes of substantially all of its assets for cash and recognizes currently all of the gain realized on the disposition. Under paragraph (c)(5) of this section, the gain recognition agreement with respect to A terminates and has no further effect.

Example 4. F, a foreign corporation, owns all the stock of S, a domestic corporation. U, a domestic corporation, owns all the stock of Y, also a domestic corporation. U does not own any of the stock of F (applying the attribution rules of section 958). In a reorganization described in section 368(a)(1)(b), S acquires all the stock of Y, and U receives 10% of the voting stock of F. For purposes of this section, F is treated as the transferee foreign corporation and Y is treated as the transferred corporation. U's exchange of Y stock for F stock will not be subject to section 367(a)(1), provided that U enters into a five-year gain recognition agreement. The gain recognition agreement will be triggered if F sells all or a portion of the stock of S, or if S sells all or a portion of the stock of Y. During the second year of the agreement, S sells 50% of the stock of Y. The amount of gain required to be included in U's income is equal to 50% of the gain realized but not recognized by U in the initial exchange under section 354.

Example 5. F, a foreign corporation, owns all of the stock of R, a domestic corporation that operates an historical business. V, a domestic corporation, owns all of the stock Z, also a domestic corporation. V does not own any of the stock of F (applying the attribution rules of section 958). In a reorganization

described in section 368(a)(1)(C), R acquires substantially all of the properties of Z, and V exchanges its stock in Z for 30% of the voting stock of F. F is treated as the transferee foreign corporation and R is treated as the transferred corporation. The consequences of the transfer are similar to those described in *Example 1*. In determining whether, in a later transaction, R has disposed of substantially all of its assets under paragraph (c)(5) of this section, only the assets of Z acquired by R shall be taken into account.

Example 6. The facts are the same as in *Example 5*, except that, during the fourth year of the gain recognition agreement, R transfers half of the assets received from Z to K, a wholly-owned foreign subsidiary of R, in an exchange described in section 351. This transfer of assets by R to K is subject to the requirements of section 367(a)(3) and the regulations thereunder, as well as the requirements of paragraph (c)(4) of this section concerning nonrecognition transfers by the transferred corporation. (If the transfer of assets by R to K had occurred immediately following the reorganization, the requirements of section 367(a)(3) and the regulations would have applied, and the requirements of paragraph (c)(4) of this section could have been consolidated into the requirements for the original gain recognition agreement. See also paragraph (d)(2)(iv) of this section.)

Example 7. Assume the same facts in *Example 5*, except that R is a foreign corporation. The properties of Z consist of Business A assets, with an adjusted basis of \$50 and fair market value of \$90, and Business B assets, with an adjusted basis of \$50 and a fair market value of \$110. V's basis in the Z stock is \$50, and the value of such stock is \$200. Under paragraph (d)(2)(vi) of this section, the assets of Businesses A and B that are transferred to R must be tested under section 367(a)(3). Assume that Business B assets are used by R in an active trade or business outside the United States, but that Business A assets are not. Z must recognize \$40 of income on the outbound transfer of Business A assets in exchange for stock of F. In addition, V must enter into a gain recognition agreement and agree to include in income 60% of the gain realized but not recognized by it in the initial section 354 exchange of Z stock for F stock (i.e., \$90), in the event that F sells all of its stock in R, or R sells substantially all of the assets received from Z, during the term of the agreement. If F sells a portion of its stock in R during the term of the agreement, V will be required to recognize a portion of the \$90 gain subject to the agreement. See also section 367(a)(5) and any regulations issued thereunder.

Example 8. Assume the same facts in *Example 7*, except that R transfers the Business A assets to M, a wholly-owned domestic subsidiary of R, in an exchange described in section 368(a)(2)(C). As provided in paragraph (d)(2)(vi) of this section, section 367(a)(3) does not apply to Z's transfer of assets to R, to the extent that such assets are transferred to M. Section 367(a)(3) does apply to Z's transfer of assets to R to the extent that such assets are not transferred to M. However, if V received more than 50% of the

stock of F in the initial section 354 exchange, then V would be required to recognize a portion of the gain that it realized on this initial exchange. Such portion (\$60) would be determined by reference to the gain realized on the transfer of Business A's assets to M, relative to the total amount of gain realized on the transfer of Z's assets to R. See also section 367(a)(5) and any regulations issued thereunder.

Example 9. F, a foreign corporation, owns all of the stock of O, also a foreign corporation. D, a domestic corporation, owns all of the stock of E, also a domestic corporation, which owns all of the stock of N, also a domestic corporation. In addition to the stock of N, E owns the assets of Business X. The N stock has a fair market value of \$100, and E has a basis of \$60 in such stock. The assets of Business X have a fair market value of \$60, and E has a basis of \$50 in such assets. D has a basis of \$100 in the stock of E, which has a fair market value of \$160. D does not own any stock in F (applying the attribution rules of section 958). In a reorganization described in section 368(a)(1)(C), O acquires all of the assets of E, and D exchanges its stock in E for 60% of the voting stock of F. E's transfer of the stock of N to O is taxable to E under section 367(a)(1) by virtue of paragraphs (a) and (b)(3) of this section. E's transfer of the assets of Business X to O must be tested under section 367(a)(3). Assume that the transfer of Business X is not taxable to E under section 367(a)(3). D will therefore have to enter into a ten-year gain recognition agreement with respect to a portion of the \$60 gain that D realizes but does not recognize in the exchange of E stock for F voting stock. This portion, \$12, is based on the amount of gain realized and not recognized on the transfer of E's assets to O (*i.e.*, \$10), relative to the total amount of gain realized on such transfer (*i.e.*, \$50). See also section 367(a)(5) and any regulations issued thereunder.

Example 10. D, a domestic corporation, owns all the stock of X, a foreign corporation that operates an historical business, which owns all the stock of Y, a foreign corporation that also operates an historical business. The properties of D consist of Business A assets, with an adjusted basis of \$50 and a fair market value of \$90, and Business B assets, with an adjusted basis of \$50 and a fair market value of \$110. In an exchange described in section 351, D transfers the assets of Businesses A and B to X, and, in connection with the same transaction, X transfers the assets of Business B to Y in another exchange described in section 351. Under paragraph (d)(2)(vi) of this section, the assets of Businesses A and B that are transferred to X must be tested under section 367(a)(3). Assume that Business B assets are used by X in an active trade or business outside the United States, but that Business A assets are not. D must recognize \$40 of income on the outbound transfer of Business A assets for X stock. In addition, under paragraph (d)(1)(vi), the transfer of Business B assets to X and subsequently to Y shall be deemed to be a transfer of Y stock described in section 354 for purposes of applying the indirect stock transfer rules of this paragraph (d) and § 1.367(a)-8. D's transfer of the Business B

assets will not be subject to section 367(a)(1) if D enters into a ten-year gain recognition agreement with respect to the stock of Y. X will be treated as the transferee foreign corporation and Y will be treated as the transferred corporation for purposes of applying the terms of the agreement. Thus, if X sells all or a portion of the stock of Y during the term of the agreement, D will be required to recognize a proportionate amount of the \$60 gain that was realized by D on the initial transfer of the B assets and that is subject to the agreement. See § 1.367(a)-8(b)(2)(ii). Similarly, if Y sells substantially all of the transferred Business B assets, D will be required to recognize all of the \$60 gain realized by D on the initial transfer of the assets.

(e) *Certain transfers in connection with performance of services.* Section 367(a)(1) shall not apply to a domestic corporation's transfer of its own stock or securities in connection with the performance of services, if the transfer is considered to be to a foreign corporation solely by reason of § 1.83-6(d)(1).

(f) *Effective dates—(1) In general.* Section 1.367(a)-3 applies to transfers occurring on or after [the date which is 30 days after these regulations are published as final regulations in the Federal Register]. However, taxpayers may, by timely filing an original or amended return, elect to apply § 1.367(a)-3 to all transfers occurring after December 16, 1987, and before [the date which is 30 days after these regulations are published as final regulations in the Federal Register]. In the absence of an election, transfers before the effective date of this section are subject to the Temporary Regulations under § 1.367(a)-1T(c)(2) and § 1.367(a)-3T, as modified by rules announced in Notice 87-85, 1987-2 C.B. 395, with respect to transfers after December 16, 1987.

(2) *Special rules—(i) Effect of election.* If the taxpayer elects to apply § 1.367(a)-3 to transfers occurring after December 16, 1987, and before [the date which is 30 days after these regulations are published as final regulations in the Federal Register], any references in § 1.367(a)-3 to § 1.367(a)-8 shall be understood to be references to § 1.367(a)-3T(g) (with appropriate modifications reflecting the rules of this section, such as the rules in § 1.367(a)-3(c)(2)). In addition, if such an election is made, the taxpayer must apply the rules in the Temporary Regulations under section 367(b) to any transfers occurring within that period as if the election to apply § 1.367(a)-3 to transfers occurring within that period had not been made. For example, if, prior to the effective date of this section, a United States person transfers stock of a foreign corporation to another foreign

corporation pursuant to a reorganization described in section 368(a)(1)(B) that is also described in section 351, and the transferor has elected to apply § 1.367(a)-3 to all transfers occurring after December 16, 1987, and before the effective date of this section, then the United States transferor will be required to enter into a gain recognition agreement pursuant to this section and will also be subject to §§ 7.367(b)-4 and 7.367(b)-7.

(ii) *Special effective date for § 1.367(a)-3(c)(4).* If an election is made under paragraph (f)(1) of this section, § 1.367(a)-3(c)(4) shall apply to any gain recognition agreement entered into in accordance with the provisions of the Temporary Regulations under § 1.367(a)-3T(g).

Par. 4. Section 1.367(a)-3T is revised by adding a new sentence at the beginning of paragraph (a) to read as follows:

§ 1.367(a)-3T Treatment of transfers of stock or securities to foreign corporations (temporary).

(a) *In general.* This section applies to transfers occurring after December 31, 1984 and before [the date which is 30 days after these regulations are published as final regulations in the Federal Register]. * * *

Par. 5. New § 1.367(a)-8 is added to read as follows:

§ 1.367(a)-8 Gain recognition agreement requirements.

(a) *Scope.* This section specifies the general terms and conditions for an agreement to recognize gain entered into pursuant to § 1.367(a)-3 (relating to transfers of stock or securities described in § 1.367(a)-3(b)(2) and (3)). For additional special provisions and exceptions relating to transfers of stock or securities, see § 1.367(a)-3(c) through (f).

(b) *Agreement to recognize gain—(1) Contents.* The agreement must set forth the following materials, with the heading "GAIN RECOGNITION AGREEMENT UNDER § 1.367(a)-8", and with paragraphs labeled to correspond with the numbers set forth below:

(i) A statement that the document submitted constitutes the transferor's agreement to recognize gain in accordance with the requirements of this section;

(ii) A description of the property transferred by the transferor, an estimate of the fair market value of the property as of the date of the transfer, a statement of the cost or other basis of the property and any adjustments

thereto, and the date on which the property was acquired by the transferor;

(iii) The transferor's agreement to recognize gain, as described in paragraph (b)(2) of this section;

(iv) A waiver of the period of limitations as described in paragraph (c) of this section;

(v) An agreement to file with the transferor's tax returns for the 10 full taxable years following the year of the transfer a certification as described in paragraph (d) of this section; and

(vi) A statement that arrangements have been made in connection with the transferred property to ensure that the transferor will be informed of any subsequent disposition of any property that would require the recognition of gain under the agreement.

(2) *Terms of agreement*—(i) *General rule*. Except as provided in paragraph (e) of this section, if, prior to the close of the tenth full taxable year (*i.e.*, not less than 120 months) following the close of the taxable year of the initial transfer, the transferee foreign corporation disposes of the transferred property in any manner (other than in a liquidation described in section 332 of a corporation whose stock was transferred or a compulsory transfer as described in § 1.367(a)-4T(f) that was not reasonably foreseeable at the time of the initial transfer), then by the 90th day thereafter the transferor will file an amended return for the year of the transfer and recognize thereon the gain realized but not recognized upon the initial transfer. For purposes of this paragraph, a disposition includes any disposition treated as an exchange under this subtitle, *e.g.*, under section 301 (c)(3)(A), section 302(a) or section 356(a)(1), but does not include a disposition that is not treated as an exchange, *e.g.*, under section 302(d) or section 356(a)(2). For purposes of this paragraph, a disposition also includes a disposition to which section 304(a)(1) applies that is not treated as a contribution of the stock to the capital of the acquiring corporation.

(ii) *Amount of gain*. The gain shall be computed as if there had been a sale of the transferred property at fair market value at the time of the initial transfer.

(iii) *Partial disposition*. If the transferee foreign corporation disposes of only a portion of the transferred property, then the United States transferor shall be required to recognize only a proportionate amount of the gain realized but not recognized upon the initial transfer of the transferred property. The proportion required to be recognized shall be determined by reference to the relative fair market values of the transferred property disposed of and retained. Solely for

purposes of determining whether the United States transferor must recognize income under the agreement described in paragraph (b)(2)(i) of this section, in the case of transferred property (including stock or securities) that is fungible with other property owned by the transferee foreign corporation, a disposition by such corporation of any such property shall be deemed to be a disposition of no less than a ratable portion of the transferred property. The rule of this paragraph (b)(2)(iii) is illustrated by the following example.

Example. A is a domestic corporation that owns 40 percent of the only outstanding class of stock of foreign corporation X. The other 60 percent of the stock of X is owned by foreign corporation Y. A owns 100 percent of the stock of Y. A's basis in its X stock is \$50, and the fair market value of such stock is \$80. Y's basis in its X stock is \$100, and the fair market value of such stock is \$120. A's basis in its Y stock is \$200, and the fair market value of such stock is \$420. In a transaction described in section 354, A exchanges its stock in X for additional voting stock of Y. Immediately after the exchange, A enters into a ten-year agreement under the rules of this section to recognize gain upon a later disposition of X by Y. In the following year, Y sells 50 percent of the fair market value of the stock of X. The block of X stock that Y sells (determined under the specific identification method) consists exclusively of X stock owned by Y prior to the transfer by A. A is required to recognize 50 percent of the gain that it realized but did not recognize upon the initial transfer of X stock (\$15). Under the rules of paragraph (k) of this section, and prior to determining the United States tax effects of Y's sale of the X stock, A's basis in its Y stock is increased by \$15 and Y's basis in the X stock that it received from A is increased by \$15. After these adjustments, the United States tax effects of Y's sale of the X stock are determined under normally applicable United States tax principles (*see, e.g.*, section 951).

(iv) *Prior dispositions of the stock of the transferee foreign corporation*—(A) *In general*. If, prior to the transferee foreign corporation's disposing of any of the property obtained by it in the initial transfer, the United States transferor disposes of any stock of the transferee foreign corporation in a transaction in which all realized gain (if any) is recognized currently, then the transferor shall be required to recognize only a proportionate amount of the gain that would otherwise be required to be recognized on a subsequent disposition of the transferred property under the rules of this paragraph (b)(2). The proportion required to be recognized shall be determined by reference to the percentage of stock (by value) of the transferee foreign corporation received in the initial transfer that is retained by the United States transferor. The rule of

this paragraph (b)(2)(iv)(A) is illustrated by the following example.

Example. A, a United States citizen, owns 100 percent of the outstanding stock of foreign corporation X. In a transaction described in section 351, A exchanges his stock in X (and other assets) for 100 percent of the outstanding voting and nonvoting stock of foreign corporation Y. A submits an agreement under the rules of this section to recognize gain upon a later disposition. In the following year, A disposes of 60 percent of the fair market value of the stock of Y. One year thereafter, Y disposes of 50 percent of the fair market value of the stock of X. A is required to include in his income in the year of the later disposition 20 percent of the gain that A realized but did not recognize on his initial transfer of X stock to Y.

(B) *Nonrecognition exchanges*. If, prior to the transferee foreign corporation's disposing of any of the property obtained by it in the initial transfer, the transferor disposes of any stock of the transferee foreign corporation in a nonrecognition transfer, the transferor shall continue to be subject to the terms of the gain recognition agreement in its entirety, unless the transferor goes out of existence, in which case the rules of paragraph (f) of this section shall apply.

(v) *Offsets*. Net operating losses, capital losses, or credits against tax that were available in the year of the initial transfer and that are unused at the time of the disposition (whether or not they have expired since the initial transfer), may be applied (respectively) against any gain recognized or tax owned by reason of this provision, but no other adjustments shall be made with respect to any other items of income or deduction in the year of the transfer or other years.

(vi) *Interest*. If additional tax is required to be paid, then interest must be paid on that amount at the rates determined under section 6621 with respect to the period between the date that was prescribed for filing the transferor's income tax return for the year of the initial transfer and the date on which the additional tax for that year is paid.

(vii) *Cross references*. For special rules applicable to nonrecognition transfers by the transferee foreign corporation, see paragraph (e) of this section. For special rules applicable when a United States transferor that enters into an agreement under this paragraph (b) ceases to exist, see paragraph (f) of this section.

(3) *Signature*. The agreement to recognize gain must be signed under penalties of perjury by a responsible officer in the case of a corporate transferor; by the individual, in the case

of an individual transferor (including a partner who is treated as a transferor by virtue of § 1.367-1T (c) (3)); by a trustee, executor, or equivalent fiduciary in the case of a transferor that is a trust or estate; and by a debtor in possession or trustee in a bankruptcy case under title 11, United States Code. An agreement may also be signed by an agent authorized to do so under a general or specific power of attorney.

(4) *Filing.* The agreement to recognize gain must be attached to, and filed by the due date of, the information return required under section 6038B and the regulations under that section for the taxable year of the transfer.

(c) *Waiver of Period of limitation.* The transferor must file, with the agreement to recognize gain, a waiver of the period of limitation on assessment of tax upon the gain realized on the transferor. The waiver shall be executed on such forms as are prescribed therefore by the Commissioner and shall extend the period for assessment of such tax to a date not earlier than the close of the thirteenth full taxable year following the taxable year of the transfer. Such waiver shall also contain such other terms with respect to assessment as may be considered necessary by the Commissioner to ensure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by a person who would be authorized to sign the agreement pursuant to the provisions of paragraph (b)(3) of this section.

(d) *Annual certification.* The United States transferor must file with its income tax return for each of the ten full taxable years following the taxable year of the transfer a certification that the property transferred has not been disposed of by the transferee in a transaction that is considered to be a disposition for purposes of this section, including dispositions described in § 1.367 (a)-3 (c). In addition, the certification must identify the transfer with respect to which it is given by setting forth the date of the transfer and a summary description of the property transferred. If a taxpayer has made more than one transfer subject to the rules of this section, the certifications for those transfers may be combined in a single document, but each transfer must be separately identified. The annual certification pursuant to this paragraph (d) must be signed under penalties of perjury by a person who would be authorized to sign the agreement pursuant to the provisions of paragraph (b)(3) of this section.

(e) *Treatment of nonrecognition transfers of property by the transferee*

foreign corporation. (1) If, during the period the agreement is in force, the transferee foreign corporation disposes of the property subject to the agreement and the requirements of this paragraph (e)(1) are satisfied, then the United States transferor is not required to recognize gain under paragraph (b)(2) of this section.

(i) The transferee foreign corporation is not required to recognize gain or loss on the disposition under United States income tax principles, or recognizes gain solely by reason of section 357(c);

(ii) Except in a transaction treated as a contribution to capital under section 304 (a) (1), the transferee foreign corporation receives (or is deemed to receive), in exchange for the property disposed of, stock in a corporation, or an interest in a partnership or trust, that acquired the transferred property (or receives stock in a corporation that controls the corporation acquiring the transferred property); and

(iii) The United States transferor complies with the requirements of paragraphs (e) (2) through (4) of this section.

(2) The United States transferor must provide a notice of the transfer with its next annual certification under paragraph (d) of this section, setting forth—

(i) A description of the transfer;

(ii) The applicable nonrecognition provision; and

(iii) The name, address, and taxpayer identification number (if any) of the new transferee of the transferred property.

(3) Except when the transferee foreign corporation is liquidated into the United States transferor in a liquidation qualifying for nonrecognition under section 332, and the United States transferor receives in a liquidating distribution the property transferred in the initial transfer, the United States transferor must provide with its next annual certification a new agreement to recognize gain (in accordance with the rules of paragraph (b) of this section) in the event that, prior to the close of the tenth full taxable year following the taxable year of the initial transfer, either—

(i) The initial transferee foreign corporation disposes of the interest (if any) which it received in exchange for the transferred property (other than in a disposition which itself qualifies under the rules of this paragraph (e)); or

(ii) The corporation, partnership, or trust that acquired the property disposes of such property (other than in a disposition which itself qualifies under the rules of this paragraph (e)); or

(iii) There is any other disposition that has the effect of an indirect disposition of the transferred property.

(4) If the United States transferor is required to enter into a new gain recognition agreement, as provided in paragraph (e) (3) of this section, the United States transferor must provide with its next annual certification a statement that arrangements have been made, in connection with the nonrecognition transfer, ensuring that the United States transferor will be informed of any subsequent disposition of property with respect to which recognition of gain would be required under the agreement.

(f) *United States transferor goes out of existence.* If an individual transferor that has entered into an agreement under paragraph (b) of this section dies, or if a United States corporation, trust, or estate that has entered into an agreement under paragraph (b) of this section goes out of existence and is not required to recognize gain as a consequence thereof with respect to all stock of the transferee foreign corporation received in the initial transfer and not previously disposed of in a transaction described in paragraph (b)(2)(iv)(A) of this section, gain recognition will be required unless one of the following requirements is met.

(1) The person winding up the affairs of the transferor retains assets to meet any possible liability of the transferor under the agreement;

(2) The person winding up the affairs of the transferor provides security as provided under paragraph (g) of this section for any possible liability of the transferor under the agreement;

(3) The United States transferor, immediately prior to the transaction in which it ceases to exist, holds all of the stock received in the initial transfer that has not previously been disposed of in a transaction described in paragraph (b)(2)(iv)(A) of this section; all of the gain with respect to such stock is either recognized by the transferor incident to its ceasing to exist or is transferred to United States persons; and each United States person who obtains such stock from the transferor enters into an agreement under paragraph (b) of this section having substantially the same terms as the agreement entered into by the transferor (but only with respect to that person's proportionate share of the gain realized but not recognized upon the transferor's initial transfer of stock to the transferee foreign corporation); or

(4) The transferor obtains a ruling from the Internal Revenue Service providing for successors to the

transferor under the gain recognition agreement.

(g) *Use of security.* The transferor may be required to furnish a bond or other security that satisfies the requirements of § 301.7101-1 if the district director determines that such security is necessary to ensure the payment of any tax on the gain realized but not recognized upon the initial transfer. Such bond or security will generally be required only if the stock or securities transferred are a principal asset of the transferor and the director has reason to believe that a disposition of the stock or securities may be contemplated.

(h) *Failure to comply—(1) General rule.* If a person that is required to file an agreement under paragraph (b) of this section fails to file the agreement in a timely manner, or if a person that has entered into an agreement under paragraph (b) of this section fails at any time to comply in any material respect with the requirements of this section or with the terms of an agreement submitted pursuant hereto, then the initial transfer of property will become subject to section 367(a)(1) (unless otherwise excepted under the rules of this section) and will be treated as a taxable exchange in the year of the initial transfer. Such a material failure to comply shall extend the period for assessment of tax until three years after the date on which the Internal Revenue Service receives actual notice of the failure to comply.

(2) *Reasonable cause exception.* If a person that is required to enter into an agreement under paragraph (b) of this section fails to file the agreement in a timely manner, as provided in paragraph (b)(4) of this section, or fails to comply in any material respect with the requirements of this section or with the terms of an agreement submitted pursuant hereto, the provisions of paragraph (h)(1) of this section shall not apply if the person is able to show that such failure was due to reasonable cause and not willful neglect and if the person files the agreement or reaches compliance as soon as he becomes aware of the failure. Whether a failure to file in a timely manner, or materially comply, was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

(i) [Reserved].

(j) *Availability of forms.* Any agreement, certification, or other document required to be filed pursuant to the provisions of this section shall be submitted on such forms as may be prescribed therefor by the Commissioner (or similar statements providing the same information). Until

such time as forms are prescribed, all necessary filings may be accomplished by providing the required information to the Service in accordance with the rules of this section.

(k) *Basis adjustments—(1) Transferee.* If a United States transferor is required to recognize gain under this section on the disposition by the transferee foreign corporation of the transferred property, then in determining for United States income tax purposes any gain or loss recognized by the transferee foreign corporation upon its disposition of such property, the transferee's basis in such property shall be increased by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount) by the United States transferor. In the case of a deemed disposition of the stock of the transferred corporation described in § 1.367(a)-3(c)(3), the transferee foreign corporation's basis in the stock deemed disposed of shall be increased by the amount of gain required to be recognized by the United States transferor.

(2) *Transferor.* If a United States transferor is required to recognize gain under this section, then the United States transferor's basis in the stock of the transferee foreign corporation shall be increased by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount).

(3) *Other adjustments.* Other appropriate adjustments to basis that are consistent with the principles of this paragraph (k) may be made if the United States transferor is required to recognize gain under this section.

(4) *Example.* The principles of this paragraph (k) are illustrated by the following example.

Example. D, a domestic corporation owning 100 percent of the stock of S, a foreign corporation, transfers all of the S stock to F, a foreign corporation, in an exchange described in section 368(a)(1)(B). In exchange, D receives 20 percent of the voting stock of F. D enters into a five-year gain recognition agreement pursuant to § 1.367(a)-3. One year after the initial transfer, F transfers all of the stock to F1 in an exchange described in section 351, and D complies with the requirements of paragraph (e) of this section. Two years after the initial transfer, D transfers its entire 20 percent interest in F's voting stock to a domestic partnership in exchange for an interest in the partnership. Three years after the initial exchange, S disposes of substantially all of its assets in a transaction that would be taxable under United States income tax principles, and D is required by the terms of the gain recognition agreement to recognize all the gain that it realized on the initial transfer of the stock of F. As a result of this gain recognition, D is permitted to increase its basis in the

partnership interest by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount), the partnership is permitted to increase its basis in the 20 percent voting stock of F, F is permitted to increase its basis in the stock of F1, and F1 is permitted to increase its basis in the stock of S. S, however, is not permitted to increase its basis in its assets for purposes of determining the direct or indirect United States tax results, if any, on the sale of its assets.

(l) *Effective date.* The rules of this section shall be effective for transfers that occur on or after [the date that is 30 days after these regulations are published as final regulations in the Federal Register]. For matters covered in § 1.367(a)-8 for periods before the effective date, the corresponding rules of § 1.367(a)-3T (g) and Notice 87-85, 1987-2 Cumulative Bulletin 395, apply. In addition, if a United States transferor entered into a gain recognition agreement prior to the effective date of this section, then the rules of § 1.367(a)-3T (g) shall continue to apply in lieu of this section in the event of any direct or indirect nonrecognition transfer of the same property. See also § 1.367(a)-3(f).

Par. 6. New §§ 1.367(b)-0 through 1.367(b)-6 are added to read as follows:

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(b) Use of reasonable method to comply with certain notices.

(1) Prior notices relating to section 367(b).

(2) Effect of prior notices.

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§ 1.367(b)-1 Other transfers.

(a) *Scope.* This section and §§ 1.367(b)-2 through 1.367(b)-6 apply to any exchange to which section 367(b) applies (a "section 367(b) exchange"). A section 367(b) exchange is any exchange described in section 332, 351, 354, 355, 356 or 361, with respect to which the status of a foreign corporation as a corporation is relevant for determining

the extent to which income shall be recognized or for determining the effect of the transaction on earnings and profits, basis of stock or securities, or basis of assets. Notwithstanding the preceding sentence, a section 367(b) exchange does not include a transfer to the extent that the foreign corporation fails to be treated as a corporation by reason of section 367(a)(1). See § 1.367(b)-4 (e) (*Example 5*) for an illustration of the interaction of sections 367 (a) and (b).

(b) *General rules.* A foreign corporation in a section 367(b) exchange is considered to be a corporation except to the extent provided in §§ 1.367(b)-2 through 1.367(b)-6. Nothing in §§ 1.367(b)-1 through 1.367(b)-6 shall permit the nonrecognition of income that would otherwise be required to be recognized under another provision of the Internal Revenue Code or the regulations thereunder. Except as provided in § 1.367(b)-3 (b)(2)(ii) (relating to exchange gain or loss on capital), nothing in §§ 1.367(b)-1 through 1.367(b)-6 shall permit the recognition of a loss or deduction that would otherwise not be recognized under another provision of the Internal Revenue Code or the regulations thereunder.

(c) *Notice required—(1) In general.* If any person realizes income (whether or not recognized) in any section 367(b) exchange, such persons must file a notice of such exchange on or before the last date for filing a notice of such exchange on or before the last date for filing a Federal income tax return (taking into account any extensions of time therefor) for the person's taxable year in which the income is realized. This notice must be filed with the Internal Revenue Service office with which the person would be required to file a Federal income tax return for such year (and if such a return is actually filed, the notice shall be attached to the return).

(2) *Information required.* The notice shall contain:

(i) A statement that the exchange is a section 367(b) exchange;

(ii) A complete description of the exchange;

(iii) A description of any stock, securities or other consideration received in the exchange;

(iv) A statement which describes any amount required, under §§ 1.367(b)-1 through 1.367(b)-6, to be recognized as income or loss or taken into account as an adjustment to basis, earnings and profits, or other tax attributes as a result of the exchange;

(v) Any information which is or would be required to be furnished with a Federal income tax return pursuant to

regulations under section 332, 351, 354, 355, 356, 361 or 368 (whether or not a Federal income tax return is required to be filed), if such information has not otherwise been provided by such person; and

(vi) Any information required to be furnished with respect to the exchange under section 6038, 6038A, 6038B, 6038C or 6046, or the regulations under those sections, if such information has not otherwise been provided by such person.

§ 1.367 (b)-2 Definitions and special rules.

(a) *Controlled foreign corporation.*

The term "controlled foreign corporation" means a controlled foreign corporation as defined in section 957 (taking into account section 953(c)).

(b) *Section 1248 shareholder.* The term "section 1248 shareholder" means any United States person who satisfies the ownership requirements of section 1248(a)(2) or (c)(2) with respect to a foreign corporation.

(c) *Section 1248 amount.* The term "section 1248 amount" with respect to stock in a foreign corporation means the net positive earnings and profits (if any) that would have been attributable to such stock and includible in income as a dividend under section 1248 and the regulations under that section if the stock were sold by the shareholder. In the case of a transaction in which the shareholder is a foreign corporation, such corporation shall be deemed to be a United States person for purposes of this paragraph (c) (other than for purposes of determining whether the stock owned by such corporation is stock of a controlled foreign corporation), and the principle of section 1248(c)(2)(D)(ii) (concerning a United States person's indirect ownership of stock in a foreign corporation) shall apply in determining the correct holding period.

Example. FX is a foreign (and foreign-owned) corporation that owns 100 percent of the stock of FY, also a foreign corporation. FY owns 60 percent of the stock of FZ, also a foreign corporation. The other 40 percent of FZ's stock is owned by unrelated foreign individuals. On January 1, 1992, DA, a domestic corporation, purchases 60 percent of FY's stock from FX. On January 1, 1993, FY purchases the FZ stock that it did not previously own. On January 1, 1994, FY exchanges all of the stock of FZ in a transaction that requires FY to include in its income the section 1248 amount with respect to the FZ stock. See § 1.367(b)-4 (b)(1). For purposes of determining the section 1248 amount in this exchange, FY must compute the amount of FZ's earnings and profits that would have been included in FY's income if FY were a United States person that sold such stock on January 1, 1994. For this

purpose, however, FY will not be treated as a United States person in determining the period during which FZ was a controlled foreign corporation (CFC). Thus, FZ will not be considered to be a CFC prior to FY's purchase of FZ stock on January 1, 1993 (the event that caused FZ to become an actual CFC under section 957). Moreover, earnings and profits of FZ will only be included in FY's section 1248 amount if accumulated during the period of DA's indirect ownership in FZ as determined under section 1248(c)(2)(D)(ii).

(d) *All earnings and profits amount—*

(1) *General rule.* The term "all earnings and profits amount" with respect to stock in a foreign corporation means the net positive earnings and profits (if any) determined as provided under paragraph (d)(2) of this section and attributable to such stock as provided under paragraph (d)(3) of this section. The all earnings and profits amount shall be determined without regard to the amount of gain that would be realized on a sale or exchange of the stock of the foreign corporation.

(2) *Rules for determining earnings and profits—(i) Domestic rules generally applicable.* For purposes of this paragraph (d), except as provided in sections 312(k)(4) and (n)(8), 964 and 986, the earnings and profits of a foreign corporation for any taxable year shall be determined according to principles substantially similar to those applicable to domestic corporations.

(ii) *Certain adjustments to earnings and profits.* Notwithstanding paragraph (d)(2)(i) of this section, for purposes of this paragraph (d), the earnings and profits of a foreign corporation for any taxable year shall not include the amounts specified in section 1248(d). In the case of amounts specified in section 1248(d)(4), the preceding sentence requires that the earnings and profits for any taxable year be decreased by the net positive amount (if any) of earnings and profits attributable to activities described in section 1248(d)(4), and increased by the net reduction (if any) in earnings and profits attributable to activities described in section 1248(d)(4).

(iii) *Effect of section 332 liquidating distribution.* The all earnings and profits amount with respect to stock of a corporation that distributes all of its property in a liquidation described in section 332 shall be determined without regard to the adjustments prescribed by section 312 (a) and (b) resulting from the distribution of such property in liquidation, except that gain or loss realized by the corporation on the distribution shall be taken into account to the extent provided in section 312(f)(1).

(3) *Amount attributable to a block of stock—(i) Application of section 1248*

principles. The all earnings and profits amount with respect to stock of a foreign corporation is determined according to the attribution principles of section 1248 and the regulations under that section. In the case of a transaction in which the exchanging shareholder is a foreign corporation, the principle of section 1248(c)(2)(D)(ii) (concerning a United States person's indirect ownership of stock in a foreign corporation) shall apply in determining the correct holding period for the exchanged stock. In all cases, the attribution principles of section 1248 shall apply without regard to whether the person directly owning the stock is a United States person, without regard to whether the foreign corporation was a controlled foreign corporation at any time during the five years preceding the section 367(b) exchange in question, and without regard to whether the earnings and profits of the foreign corporation were accumulated in post-1962 taxable years or while the corporation was a controlled foreign corporation.

(ii) *Exclusion of lower tier earnings.* In applying the attribution principles of section 1248 and the regulations under that section to determine the all earnings and profits amount with respect to stock of a foreign corporation, the earnings and profits of subsidiaries of the foreign corporation shall not be taken into account notwithstanding section 1248(c)(2).

(4) *Effective date.* This paragraph (d) shall be effective for all exchanges that occur on or after August 28, 1991.

(c) *Treatment of deemed dividends—*
(1) *In general.* In certain circumstances these regulations provide that an exchanging shareholder shall include an amount in income as a deemed dividend. This paragraph provides rules for the treatment of the deemed dividend.

(2) *Consequences of dividend characterization.* A deemed dividend described in paragraph (e)(1) of this section shall be treated as a dividend for purposes of the Internal Revenue Code. The deemed dividend shall be considered as paid out of the earnings and profits with respect to which the amount of the deemed dividend was determined. Thus, for example, a deemed dividend that is determined by reference to the all earnings and profits amount or the section 1248 amount will never be considered as paid out of (and therefore will never reduce) earnings and profits specified in section 1248(d), because such earnings and profits amount (under paragraph (d)(2)(ii) of this section) and the section 1248 amount (under section 1248(d) and paragraph (c) of this section). If the

deemed dividend is determined by reference to the earnings and profits of a foreign corporation that is owned indirectly (*i.e.*, through one or more tiers of intermediate owners) by the person that is required to include the deemed dividend in income, the deemed dividend shall be considered as having been paid by such corporation to such person through the intermediate owners, rather than directly to such person.

(3) *Ordering rules.* In the case of an exchange of stock in which the exchanging shareholder is treated as receiving a deemed dividend from a foreign corporation, the following ordering rules shall apply. *See also* paragraph (k)(2) of this section.

(i) For purposes of applying §§ 1.367(b)-1 through 1.367(b)-6, the gain realized by an exchanging shareholder shall be determined before increasing (as provided in paragraph (e)(3)(ii) of this section) the basis in the stock of the foreign corporation by the amount of the deemed dividend.

(ii) Except as provided in paragraph (e)(3)(i) of this section, the deemed dividend shall be considered to be received immediately before the exchanging shareholder's receipt of consideration for its stock in the foreign corporation, and the shareholder's basis in the stock exchanged shall be increased by the amount of the deemed dividend. Such basis increase shall be taken into account before determining the gain otherwise recognized on the exchange (for example, under section 356), the basis that the exchanging shareholder takes in the property that it receives in the exchange (under section 356(a)(1)), and the basis that the transferee otherwise takes in the transferred stock (under section 362).

(iii) Except as provided in paragraphs (e)(3)(i) of this section, the earnings and profits of the appropriate foreign corporation shall be reduced by the deemed dividend amount before determining the consequences (for example, under section 356(a)(2) or sections 356(a)(1) and 1248) of the recognition of gain in excess of the deemed dividend amount.

(4) *Examples.* The rules of this paragraph (e) are illustrated by the following examples.

Example 1. DC, a domestic corporation, exchanges stock in FC, a foreign corporation that is a controlled foreign corporation, in a transaction in which DC includes the all earnings and profits amount income as a deemed dividend. *See, e.g.,* the facts of *Example 1* in § 1.367(b)-3 (b)(2)(i)(B). Provided that the requirements of section 902 are met, DC may qualify for a deemed paid foreign tax credit even as to the portion (if

any) of the deemed dividend that exceeds the amount that would have been included income by DC as a dividend under section 1248 if DC had sold the stock of FC in a transaction to which section 1248 applied (*i.e.*, even as to the portion of the deemed dividend in excess of the section 1248 amount).

Example 2. DC, a domestic corporation, exchanges stock in FC1, a foreign corporation that is a controlled foreign corporation, in a transaction in which DC is required to include the section 1248 amount in income as a deemed dividend. A portion of the section 1248 amount is determined by reference to the earnings and profits of FC1 (the upper tier portion of the section 1248 amount), and the remainder of the section 1248 amount is determined by reference to the earnings and profits of FC2, which is a wholly-owned foreign subsidiary of FC1 (the lower tier portion of the section 1248 amount). Under paragraph (e)(2) of this section, DC computes its deemed paid foreign tax credit as if the lower tier portion of the section 1248 amount were distributed as a dividend by FC2 to FC1, and as if such portion and the upper tier portion of the section 1248 amount were then distributed as a dividend by FC1 to DC.

Example 3. DC, a domestic corporation, exchanges stock in FC, a foreign corporation that is a controlled foreign corporation, in a transaction in which DC realizes gain of \$100 (prior to the application of section 367(b) and these regulations) and is required to include \$40 in income as a deemed dividend. In addition to receiving property permitted to be received under section 354 without the recognition of gain, DC also receives cash in the amount of \$70. Under paragraph (e)(3) of this section, the \$40 deemed dividend increases DC's basis in its FC stock before determining the gain to be recognized under section 358. Thus, in applying section 358, DC is considered to realize \$60 of gain on the exchange, all of which is recognized under section 356(a)(1).

(f) *Deemed asset transfer and closing of taxable year in certain section 368(a)(1)(F) reorganizations—(1) Scope.* This paragraph applies to a reorganization described in section 368(a)(1)(F) in which the transferor corporation is a foreign corporation. For additional rules applicable to such reorganizations, see, *e.g.*, § 1.367(b)-3 (if the acquiring corporation is domestic) and § 1.367(b)-4 (if the acquiring corporation is foreign).

(2) *Deemed asset transfer.* In a reorganization described in paragraph (f)(1) of this section, there is considered to exist—

(i) A transfer of assets by the foreign transferor corporation to the acquiring corporation in exchange for stock (or stock and securities) of the acquiring corporation and the assumption by the acquiring corporation of the foreign transferor corporation's liabilities;

(ii) A distribution of such stock (or stock and securities) by the foreign transferor corporation to its

shareholders (or shareholders and security holders); and

(iii) An exchange by the foreign transferor corporation's shareholders (or shareholders and security holders) of their stock (or stock and securities) for stock (or stock and securities) of the acquiring corporation.

For this purpose, it is immaterial that the applicable foreign or domestic law treats the acquiring corporation as a continuation of the foreign transferor corporation.

(3) *Closing of taxable year.* In a reorganization described in paragraph (f)(1) of this section, the taxable year of the foreign transferor corporation shall end with the close of the date of the transfer and the taxable year of the acquiring corporation shall end with the close of the date on which the transferor's taxable year would have ended but for the occurrence of the reorganization if—

(i) The acquiring corporation is a domestic corporation, or

(ii) The foreign transferor corporation has effectively connected earnings and profits (as defined in section 884(d)) or accumulated effectively connected earnings and profits (as defined in section 884(b)(2)(B)(ii)).

(g) *Stapled stock under section 269B.* For rules treating a foreign corporation as a domestic corporation if it and a domestic corporation are stapled entities, see section 269B. The deemed conversion of a foreign corporation to a domestic corporation under section 269B is treated as a reorganization under section 368(a)(1)(F). For the treatment of such a reorganization under section 367(b), see, for example, paragraph (f) of this section and § 1.367(b)-3.

(h) *Section 953(d) domestication elections—(1) Effect of election.* A foreign corporation that elects under section 953(d) to be treated as a domestic corporation shall be treated for purposes of section 367(b) as transferring, as of the first day of the first taxable year for which the election is effective, all of its assets to a domestic corporation in a reorganization described in section 368(a)(1)(F). For the treatment of such a reorganization under section 367(b), see, for example, paragraph (f) of this section and § 1.367(b)-3. Notwithstanding paragraph (d) of this section, for purposes of determining the consequences of the reorganization under § 1.367(b)-3, the all earnings and profits amount shall not be considered to include earnings and profits accumulated in taxable years beginning before January 1, 1988.

(2) *Post-election exchanges.* For purposes of applying section 367(b) to

post-election exchanges with respect to a corporation that has made a valid election under section 953(d) to be treated as a domestic corporation, such corporation shall generally be treated as a domestic corporation as to earnings and profits that were taken into account at the time of the section 953(d) election or which accrue after such election, and shall otherwise be treated as a foreign corporation. Thus, for example, if the section 953(d) corporation subsequently transfers its assets to a domestic corporation in a transaction described in section 381(a), the rules of § 1.367(b)-3 shall apply to such transaction to the extent of the section 953(d) corporation's earnings and profits accumulated in taxable years beginning before January 1, 1988.

(i) [Reserved]

(j) *Section 1504(d) elections.* An election under section 1504(d), which permits certain foreign corporations to be treated as domestic corporations, is treated as a transfer of property to a domestic corporation and will generally constitute a reorganization described in section 368(a)(1)(F). For rules relating to the treatment under section 367(b) of a reorganization described in section 368(a)(1)(F) if the corporation whose assets are acquired is a foreign corporation and the acquiring corporation is a domestic corporation, see, for example, paragraph (f) of this section and § 1.367(b)-3. However, if a foreign branch of a domestic corporation is incorporated as a foreign corporation and an election under section 1504(d) is made with effect from the first day of the foreign corporation's existence, then the deemed transfer will be treated as a transfer by a domestic corporation of its branch assets and liabilities to a domestic corporation, and section 367(b) will not apply to the transfer.

(k) *Sections 985 through 989—(1) In general.* On the occurrence of a transaction described in section 381(a) in which the acquiring corporation has a functional currency different from that of the acquired corporation, the acquired corporation shall make the adjustments described in § 1.985-5T. For the requirement to recognize exchange gain or loss with respect to capital in the case of a domestic corporation's acquisition of the assets of a foreign corporation, see § 1.367(b)-3(b)(2)(ii). For the determination of a corporation's or qualified business unit's functional currency and the treatment of foreign currency transactions, see sections 985 through 989.

(2) *Previously taxed earnings and profits.* If an exchanging shareholder is required to include in income either the

section 1248 amount or the all earnings and profits amount under the provisions of these regulations, then immediately prior to the exchange, and solely for the purpose of computing exchange gain or loss under section 986(c), the shareholder shall be treated as receiving a distribution of previously taxed earnings and profits from the appropriate foreign corporation that is attributable (under the attribution principles of section 1248) to the exchanged stock. The exchange gain or loss so recognized will increase or decrease the exchanging shareholder's adjusted basis in the stock of the foreign corporation for purposes of computing gain or loss realized with respect to the stock on the transactions. The shareholder's dollar basis with respect to each account of previously taxed income shall be increased or decreased by the exchange gain or loss recognized.

(1) *Partnerships, trusts and estates.* In applying the rules of §§ 1.367(b)-1 through 1.367(b)-6, stock of a corporation that is owned by a foreign partnership, trust or estate (and, solely for purposes of § 1.367(b)-5(b), stock or securities of a corporation that are owned by a domestic partnership, trust or estate) shall be considered as owned proportionately by its partners or beneficiaries under the principles of § 1.904-4(g)(1).

§ 1.367(b)-3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

(a) *Scope.* This section applies to an acquisition by a domestic corporation (the domestic acquiring corporation) of the assets of a foreign corporation (the foreign acquired corporation) in a liquidation described in section 332 or an asset acquisition described in section 368(a)(1).

(b) *Exchange of stock owned directly by a United States shareholder or by certain foreign corporate shareholders—(1) Scope.* This paragraph (b) applies in the case of an exchanging shareholder at is either—

(i) A United States shareholder of the foreign acquired corporation, or

(ii) A foreign corporation with respect to which a United States person is either a section 1248 shareholder or a domestic corporation that meets the stock ownership requirements of section 902.

For purposes of this section, the term "United States shareholder" means any shareholder described in section 951(b) (without regard to whether the foreign corporation is a controlled foreign corporation), and also any shareholder described in section 953(c)(1)(A) (but only if the foreign corporation is a

controlled foreign corporation subject to the rules of section 953(c).

(2) *Recognition of income—(i) Inclusion of all earnings and profits amount—(A) Rules.* Except as provided in paragraph (b)(2)(iii) (A) of this section (relating to shareholders that elect taxable exchange treatment), the exchanging shareholder shall include in income as a deemed dividend the all earnings and profits amount with respect to its stock in the foreign acquired corporation. For the consequences of the deemed dividend, see § 1.367(b)-2(e). Notwithstanding § 1.367(b)-2(e), however, a deemed dividend from the foreign acquired corporation to an exchanging foreign corporate shareholder shall not qualify for the exception from foreign personal holding company income provided by section 954(c)(3)(A)(i), though it may qualify for the "look-through" treatment provided by section 904(d)(3) if the requirements of that section are met with respect to the deemed dividend.

(B) *Examples.* The rules of paragraph (b)(2)(i)(A) of this section are illustrated by the following examples. The examples assume that the exchanging shareholder does not make the taxable exchange election described in paragraph (b)(2)(iii)(A) of this section. For the requirement to recognize exchange gain or loss with respect to capital, see paragraph (b)(2)(ii) of this section.

Example 1—(i) Facts. DC, a domestic corporation, owns all of the outstanding stock of FC, a foreign corporation. The stock of FC has a value of \$100, and DC has a basis of \$30 in such stock. The all earnings and profits amount attributable to the FC stock owned by DC is \$20, of which \$15 is described in section 1248(a) and the remaining \$5 is not (for example, because it was earned prior to 1963). FC has a basis of \$50 in its assets. In a liquidation described in section 332, FC distributes all of its property to DC, and the FC stock held by DC is canceled.

(ii) *Result.* DC must include \$20 in income as a deemed dividend from FC under paragraph (b)(2)(i)(A) of this section. Under section 337(a) FC does not recognize gain or loss in the assets that it distributes to DC, and under section 334(b), DC takes a basis of \$50 in such assets.

Example 2—(i) Facts. DC, a domestic corporation, owns 80 percent of the outstanding stock of FC, a foreign corporation. DC has owned the stock since FC was incorporated. During the entire period of FC's existence, the remaining 20 percent of the outstanding stock of FC has been owned by a person unrelated to DC (the minority shareholder). The stock of FC owned by DC has a value of \$80, and DC has a basis of \$24 in such stock. The stock of FC owned by the minority shareholder has a value of \$20, and the minority shareholder has a basis of \$18 in such stock. The assets of FC have a value of \$100, and FC has a basis of \$50 in such

assets. The all earnings and profits amount with respect to the outstanding stock of FC is \$20, of which \$18 is attributable to the stock owned by DC under the rules of § 1.367(b)-2(d)(3)(i). FC distributes to the minority shareholder assets with a value of \$20 and a basis of \$5. Such assets are not assets the gain on which would generate earnings and profits qualifying under section 1248(d) for an exclusion from earnings and profits for purposes of section 1248. As part of the same transaction, in a liquidation described in section 332, FC distributes the remainder of its assets to DC, and the FC stock held by DC and the minority shareholder is canceled.

(ii) *Result.* Under section 336 FC must recognize the \$15 of gain it realizes in the assets that it distributes to the minority shareholder, and under section 331 the minority shareholder recognizes its gain of \$2 in the stock of FC. (Such gain is included in income by the minority shareholder as a dividend to the extent provided in section 1248 if the minority shareholder is a United States person that is described in section 1248(a)(2).) The \$15 of gain recognized by FC increases its all earnings and profits amount under § 1.367(b)-2(d)(2)(iii), and \$12 of such increase (80 percent of \$15) is considered to be attributable to the FC stock owned by DC under § 1.367(b)-2(d)(3)(i). Thus, DC realizes income of \$56 (\$30 minus \$24) on its stock in FC, but under paragraph (b)(2)(i)(A) of this section DC only recognizes income of \$28 (the \$16 of initial all earnings and profits amount with respect to the FC stock held by DC, plus the \$12 addition to such amount that results from FC's recognition of gain on the distribution to the minority shareholder), which is included in income by DC as a deemed dividend from FC.

Example 3—(i) Facts. DC1, a domestic corporation, owns all of the outstanding stock of DC2, a domestic corporation. DC1 also owns all of the outstanding stock of FC, a foreign corporation. The stock of FC has a value of \$100, and DC1 has a basis of \$30 in such stock. The all earnings and profits amount with respect to the FC stock owned by DC1 is \$20. In a reorganization described in section 368(a)(1)(D), DC2 acquires all of the assets and liabilities of FC solely in exchange for DC2 stock. FC distributes the DC2 stock to DC1, and the FC stock held by DC1 is canceled.

(ii) *Result.* DC1 must include \$20 in income as a deemed dividend from FC under paragraph (b)(2)(i)(A) of this section. Under section 361 FC does not recognize gain or loss in the assets that it transfers to DC2 or in the DC2 stock that it distributes to DC1, and under section 362(b) DC2 takes a basis in the assets that it acquires from FC equal to the basis that FC had therein. Under § 1.367(b)-2(e)(3)(ii) and section 358(a)(1), DC1 takes a basis of \$50 (its \$30 basis in the stock of FC, plus the \$20 that was treated as a deemed dividend to DC1) in the stock of DC2 that it receives in exchange for the stock of FC.

Example 4—(i) Facts. DC1, a domestic corporation, owns all of the outstanding stock of DC2, a domestic corporation. DC1 also owns all of the outstanding stock of FC1, a foreign corporation. FC1 owns all of the outstanding stock of FC2, a foreign

corporation. The all earnings and profits amount with respect to the FC2 stock owned by FC1 is \$20. In a reorganization described in section 368(a)(1)(D), DC2 acquires all of the assets and liabilities of FC2 in exchange for DC2 stock. FC2 distributes the DC2 stock to FC1, and the FC2 stock held by FC1 is canceled.

(ii) *Results.* FC1 must include \$20 in income as a deemed dividend from FC2 under paragraph (b)(2)(i)(A) of this section. The deemed dividend generally is treated as a dividend for purposes of the Internal Revenue Code as provided in § 1.367(b)-2 (e)(2); however, under paragraph (b)(2)(i)(A) of this section the deemed dividend cannot qualify for the exception from foreign personal holding company income provided by section 954(c)(3)(A)(i), even if the provisions of that section would otherwise have been met in the case of an actual dividend.

(ii) *Recognition of exchange gain or loss with respect to capital—(A) Rules.* Except as provided in paragraph (b)(2)(iii)(A) of this section (relating to shareholders that elect taxable exchange treatment), the exchanging shareholder shall realize and recognize exchange gain (or loss) to the extent that its share of the foreign acquired corporation's capital account (whether reflected on the books of the foreign acquired corporation as shareholder capital, contributed capital, paid-in capital, or any substantially similar account) has appreciated (or depreciated) by reason of changes in the relative exchange rates of the foreign acquired corporation's functional currency and the exchanging shareholder's functional currency during the exchanging shareholder's holding period. Notwithstanding the foregoing, the amount of exchange loss recognized by the exchanging shareholder under this paragraph (b)(2)(ii) shall in no event exceed the amount included in income as a deemed dividend by such shareholder under paragraph (b)(2)(i) of this section. The gain (or loss) so recognized shall be treated in a manner consistent with the treatment of gain (or loss) recognized under section 987(3) and the regulations under that section (as if the foreign acquired corporation were a qualified business unit of the exchanging shareholder).

(B) *Examples.* The rules of paragraph (b)(2)(ii)(A) of this section are illustrated by the following examples. The examples assume that the exchanging shareholder does not make the taxable exchange election described in paragraph (b)(2)(iii)(A) of this section.

Example 1—(i) Facts. DC, a domestic corporation with a calendar taxable year and a dollar (\$) functional currency forms FC, a U.K. corporation with a calendar taxable year and a pound functional currency. DC funds FC with initial capital of \$100 on January 1, 1993, when the spot exchange rate

is \$100 = 100 pounds. FC converts the \$100 in to 100 pounds and uses the 100 pounds to purchase inventory which it resells (in a transaction that does not give rise to subpart F income under section 951) during 1993 for consideration giving rise to earnings and profits of 20 pounds. At the end of 1993, FC's assets consist solely of 120 pounds (and FC has no liabilities). FC distributes its 120 pounds to DC in a liquidation described in section 332, and the FC stock held by DC is canceled. FC's all earnings and profits amount of 20 pounds is translated into dollars at the spot rate. See § 1.367(b)-2 (k)(1) and § 1.985-5T(e)(1). At the end of 1993 the spot exchange rate is \$110 = 100 pounds, so FC's translated all earnings and profits amount is \$22.

(ii) *Result.* Under paragraph (b)(2)(ii)(A) of this section, DC must recognize exchange gain to the extent that its share of FC's capital account has appreciated by reason of changes in the relative exchange rates of the pound and the dollar during 1993 (DC's holding period in the stock of FC). DC contributed \$100 to the capital of FC when the exchange rate was \$100 = 100 pounds, and the 100 pound account was worth \$110 on the date of the liquidation. Thus, the amount of such appreciation equals \$10 (\$110 - \$100 = \$10). DC therefore recognizes gain of \$10 under paragraph (b)(2)(ii)(A) of this section. The \$10 of gain recognized by DC is treated in a manner consistent with the treatment of gain recognized under section 987(3) and the regulations under that section (as if FC were a qualified business unit of DC). In addition to the \$10 of gain recognized under paragraph (b)(2)(ii)(A) of this section, see paragraph (b)(2)(i)(A) of this section for the requirement that DC also include in income as a deemed dividend the \$22 all earnings and profits amount with respect to its stock in FC. For rules providing that DC takes a basis of \$132 (120 pounds translated at the spot rate of \$110 = 100 pounds) in the 120 pounds that it receives from FC, see section 334(b), § 1.367(b)-2 (k)(1) and § 1.985-5T(c).

Example 2—(i) Facts. The facts are the same as in *Example 1*, except that on the date of the liquidation (December 21, 1993) the exchange rate is \$90 = 100 pounds. FC's all earnings and profits amount of 20 pounds is translated into dollars at the spot rate. See § 1.367(b)-2 (k)(1) and § 1.985-5T(e)(1). FC's translated all earnings and profits amount is therefore \$18.

(ii) *Result.* Under paragraph (b)(2)(ii)(A) of this section, DC must recognize exchange loss (subject to the all earnings and profits amount limitation described below) to the extent that its share of FC's capital account has depreciated by reason of changes in the relative exchange rates of the pound and the dollar during 1993 (DC's holding period in the stock of FC). DC contributed \$100 to the capital of FC when the exchange rate was \$100 = 100 pounds, and the 100 pound account was worth \$90 on the date of the liquidation. Thus, the amount of such depreciation equals \$(10) (\$90 - \$100 = \$(10)). DC therefore recognizes a loss of \$10 under paragraph (b)(2)(ii)(A) of this section. The \$10 loss does not exceed the \$18 all earnings and profits amount inclusion, and the entire loss

is therefore allowable. The \$10 of loss recognized by DC is treated in a manner consistent with the treatment of loss recognized under section 987 (3) and the regulations under that section (as if FC were a qualified business unit of DC). In addition to the \$10 of loss recognized under paragraph (b)(2)(ii)(A) of this section, see paragraph (b)(2)(i)(A) of this section for the requirement that DC also include in income as a deemed dividend the \$18 all earnings and profits amount with respect to its stock in FC. For rules providing that DC takes a basis of \$108 (120 pounds translated at the spot rate of \$90 = 100 pounds) in the 120 pounds that it receives from FC, see section 334(b), § 1.367(b)-2(k)(1) and § 1.985-5T(c).

(iii) *Election of taxable exchange treatment—(A) Rules.* In lieu of the treatment prescribed by paragraphs (b)(2)(i) and (ii), the exchanging shareholder may instead elect to recognize the gain (but not loss) that it realizes in the exchange. To make the election (hereafter referred to as a taxable exchange election), the exchanging shareholder (and its direct or indirect owners that would be affected by the election, in the case of an exchanging shareholder that is a foreign corporation) shall report the exchange in a manner consistent therewith (see, e.g., section 954(c)(1)(B)(i), 1001 and 1248). If the all earnings and profits amount described in paragraph (b)(2)(i)(A) of this section with respect to the exchange exceeds the gain recognized by the exchanging shareholder, then the following adjustments shall be made.

(1) *Reduction of NOL carryovers.* The amount by which the all earnings and profits amount exceeds the gain recognized by the exchanging shareholder (the "excess earnings and profits amount") shall be applied to reduce the net operating loss carryovers (if any) of the foreign acquired corporation to which the domestic acquiring corporation would otherwise succeed under section 381 (a) and (c)(1). For an illustration of how the rules of section 381 are applied to determine whether and to what extent a domestic acquiring corporation would otherwise succeed to a net operating loss carryover attributable to the losses of a foreign acquired corporation, see Rev. Rul. 72-421, 1972-2 C.B. 166.

(2) *Reduction of capital loss carryovers.* After the application of paragraph (b)(2)(iii)(A)(1) of this section, any remaining excess earnings and profits amount shall be applied to reduce the capital loss carryovers (if any) of the foreign acquired corporation to which the domestic acquiring corporation would otherwise succeed under section 381 (a) and (c)(3).

(3) *Reduction of basis.* After the application of paragraph (b)(2)(iii)(A)(2) of this section, any remaining excess earnings and profits amount shall be applied to reduce (but not below zero) the basis of the assets (other than dollar-denominated money) of the foreign acquired corporation that are acquired by the domestic acquiring corporation. Such remaining excess earnings and profits amount shall be applied to reduce the basis of such assets in the following order: First, tangible depreciable or depletable assets, according to their class lives (beginning with those assets with the shortest class life); second, other non-inventory tangible assets; third, intangible assets that are amortizable; and finally, the remaining assets of the foreign acquired corporation that are acquired by the domestic acquiring corporation. Within each of these categories, if the total basis of all assets in the category is greater than the excess earnings and profits amount to be applied against such basis, the taxpayer may choose to which specific assets in the category the basis reduction first applies.

(B) *Example.* The rules of paragraph (b)(2)(iii)(A) of this section are illustrated by the following example.

Example—(i) Facts. DC, a domestic corporation, owns all of the outstanding stock of FC, a foreign corporation. The stock of FC has a value of \$100, and DC has a basis of \$80 in such stock. The assets of FC are one parcel of land with a value of \$60 and a basis of \$30, and tangible depreciable assets with a value of \$40 and a basis of \$80. FC has no net operating loss carryovers or capital loss carryovers. The all earnings and profits amount with respect to the FC stock owned by DC is \$30, of which \$19 is described in section 1248(a) and the remaining \$11 is not (for example, because it was earned prior to 1963). In a liquidation described in section 332, FC distributes all of its property to DC, and the FC stock held by DC is canceled. Rather than including in income as a deemed dividend the all earnings and profits amount of \$30 as provided in paragraph (b)(2)(i)(A) of this section, DC instead elects taxable exchange treatment under paragraph (b)(2)(iii)(A) of this section.

(ii) *Result.* DC recognizes the \$20 of gain it realizes on its stock in FC. Of this \$20 amount, \$19 is included in income by DC as a dividend pursuant to section 1248(a). (For the source of the remaining \$1 of gain recognized by DC, see section 865. For the treatment of the \$1 for purposes of the foreign tax credit limitation, see generally section 904(d)(2)(A)(i).) The all earnings and profits amount with respect to the FC stock held by DC (\$30) exceeds by \$10 the income recognized by DC (\$20), so the liquidation results in an excess earnings and profits amount of \$10. Under paragraph (b)(2)(iii)(A) of this section, the \$10 excess earnings and profits amount is applied to reduce the basis

of the tangible depreciable assets of FC, beginning with those assets with the shortest class lives. Under section 337(a) FC does not recognize gain or loss in the assets that it distributes to DC, and under section 334(b) (which is applied taking into account the basis reduction prescribed by paragraph (b)(2)(iii)(A)(3) of this section) DC takes a basis of \$30 in the land and \$70 in the tangible depreciable assets that it receives from FC.

(c) *Exchange of stock owned by a United States person that is not a United States shareholder—(1) Scope.* This paragraph (c) applies in the case of an exchanging shareholder that is a United States person not described in paragraph (b)(1)(i) of this section (i.e., a United States person that is not a United States shareholder of the foreign acquired corporation).

(2) *Requirement to recognize gain.* An exchanging shareholder described in paragraph (c)(1) of this section shall recognize any gain (but not loss) that it realizes with respect to the stock of the foreign acquired corporation.

(d) *Carryover of certain foreign taxes.* Unused foreign tax credits allowable to the foreign acquired corporation under section 906 shall carryover to the domestic acquiring corporation and become allowable under section 901, subject to the limitations prescribed by the Internal Revenue Code (for example, sections 383, 904 and 907). The domestic acquiring corporation shall not succeed to any other foreign taxes paid or incurred by the foreign acquired corporation.

§ 1.367(b)-4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) *Scope.* This section applies to an acquisition by a foreign corporation (the foreign acquiring corporation) of the stock or assets of another foreign corporation (the foreign acquired corporation) in an exchange described in section 351 or a reorganization described in section 368 (a) (1) (B), (C), (D), (E), (F) or (G).

(b) *Recognition of income.* If an exchange is described in paragraph (b) (1) or (2) of this section, the exchanging shareholder shall include in income as a deemed dividend the section 1248 amount attributable to the stock that it exchanges.

(1) *Exchange that results in loss of status as section 1248 shareholder.* An exchange is described in this paragraph (b)(1) if—

(i) Immediately before the exchange, the exchanging shareholder is—

(A) A United States person that is a section 1248 shareholder with respect to the foreign acquired corporation, or

(B) A foreign corporation, and a United States person is a section 1248 shareholder with respect to such foreign corporation and with respect to the foreign acquired corporation, and

(ii) Either of the following conditions is satisfied—

(A) Immediately after the exchange, the stock received in the exchange is not stock in a corporation that is a controlled foreign corporation as to which the United States person described in paragraph (b)(1)(i) of this section is a section 1248 shareholder; or

(B) Immediately after the exchange, the foreign acquiring corporation (or, in the case of a reorganization described in section 368(a)(1)(B), the foreign acquired corporation) is not a controlled foreign corporation as to which the United States person described in paragraph (b)(1)(i) of this section is a section 1248 shareholder.

An exchange is not described in this paragraph (b)(1), however, if the stock received in the exchange is stock of a domestic corporation.

(2) *Exchange that results in excessive potential shifting of earnings and profits.* An exchange is described in this paragraph (b)(2) if—

(i) Immediately before the exchange, the foreign acquired corporation and the foreign acquiring corporation are not members of the same affiliated group (within the meaning of section 1504(a), but without regard to the exceptions set forth in section 1504(b), and substituting the words "more than 50" in place of the words "at least 80" in sections 1504(a)(2) (A) and (B));

(ii) Immediately after the exchange, a domestic corporation meets the ownership threshold specified by section 902 (a) or (b) such that it may qualify for a deemed paid foreign tax credit if it receives from the foreign acquiring corporation a distribution (directly or through tiers) of its earnings and profits; and

(iii) The exchanging shareholder receives preferred stock (other than preferred stock that is fully participating with respect to dividends, redemptions and corporate growth) in consideration for common stock, or, in the discretion of the District Director (and without regard to whether the stock exchanged is common stock or preferred stock), receives stock that entitles it to participate (through dividends, redemption payments or otherwise) disproportionately in the earnings generated by particular assets of the foreign acquired corporation or the foreign acquiring corporation.

(3) *Certain recapitalizations.* An exchange pursuant to a recapitalization

under section 368(a)(1)(E) shall be deemed to be an exchange described in paragraph (b)(2) of this section if the following conditions are satisfied—

(i) During the 24 month period immediately preceding or following the date of the recapitalization, the corporation that undergoes the recapitalization (or a predecessor of, or successor to, such corporation) also engages in a transaction that would be described in paragraph (b)(2) of this section but for paragraph (b)(2)(iii) of this section, either as the foreign acquired corporation or the foreign acquiring corporation; and

(ii) The exchange in the recapitalization is described in paragraph (b)(2)(iii) of this section.

(c) *Exclusion of deemed dividend from foreign personal holding company income.* In the event the section 1248 amount is included in income as a deemed dividend by a foreign corporation under paragraph (b) of this section, such deemed dividend shall be treated as if it were described in section 954(c)(3)(A)(i).

(d) *Special rules for applying section 1248 to subsequent exchanges.* If income is not required to be recognized under the provisions of paragraph (b) of this section in a transaction described in paragraph (a)(1) of this section, then, for purposes of applying section 1248 or 367(b) to subsequent exchanges, the earnings and profits of the foreign acquired corporation to which the foreign acquiring corporation succeeds under section 381 (if applicable) shall be deemed to have been accumulated by the foreign acquiring corporation in the same years in which they were accumulated by the foreign acquired corporation (without regard to whether the foreign acquiring corporation was in existence in such years), and the exchanging shareholder shall be deemed to have owned stock in the foreign acquiring corporation for the same period during which it owned stock in the foreign acquired corporation.

(e) *Examples.* The rules of this section are illustrated by the following examples.

Example 1—(i) Facts. FC1 is a foreign corporation that is owned, directly and indirectly (applying the ownership rules of section 958), solely by foreign persons. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding stock of FC2, a foreign corporation. Thus, DC is a section 1248 shareholder with respect to FC2, and FC2 is a controlled foreign corporation. (See § 1.367(b)-2(a) and (b).) The section 1248 amount attributable to the stock of FC2 held by DC is \$20. (See § 1.367(b)-2(c).) In a reorganization described in section 368(a)(1)(C), FC1 acquires all of the assets and assumes all of the liabilities of FC2 in

exchange for FC1 voting stock. The FC1 voting stock received does not represent more than 50 percent of the voting power or value of FC1's stock. FC2 distributes the FC1 stock to DC, and the FC2 stock held by DC is canceled.

(ii) *Result.* FC1 is not a controlled foreign corporation immediately after the exchange. Under paragraph (b)(1) of this section, DC must include in income, as a deemed dividend from FC2, the section 1248 amount (\$20) attributable to the FC2 stock that DC exchanged.

Example 2—(i) Facts. FC1 is a foreign corporation that is owned, directly and indirectly (applying the ownership rules of section 958), solely by foreign persons. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding stock of FC2, a foreign corporation. FC2 owns all of the outstanding stock of FC3, a foreign corporation. Thus, DC is a section 1248 shareholder with respect to FC2 and FC3, and FC2 and FC3 are controlled foreign corporations. (See § 1.367(b)-2(a) and (b).) The section 1248 amount attributable to the stock of FC3 and held by FC2 is \$20. (See § 1.367(b)-2(c).) In a reorganization described in section 368(a)(1)(B), FC1 acquires from FC2 all of the outstanding stock of FC3 in exchange for FC1 voting stock. The FC1 voting stock received does not represent more than 50 percent of the voting power or value of FC1's stock.

(ii) *Result.* FC1 is not a controlled foreign corporation immediately after the exchange. Under paragraph (b)(1) FC2 must include in income, as a deemed dividend from FC3, the section 1248 amount (\$20) attributable to the FC3 stock that FC2 exchanged. The deemed dividend is generally treated as a dividend for purposes of the Internal Revenue Code under § 1.367(b)-2(e)(2); however, under paragraph (c) of this section the deemed dividend is treated as if it were described in section 954(c)(3)(A)(i), and therefore does not result in foreign personal holding company income to FC2 or a current income inclusion under section 951 to DC.

Example 3—(i) Facts. The facts are the same as in *Example 1*, except that the voting stock of FC1, which is received by FC2 in exchange for its assets and is distributed by FC2 to DC, represents more than 50 percent of the voting power of FC1's stock under the rules of section 957(a).

(ii) *Result.* Paragraph (b)(1) of this section does not apply to require inclusion in income of the section 1248 amount, because FC1 is a controlled foreign corporation as to which DC is a section 1248 shareholder immediately after the exchange.

Example 4—(i) Facts. The facts are the same as in *Example 1*, except that FC2 receives and distributes voting stock of FP, a foreign corporation that is in control (within the meaning of section 368(c)) of FC1, instead of receiving and distributing voting stock of FC1.

(ii) *Result.* If FP and FC1 are controlled foreign corporations as to which DC is a (direct or indirect) section 1248 shareholder immediately after the reorganization, then the result is the same as in *Example 3*—that is, paragraph (b)(1) of this section does not apply to require inclusion in income of the

section 1248 amount. If FP or FC1 is not a controlled foreign corporation as to which DC is a (direct or indirect) section 1248 shareholder immediately after the exchange, then the result is the same as in *Example 1*—that is, DC must include in income, as a deemed dividend from FC2, the section 1248 amount (\$20) attributable to the FC2 stock that DC exchanged.

Example 5—(i) Facts. DC, a domestic corporation, owns all of the stock of FC1, a foreign corporation. DC's basis in the stock of FC1 is \$50, and the value of such stock is \$100. The section 1248 amount with respect to such stock is \$30. FC2, also a foreign corporation, is owned entirely by foreign individuals and is not related to DC or FC1. In a reorganization described in section 368(a)(1)(B), FC2 acquires all of the stock of FC1 from DC in an exchange for 30 percent of the voting stock of FC2. FC2 is not a controlled foreign corporation after the reorganization.

(ii) *Result.* Under the provisions of §§ 1.367(a)-3 and 1.367(a)-8, DC will not be subject to tax under section 367(a)(1) if it enters into a five-year gain recognition agreement with respect to the transfer of FC1 stock to FC2.

Under the provisions of § 1.367(b)-1(a), the exchange will be subject to the provisions of section 367(b) and the regulations thereunder to the extent that it is not subject to tax under section 367(a)(1). Therefore, if DC enters into a gain recognition agreement, it will be subject to the provisions of paragraph (b)(1) of this section, which will require that DC recognize the section 1248 amount of \$30 on the exchange of the FC1 stock for FC2 stock. As provided in § 1.367(b)-2(e)(3), the deemed dividend of \$30 recognized by DC will increase its basis in the FC1 stock exchanged in the transaction, and therefore the basis of the FC2 stock received in the transaction. The remaining gain of \$20 realized by DC in the exchange of FC1 stock will be subject to the gain recognition agreement under section 367(a).

Example 6—(i) Facts. DC1, a domestic corporation, owns all of the outstanding stock of DC2, a domestic corporation. DC2 owns various assets including all of the outstanding stock of FC2, a foreign corporation. The stock of FC2 has a value of \$100, and DC2 has a basis of \$30 in such stock. The section 1248 amount attributable to the FC2 stock held by DC2 is \$20. DC2 does not own any other stock in a foreign corporation. FC1 is a foreign corporation and is unrelated to DC1, DC2 or FC2. In a reorganization described in section 368(a)(1)(C), FC1 acquires all of the assets and liabilities of DC2 in exchange for FC1 voting stock that represents 20 percent of the outstanding voting stock of FC1. DC2 distributes the FC1 stock to DC1, and the DC2 stock held by DC1 is canceled. The corporations comply with all requirements under section 367(a) (including but not limited to entering into a gain recognition agreement as provided in regulations issued under section 367(a)); in order for FC1 to be treated as a corporation in the transaction, so that DC2 is not required under section 367(a)(1) to recognize its gain on the transfer of the stock of FC2 to FC1.

(ii) *Result.* If FC1 and FC2 are controlled foreign corporations as to which DC1 is a section 1248 shareholder immediately after the transaction, then paragraph (b)(1) of this section does not apply to require inclusion in income of the section 1248 amount. Alternatively, if FC1 or FC2 is not a controlled foreign corporation as to which DC1 is a section 1248 shareholder immediately after the transaction, then DC2 must include in income, as a deemed dividend from FC2, the section 1248 amount (\$20) attributable to the FC2 stock that DC exchanges. See also section 367(a)(5) and any regulations issued thereunder.

Example 7—(i) Facts. FC1 is a foreign corporation. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding common stock of FC2, a foreign corporation, and FC2 has no outstanding preferred stock. Thus, DC is a section 1248 shareholder with respect to FC2. (See § 1.367(b)-2(b).) The section 1248 amount attributable to the stock of FC2 held by DC is \$20. (See § 1.367(b)-2(c).) In a reorganization described in section 368(a)(1)(C), FC1 acquires all the assets and liabilities of FC2 in exchange for FC1 voting preferred stock that constitutes 10 percent of the outstanding voting stock of FC1 for purposes of section 902(a). FC2 distributes the FC1 voting preferred stock to DC, and the FC2 stock held by DC is canceled. Immediately after the exchange, FC1 is a controlled foreign corporation as to which DC is a section 1248 shareholder, so paragraph (b)(1) of this section does not apply to require inclusion in income of the section 1248 amount. (See *Example 3* of this paragraph.)

(ii) *Result.* Even though paragraph (b)(1) does not apply to require inclusion in income of the section 1248 amount, DC must nevertheless include the \$20 section 1248 amount in income as a deemed dividend from FC2 under paragraph (b)(2) of this section.

Example 8—(i) Facts. The facts are the same as in *Example 7*, except that DC owns all of the outstanding stock of FC1 immediately before the transaction.

(ii) *Result.* Paragraph (b)(2) of this section does not apply to require inclusion in income of the section 1248 amount. Under paragraph (b)(2)(i) of this section, the transaction is outside the scope of paragraph (b)(2) of this section, because FC1 and FC2 are, immediately before the transaction, members of the same affiliated group (within the meaning of such paragraph).

Example 9—(i) Facts. FC1 is a foreign corporation. DC is a domestic corporation that is unrelated to FC1. DC owns all of the stock of FC2, a foreign corporation. Thus, DC is a section 1248 shareholder with respect to FC2. (See § 1.367(b)-2(b).) The section 1248 amount attributable to the stock of FC2 held by DC is \$20. (See § 1.367(b)-2(c).) In a reorganization described in section 368(a)(1)(B), FC1 acquires all of the stock of FC2 in exchange for FC1 voting stock that constitutes 10 percent of the outstanding voting stock of FC1 for purposes of section 902(a). The FC1 voting stock received by DC in the exchange carries voting rights in FC1, but by agreement of the parties the shares entitle the holder to dividends, amounts to be paid on redemption, and amounts to be paid

on liquidation, which are to be determined by reference to the earnings or value of FC2 as of the date of such event, and which are affected by the earnings or value of FC1 only if FC1 becomes insolvent or has insufficient capital surplus to pay dividends.

(ii) *Result.* Under the provisions of §§ 1.367(a)-3 and 1.367(a)-8, DC will not be subject to tax under section 367(a)(1) if it enters into a five-year gain recognition agreement with respect to the transfer of FC2 stock to FC1. Under the provisions of § 1.367(b)-1(a), the exchange will be subject to the provisions of section 367(b) and the regulations thereunder to the extent that it is not subject to tax under section 367(a)(1). Furthermore, even if DC would not otherwise be required to recognize income under this section, the District Director may nevertheless require that DC include the \$20 section 1248 amount in income as a deemed dividend from FC2 under paragraph (b)(2) of this section.

§ 1.367(b)-5 Distributions of stock described in section 355.

(a) *Scope.* This section provides rules relating to a distribution described in section 355 and to which section 367(b) applies. For purposes of this section, the terms "distributing corporation" and "controlled corporation" have the meanings of those terms as used in section 355.

(b) *Distribution by a domestic corporation.* In a distribution described in section 355, if the distributing corporation is a domestic corporation and the controlled corporation is a foreign corporation—

(1) If the distributee shareholder is a corporation, then the controlled corporation shall be considered to be a corporation; and

(2) If the distributee shareholder is an individual, then, solely for purposes of section 355(c), the controlled corporation shall not be considered to be a corporation, and the distributing corporation shall recognize any gain (but not loss) realized on the distribution.

In applying the rules of this paragraph (b), the distributing corporation shall be obligated to treat the distributee shareholder as an individual unless the distributing corporation has reason to know that the distributee shareholder is a corporation. For rules with respect to a distributee shareholder that is a partnership, trust or estate, see § 1.367(b)-2 (1). For additional rules relating to a distribution of stock of a foreign corporation by a domestic corporation, see section 1248 (f) and the regulations under that section. For additional rules relating to a distribution described in section 355 by a domestic corporation to a foreign distributee, see section 367 (e) (1) and the regulations under that section.

(c) *Pro rata distribution by a controlled foreign corporation—(1) Scope.* This paragraph (c) applies to a distribution described in section 355 in which the distributing corporation is a controlled foreign corporation and in which the stock of the controlled corporation is distributed pro rata to each of the distributing corporation's shareholders.

(2) *Adjustment to basis in stock.* If the distributee's section 1248 amount, determined with respect to a hypothetical exchange of its stock in either the distributing or controlled corporation immediately after the distribution (but determined without regard to this paragraph (c)), would be less than the distributee's predistribution amount (as defined in paragraph (e) of this section) with respect to such corporation, then the distributee's basis in such stock immediately after the distribution (determined under the normal principles of section 358) shall be reduced by this difference. Notwithstanding the foregoing, however, basis in stock shall not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, the distributee shall instead include such amount in income as a deemed dividend from such corporation.

(d) *Non-pro-rata distribution by a controlled foreign corporation—(1) Scope.* This paragraph (d) applies to a distribution described in section 355 in which the distributing corporation is a controlled foreign corporation and in which the stock of the controlled corporation is not distributed pro rata to each of the distributing corporation's shareholders.

(2) *Recognition of excess section 1248 gain by exchanging shareholder.* Except as provided in paragraph (d) (3) (ii) of this section (relating to a taxable distribution election), if the distributee's section 1248 amount, determined with respect to a hypothetical exchange of its stock in either the distributing or controlled corporation immediately after the distribution (but determined without regard to this paragraph (d)), would be less than the distributee's predistribution amount (as defined in paragraph (e) of this section) with respect to such corporation, then the distributee shall include in income as a deemed dividend the amount of the difference. Notwithstanding the rules of § 1.1248-1 (d) (3), the deemed dividend included in the distributee's income by reason of the preceding sentence shall be treated as paid out of the earnings and profits of the relevant member of the distributing or controlled group to

which the difference is attributable, as the case may be. For purposes of this paragraph (d) (2), if a distributee owns no stock in the distributing or controlled corporation immediately after the distribution, the distributee's section 1248 amount with respect to such corporation shall be zero.

(3) Treatment of certain shareholders as distributees, and taxable distribution election—

(i) Distributee status. For purposes of this paragraph (d), unless a taxable distribution election is made as described in paragraph (d) (3) (ii) of this section, all persons owning stock of the distributing corporation immediately after a transaction described in paragraph (a) of this section shall be treated as distributees of such stock.

(ii) Taxable distribution election. A shareholder of the distributing corporation that—

(A) Neither exchanges stock in the distributing corporation nor receives stock in a controlled corporation, and

(B) Would otherwise be required to include an amount in income under paragraph (d) (2) of this section, may instead elect to treat the distributing corporation and the controlled corporation as not corporations for the purpose of recognition of income (but not loss) by all persons affected by the taxable status of the transaction. The election is made by delivering notice of such election to the distributing corporation on or before the 30th day following the date of the transaction.

(e) Definition of predistribution amount. For purposes of this section, the predistribution amount with respect to a distributing or controlled corporation is the amount that would be included in income as a dividend by the distributee if the distributee were a United States person that actually sold all of its stock in the distributing corporation immediately prior to the distribution (and after any section 368 (a) (1) (D) transfer described in paragraph (g) (1) of this section), but only to the extent that such dividend amount would be attributable to the distributing corporation and any corporations controlled by it immediately prior to the distribution (the "distributing group") or the controlled corporation and any corporations controlled by it immediately prior to the distribution (the "controlled group"), as the case may be, under the principles of §§ 1.1248-1 (d) (3), 1.1248-2 and 1.1248-3. In the case of a distribution in which the distributee is a foreign corporation, such corporation shall be deemed to be a United States person for purposes of this paragraph (e) (other than for purposes of determining

whether any member of the distributing or controlled group is a controlled foreign corporation), and the principle of section 1248 (c) (2) (D) (ii) shall apply in determining the correct holding period for such determination.

(f) Adjustments to earnings and profits—(1) Divisive "D" reorganizations—

(i) In general. In the case of a section 355 distribution described in paragraph (a) of this section in connection with a reorganization described in section 368 (a) (1) (D), the earnings and profits of a foreign transferor corporation shall be allocated between the foreign transferor corporation and the transferee corporation, on a pro rata basis, in accordance with the relative adjusted bases (net of liabilities) of the assets retained by the transferor and the assets transferred to the transferee. The allocation shall be made without regard to whether the transaction would otherwise be subject to the allocation rule of section 312 (h).

(ii) Coordination with branch profits tax. Notwithstanding paragraph (f) (1) (i) of this section, a foreign transferor corporation's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits shall be allocated between the foreign transferor corporation and a domestic transferee corporation in a manner consistent with § 1.894-2T (d) (4) if the domestic transferee corporation makes the election described therein.

(2) Nonapplication of § 1.312-10 (b). Section 1.312-10 (b) shall not apply in the case of a foreign distributing corporation.

Example 1—(i) Facts. DC, a domestic corporation, and FP, a foreign person, together formed FC1, a foreign corporation. DC contributed \$30 of initial capital into FC1 in exchange for 60 percent of the outstanding stock of FC1, and FP contributed \$20 of initial capital into FC1 in exchange for 40 percent of its outstanding stock. FC1 immediately formed a wholly owned foreign subsidiary, FC2, to which it contributed \$40 of initial capital. During the succeeding seven years, FC1 had earnings and profits of \$30, and FC2 had earnings and profits of \$20, none of which was described in section 1248 (d). At the end of this seven year period, the value of FC1 was \$40 exclusive of the stock of FC2, and the value of FC2 was \$60. (Thus, the value of FC1 inclusive of the stock of FC2 was \$100, and the value of the FC1 stock owned by DC was \$60.) DC had a basis of \$30 in the stock of FC1. If DC had sold all of its stock in FC1 at the end of the seven year period, DC would have included \$30 in income as a dividend under section 1248, of which \$18 (60 percent of \$30) would be

attributable to the earnings and profits of FC1 and \$12 (60 percent of \$20) would be attributable to the earnings and profits of FC2. Instead, FC1 distributed all of its FC2 stock to DC in exchange for DC's stock in FC1, in a transaction described in section 355.

(ii) Result. Under paragraph (e) of this section, DC's Predistribution Amount with respect to FC1 is \$18, and its Predistribution Amount with respect to FC2 is \$12. Immediately after the distribution (and without regard to paragraph (d) of this section), DC's section 1248 amount with respect to the stock of FC1 would be \$0 (because DC owns no stock in FC1) and DC's section 1248 amount with respect to the stock of FC2 would be \$12 (60 percent of \$20). Thus, under paragraph (d) (2) of this section, DC must include \$18 in income as a deemed dividend, because its Predistribution Amount with respect to the stock of FC2 exceeds its section 1248 amount with respect to such stock by this amount. Under § 1.367 (b)-2 (e) (2), the deemed dividend is considered as having been paid by FC2 to FC1, and then by FC1 to DC, immediately before the exchange.

Example 2—(i) Facts. DC, a domestic corporation, and FP, a foreign person, together formed FC1, a foreign corporation. DC contributed \$30 of initial capital into FC1 in exchange for 60 percent of the outstanding stock of FC1, and FP contributed \$20 of initial capital into FC1 in exchange for 40 percent of its outstanding stock. FC1 immediately formed a wholly owned foreign subsidiary, FC2, to which it contributed \$10 of initial capital. During the succeeding seven years, FC1 had earnings and profits of \$20, and FC2 had earnings and profits of \$30, none of which was described in section 1248 (d). At the end of this seven year period, the value of FC1 was \$60 exclusive of the stock of FC2, and the value of FC2 was \$40. (Thus, the value of FC1 inclusive of the stock of FC2 was \$100, and the value of the FC1 stock owned by DC was \$60.) DC had a basis of \$30 in the stock of FC1. If DC had sold all of its stock in FC1 at the end of the seven-year period, DC would have included \$30 in income as a dividend under section 1248, of which \$12 (60 percent of \$20) would be attributable to the earnings and profits of FC1 and \$18 (60 percent of \$30) would be attributable to the earnings and profits of FC2. Instead, FC1 distributed all of its FC2 stock to FP in exchange for FP's stock in FC1, in a transaction described in section 355.

(ii) Result. Under paragraph (e) of this section, DC's Predistribution Amount with respect to FC1 is \$12, and its Predistribution Amount with respect to FC2 is \$18. Immediately after the distribution (and without regard to paragraph (d) of this section), DC's section 1248 amount with respect to the stock of FC1 would be \$12 (60 percent of \$20) and DC's section 1248 amount with respect to the stock of FC2 would be \$0 (because DC owns no stock in FC2). Thus, under paragraph (d) (2) of this section, and except as described below, DC must include \$18 in income as a deemed dividend from FC2, because its Predistribution Amount with respect to the stock of FC2 exceeds its

section 1248 amount with respect to such stock by this amount. Under § 1.367(b)-2(e)(2), the deemed dividend is considered as having been paid by FC2 to FC1, and then by FC1 to DC, immediately before the exchange. Notwithstanding the foregoing, however, under paragraph (d)(3)(ii) of this section, DC may instead elect to treat FC1 and FC2 as not corporations for the purpose of recognition of income (but not loss) by all persons affected by the taxable status of the transaction. If DC so elects, then the consequences of the election include the requirement that FC1 must recognize gain on the stock of FC2 under section 311(b).

§ 1.367(b)-6 Effective date.

(a) *In general.* Section 1.367(b)-1 through 1.367(b)-6 are effective for exchanges that occur on or after [the date that is 30 days after these regulations are published as final regulations in the Federal Register]. Notwithstanding the preceding sentence, however, § 1.367(b)-2(d) (relating to the definition and computation of the "all earnings and profit amount") is effective for exchanges that occur on or after August 26, 1991.

(b) *Use of reasonable method to comply with certain notices—*(1) *Prior notices relating to section 367(b).* Notice 88-71, 1988-2 C.B. 374, provided in part that the section 367(b) regulations' ordering rules for certain post-exchange distributions out of earnings and profits of a foreign corporation are not effective for taxable years beginning after December 31, 1986, to the extent superseded by the Tax Reform Act of 1986. Notice 89-30, 1989-1 C.B. 670, provided in part that regulations under section 367(b) would be issued to prevent the double counting of earnings and profits that might otherwise result from certain post-exchange distributions and stock sales. Notice 89-79, 1989-2 C.B. 392, provided in part that, if a foreign corporation makes the election described in section 953(d), and if the foreign corporation subsequently becomes an actual domestic corporation, then the corporation's shareholders are required to include in income the pre-1988 taxable year earnings and profits of the corporation to the extent provided in section 367(b) and the regulations under that section.

(2) *Effect of prior notices.* For exchanges described in section 367(b) that occur prior to the effective date prescribed by paragraph (a) of this section, the taxpayer may use any reasonable method to comply with the notices described in paragraph (b)(1) of this section as they relate to section 367(b). For exchanges that occur on or after such date, the regulations under §§ 1.367(b)-1 through 1.367(b)-6 supersedes such notices insofar as they

provide for modifications to the section 367(b) regulations.

(c) *Effect of elimination of attribution rules.* To the extent that the rules under §§ 7.367(b)-9 and 7.367(b)-10(h) attributed earnings and profits to the stock of a foreign corporation in connection with an exchange described in section 351, 354, 355, and 356 before [the date that is 30 days after these regulations are published as final regulations in the Federal Register], the foreign corporation shall continue to be subject to the rules of § 7.367(b)-12, as modified by the relevant notices described in paragraph (b) of this section, in the event of any subsequent exchanges and distributions with respect to such stock, notwithstanding the fact that such subsequent exchange or distribution occurs on or after the effective date of this section.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 7. The authority citation for part 7 is revised to read as follows:

Authority: 26 U.S.C. 7805.

§§ 7.367(b)-1 through 7.367(b)-11 and 7.367 [Removed].

Par. 8. Sections 7.367(b)-1 through 7.367(b)-11 and 7.367(b)-13 are removed as of [the date that is 30 days after these regulations are published as final regulations in the Federal Register].

Par. 9. Section 7.367(b)-12 is amended by revising paragraph (a) to read as follows: § 7.367(b)-12 *Subsequent treatment of amounts attributed or included in income (temporary).*

(a) *Application.* This section applies to distributions with respect to, or a disposition of stock—

(1) To which, in connection with an exchange occurring before [the date that is 30 days after these regulations are published as final regulations in the Federal Register], an amount has been attributed pursuant to §§ 7.367(b)-9 or 7.367(b)-10, or

(2) In respect of which, before [the date that is 30 days after these regulations are published as final regulations in the Federal Register], an amount has been included in income or added to earnings and profits pursuant to §§ 7.367(b)-7 or 7.367(b)-10.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-19787 Filed 8-23-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

45 CFR Part 3

RIN 0905-AD55

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend the regulations in title 45 of the Code of Federal Regulations, part 3, governing the conduct of persons and traffic on the NIH Federal enclave in Bethesda, Maryland, to add a new provision prohibiting the possession of weapons.

DATES: Written comments must be received on or before October 25, 1991, in order to assure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Send written comments, preferably in duplicate, to Mr. James Koerber, Division of Security Operations, National Institutes of Health, Building 31, room B3B44, Bethesda, Maryland 20892, telephone (301) 496-8403.

FOR FURTHER INFORMATION CONTACT: Mr. O.W. Sweat, Director, Division of Security Operations, National Institutes of Health, Building 31, room B3B12, Bethesda, Maryland, 20892, telephone (301) 496-6893.

SUPPLEMENTARY INFORMATION: Notice is hereby given that NIH proposes to amend 45 CFR part 3 by adding a new paragraph (g) to § 3.42 relating to the possession of firearms, other dangerous or deadly weapons, or material, or explosive, either openly or concealed. The proposed amendment of § 3.42 will enhance the security and safety of persons conducting business or utilizing the NIH Federal enclave. The existing penalties for violation of provisions of the regulations set forth in subpart D are not affected.

E.O. 12291, Federal Regulation

The Director, NIH, has determined that the proposed regulations do not constitute a major rule, as defined under E.O. 12291, and that a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The Director, NIH, certifies that the proposed regulations would not have a significant economic impact on a

substantial number of small entities, and therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) is not required.

E.O. 12606, Family

The Director, NIH, has determined that the proposed regulations would not have a significant potential negative impact on family well-being, as defined under E.O. 12606.

E.O. 12612, Federalism

The Director, NIH, has determined that the proposed regulations would not have a significant potential negative impact on States, in the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as defined under E.O. 12612.

Paperwork Reduction Act

The proposed regulations do not contain information collection requirements subject to review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

List of Subjects in 45 CFR Part 3

Conduct, Federal buildings and facilities, Government property, Traffic regulations, Firearms.

For reasons set forth in the preamble, title 45, part 3, of the Code of Federal Regulations, § 3.42, is amended to read as set forth below.

Dated: August 1, 1991.

Bernadine Healy,

Director, National Institutes of Health.

PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

1. The authority citation for part 3 would continue to read as follows:

Authority: 40 U.S.C. 318-318d, 486; Delegation of Authority, 33 FR 604.

2. Amend § 3.42 by adding a new paragraph (g) to read as follows:

§ 3.42 Restricted activities.

(g) *Firearms, explosives, and other weapons.* No person other than a specifically authorized police officer shall possess firearms, explosives, or other dangerous or deadly weapons or materials, either openly or concealed. Upon written request, the Director may permit possession in living quarters of antique firearms held for collection purposes, if the Director finds that the

collection does not present any risk or harm.

[FR Doc. 91-20339 Filed 8-23-91; 8:45 am]

BILLING CODE 4140-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 90-23]

Automated Tariff Filing and Information System ("ATFI")

AGENCY: Federal Maritime Commission.

ACTION: Third interim rule; extension of comment period.

SUMMARY: On July 29, 1991, the Federal Maritime Commission ("FMC") published a Notice of Availability of the Third Interim Report on implementation of the FMC's Automated Tariff Filing and Information System (56 FR 35847), and invited comments, by August 26, 1991, on a modified approach to the "Harmonized System" and a proposed "transition" plan. Four conferences of ocean common carriers, Asia North America Eastbound Rate Agreement, Japan-Atlantic and Gulf Freight Conference, Transpacific Freight Conference of Japan, and Transpacific Westbound Rate Agreement, have jointly requested a two-week extension of time for filing comments because of logistical and timing problems in obtaining information from sources in the United States and Asia and developing and obtaining member approval of joint comments. The request is granted; time for filing comments is extended to September 9, 1991.

DATES: Comments (original and fifteen copies) due on or before September 9, 1991.

ADDRESSES: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001. Comments must be served on each other party to this proceeding. A copy of the Service List may be obtained from the Secretary.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5800.

Joseph C. Polking,

Secretary.

[FR Doc. 91-20337 Filed 8-23-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-241, RM-7767]

Radio Broadcasting Services; Topsail Beach, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Topsail Broadcasting, Inc., seeking the substitution of Channel 280C3 for Channel 280A at Topsail Beach, North Carolina, and the modification of Station WZXS's construction permit to specify operation on the higher powered channel. Channel 280C3 can be allotted to Topsail Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.3 kilometers (13.3 miles) northeast to avoid short-spacings to the proposed allotment of Channel 279A or Channel 279C3 at Shallotte and Channel 283A at Wilmington, North Carolina, and to accommodate petitioner's desired transmitter site, at coordinates 34-30-38 and 77-28-45. In accordance with § 1.420(g) of the Commissioner's Rules, we will not accept competing expressions of interest in use of Channel 280C3 at Topsail Beach or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 15, 1991, and reply comments on or before October 30, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stephen T. Yelverton, Esq., Maupin Taylor Ellis & Adams, P.C., 1130 Connecticut Avenue, NW., suite 750, Washington, DC 20036-3904 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-241, adopted August 12, 1991, and released August 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-20436 Filed 8-23-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-242, RM-7329]

Radio Broadcasting Services; Bay City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on a petition by Sandlin Broadcasting Company, Inc., licensee of Station KMKS(FM), Channel 273C2, Bay City, Texas, seeking the substitution of Channel 273C1 for Channel 273C2 at Bay City, Texas, and modification of its license for Station KMKS(FM) to specify operation on the higher powered channel. Channel 273C1 can be allotted to Bay City in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.0 kilometers (29.2 miles) west in order to avoid short-spacing conflicts with Station WKJQ(FM), Channel 271C, Houston, Texas, and the pending applications for the vacant but applied for Channel 273C2 at Beaumont, Texas. The coordinates for Channel 273C1 at Bay City are North Latitude 29-08-00 and West Longitude 96-26-00. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expression of interest in use of Channel 273C1 at Bay City or require the petitioner to demonstrate the

availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 15, 1991, and reply comments on or before October 30, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Helen E. Disenhaus, Swidler & Berlin, 3000 K Street, NW., suite 300, Washington, DC 20007-3851 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 654-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-242, adopted August 12, 1991, and released August 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-20437 Filed 8-23-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

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

Radio Broadcasting Services; Rusk, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by E.H. Whitehead ("petitioner"), licensee of Station KWRW(FM), Channel 249A, Rusk, Texas, proposing the substitution of Channel 249C3 for Channel 249A at Rusk and modification of Station KWRW(FM)'s license to specify operation on the higher powered channel. Channel 249C3 can be allotted to Rusk in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) south to accommodate petitioner's desired site. The coordinates for Channel 249C3 at Rusk are North Latitude 31-44-57 and West Longitude 95-09-26. This proposal is contingent upon Station KALK(FM) at Winfield, Texas, receiving a license to operate on Channel 249C2 in accordance with its outstanding construction permit (BPH-880923IG). In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 249C3 at Rusk or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 15, 1991, and reply comments on or before October 30, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Silverman, Esq., Cole, Raywid & Braverman, 1919 Pennsylvania Ave., NW., suite 200, Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 654-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-243, adopted August 12, 1991, and released August 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is

no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-20438 Filed 8-23-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

RIN 1018-AA71

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations in 50 CFR parts 32 and 33 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

DATES: Comments must be received on or before September 25, 1991.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670-ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670-ARLSQ, Washington, DC 20240; Telephone (703) 358-2043.

SUPPLEMENTARY INFORMATION: 50 CFR parts 32 and 33 contain provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the Federal Register. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Accordingly, interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (address above) by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 49(d)(1)(A) of the NWRSA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are

compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the NWRSA and Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of \$100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in parts 25, 32 and 33 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Office, U.S. Fish and Wildlife Service, 1049 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE., 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant

Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331-0833.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965-9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges). Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3538.

Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

List of Subjects**50 CFR Part 25**

Administrative practice and procedure, Concessions, Safety, Wildlife refuges.

50 CFR Part 32

Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, it is proposed to amend parts 25, 32 and 33 of chapter I of title 50 of the Code of Federal Regulations as set forth below:

PARTS 25, 32 AND 33—AMENDED

1. The authority citation for part 25, 32 and 33 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.4 [Removed]

2. Part 32 would be amended by removing § 32.41.

§ 33.2 [Amended]

3. Part 33 would be amended by removing § 33.2(f).

4. Part 25 would be amended by adding § 25.23 to read as follows:

§ 25.23 General regulations and information collection requirements.

The information collection requirements contained in subchapter C, parts 25, 32 and 33 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit. The public reporting burden for the application form is estimated to average six minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20530.

5. Section 32.2 would be amended by adding paragraph (j) to read as follows:

§ 32.2 [Amended]

5. Section 32.2 would be amended by adding paragraph (j) to read as follows:

* * * * *

(j) The use or possession of alcoholic beverages while hunting is prohibited.

6. Section 32.12 would be amended by revising (f)(3); revising (i)(4); revising (p)(2); revising (p)(4)(iii); revising (p)(5); revising (s)(2); revising (u)(1); revising (y)(2) (i) and (ii); revising (hh)(4)(i); revising (hh)(10) (ii) and (v); revising (hh)(11)(ii) and adding (hh)(11)(viii); revising (jj)(2); revising (qq)(4) (ii), (v), and adding (qq)(4)(viii); revising (qq)(7) (i) and (iii).

§ 32.12 Refuge-specific regulations; migratory game birds.

(f) *California*—* * *

(3) *Develan National Wildlife Refuge*. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following condition:

- (i) Firearms must be unloaded while being transported between parking areas and blind sites.
- (ii) Snipe hunting is only permitted in the free roam unit.
- (iii) Hunters assigned to the spaced blind unit are restricted to their original blind except for retrieving downed birds, placing decoys, or traveling to and from the parking area.
- (iv) Hunters must hunt from assigned blinds except when shooting to retrieve crippled birds.

(i) *Florida*—* * *

(4) *Merritt Island National Wildlife Refuge*. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(p) *Louisiana*—* * *

(2) *Boque Chitto National Wildlife Refuge*. Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Delta National Wildlife Refuge*.

(iii) Camping is permitted in designated area only.

(5) *Lacassine National Wildlife Refuge*. Hunting of geese, ducks, and coots is permitted on designated areas of refuge subject to the following condition: Permits are required.

(s) *Michigan*—* * *

(2) *Shiawassee National Wildlife Refuge*. Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

- (i) Permits are required.
- (ii) Duck and coot hunting is permitted only in Pool 4 and associated marshes.
- (iii) Goose hunting in designated cropland fields and areas of the Shiawassee River is permitted until 12 noon with a required check out time of 1 p.m.

(u) *Mississippi*—(1) *Boque Chitto National Wildlife Refuge*. Hunting of ducks, geese, coots, and woodcock is

permitted on designated areas of the refuge subject to the following condition: Permits are required.

(y) *Nevada*—* * * (2) *Pahranagat National Wildlife Refuge*. * * *

(i) Only nonmotorized boats or other motorless flotation devices are permitted on the refuge hunting area during the migratory waterfowl hunting season.

(ii) Hunting of waterfowl, coots, moorhens, and snipe is permitted only on the opening day of the season and alternate days throughout the remainder of the season.

(hh) *Oregon*—* * *

(4) *Cold Springs National Wildlife Refuge*. * * *

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

(10) *McKay Creek National Wildlife Refuge*. * * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

(v) The refuge may not be entered before 5 a.m.

(11) *Umatilla National Wildlife Refuge*.—* * *

(ii) In the McCormack Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New years Day. * * *

(viii) Decoys, boats, and other personal property may not be left on the refuge overnight.

(jj) *South Carolina*—* * *

(2) *Carolina Sandhills National Wildlife Refuge*. Hunting of mourning doves and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(qq) *Washington*—* * *

(4) *McNary National Wildlife Refuge*.—* * *

(ii) In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

(v) Hunters may not enter or be on the refuge between one hour after sunset and 5 a.m. or leave decoys, boats, and other personal property on the refuge overnight.

(viii) On Youth Hunt Day only youths aged 10 through 17 accompanied by an adult 18 or older may hunt.

(7) *Umatilla National Wildlife Refuge*.—* * *

(i) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

(iii) The refuge, including parking sites, is closed from 10 p.m. to 5 a.m. Decoys, boats, and other personal property may not be left on the refuge overnight.

7. Section 32.22 would be amended by revising (e)(2); revising (e)(4)(i); revising (e)(10)(i); revising (p); revising (q)(2); revising (q)(5) (i) and (ii); adding a new (q)(5)(iv); revising (v)(1); revising (dd)(1); revising (ff)(1) (i) and (iii); revising (ff)(6) (ii) and (iv); revising (ff)(8)(ii); revising (hh)(2); revising (jj)(4); revising (nn)(3) introductory text and (nn)(3) (i) and (ii); revising (nn)(5)(ii).

§ 32.22 Refuge-specific regulations; upland game.

(e) *California*—* * *

(2) *Develan National Wildlife Refuge*. Hunting of pheasant is permitted only in the free roam areas of the refuge subject to the following condition: A special one-day pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

(4) *Lower Klamath National Wildlife Refuge*. * * *

(i) In the controlled pheasant hunting area, entry permits are required for all hunters 16 years of age or older for the first 3 days of hunting. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit.

(10) *Tule Lake National Wildlife Refuge*. * * *

(i) In the controlled pheasant hunting area, entry permits are required for all hunters 16 years of age or older for the first 3 days of hunting. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit.

(p) *Kentucky and Tennessee—Reelfoot National Wildlife Refuge*. Hunting of squirrels and raccoons is permitted on designated areas of the

refuge subject to the following conditions: Permits are required.

* * * * *

(q) *Louisiana*—* * *
(2) *Bogue Chitto National Wildlife Refuge*. Hunting of squirrel, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(i) Hunting is permitted after the close of the State waterfowl season (duck) through the end of the State season.

(ii) Only shotguns are permitted.

(iv) Camping is permitted in designated area only.

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge*. Hunting of squirrel, rabbit, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(dd) *North Dakota*—(1) *Arrowwood National Wildlife Refuge*. Hunting of pheasant, sharp-tailed grouse, partridge, rabbit, and fox is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from December first through the end of the regular State seasons.

(ff) *Oregon*—(1) *Cald Springs National Wildlife Refuge*.

(1) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

(iii) Hunting is permitted only by shotgun and bow and flu-flu arrow beginning at noon each day.

(6) *McKay Creek National Wildlife Refuge*.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

(iv) Hunting is permitted by shotgun and bow and flu-flu arrow beginning noon each day.

(8) *Umatilla National Wildlife Refuge*.

(ii) In the McCormack Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Years Day.

* * * * *

(hh) *South Carolina*—* * *

(2) *Carolina Sandhills National Wildlife Refuge*. Hunting of quail, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(jj) *Tennessee*—* * *

(4) *Lake Isam National Wildlife Refuge*. Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(nn) *Washington*—* * *

(3) *McNary National Wildlife Refuge*. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted by shotgun and bow and flu-flu arrow beginning at noon each day.

(ii) In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Years Day.

(5) *Umatilla National Wildlife Refuge*.

(ii) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

8. Section 32.32 which was proposed to be amended in June 19, 1991, at 56 FR 28136, would be further amended as follows:

By revising (s)(2); adding a new (s)(5)(iii) and (iv); revising (s)(6); revising (t); revising (z)(1); revising (ii)(1) introductory text; revising (mm)(2); revising (pp)(1)(iii) through (ix); revising (ss)(4)(iv); revising (tt)(3)(ii).

§ 32.32 **Refuge-specific regulations; big game.**

(s) *Louisiana*—* * *

(2) *Bogue Chitto National Wildlife Refuge*. Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following condition: permits are required.

(5) *Delta National Wildlife Refuge*.

(iv) Archery hunting is permitted beginning October 1 through October 31.

(v) Camping is permitted in designated area only.

(6) *Lacassine National Wildlife Refuge*. Hunting of white-tailed deer is

permitted on designated areas of the refuge subject to the following condition: Permits are required.

(t) *Kentucky and Tennessee—Reelfoot National Wildlife Refuge*. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(z) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge*. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(ii) *North Dakota*—(1) *Arrowwood National Wildlife Refuge*. Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(mm) *South Carolina*—* * *

(2) *Carolina Sandhills National Wildlife Refuge*. Hunting of White-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(pp) *Texas*—(1) *Aransas National Wildlife Refuge*.

(iii) Hunters shall be at least 12 years of age. Hunters between the ages of 12 and 17 (inclusive) must hunt under the supervision of an adult 18 years of age or older.

(iv) Archery hunting is permitted for nine consecutive days beginning the first Saturday after the Monday holiday for Columbus Day in October.

(v) Archery hunt bag limits are three deer, no more than two bucks per hunter. There is no limit on feral hogs.

(vi) Permits are required for the firearms hunt.

(vii) Firearms hunting is permitted for five consecutive one day hunts beginning the first Wednesday after Veterans Day holiday in November

(viii) Firearms hunters must wear safety orange cap and vest while in hunt units.

(ix) Firearms hunt bag limit is two deer of either sex per hunter. There is no limit on feral hogs.

(ss) *Virginia*—* * *

(4) *Masan Neck National Wildlife Refuge*.

(iv) Only shotguns 20 gauge or larger loaded with buckshot are permitted.

(tt) *Washington*—* * *

(3) Umatilla National Wildlife Refuge.

(ii) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

Dated: July 2, 1991.

Richard N. Smith.

Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-20228 Filed 8-23-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 56, No. 165

Monday, August 26, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

The Citizen's Advisory Committee on Equal Opportunity; Meeting

AGENCY: Office of Advocacy and Enterprise, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Citizens' Advisory Committee on Equal Opportunity. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. Number 92-462).

DATES: September 9-14, 1991 from 8 a.m. to 5 p.m.

ADDRESSES: The meetings locations are at the Sheraton Old Town Hotel, 800 Rio Grande Boulevard NW., Albuquerque, New Mexico 87104, Alcalde Science Center, Alcalde, New Mexico 87511, Corbett Center, New Mexico State University, Las Cruces, New Mexico 88003, Santa Teresa Country Club, Santa Teresa, New Mexico 82008, and the Radisson Suite Inn, 1770 Airway Boulevard, El Paso, Texas 79925. Send written statements to Crystal Day, Office of Advocacy and Enterprise, U.S. Department of Agriculture, room 127-W, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Crystal Day on (202) 447-7117.

SUPPLEMENTARY INFORMATION: The Committee will explore how global economic shifts in agriculture will impact equal employment opportunity in the Department of Agriculture and follow-up on the Committee's 1984 trip to New Mexico.

Jo Ann Jenkins,

Director, Office of Advocacy and Enterprise.

[FR Doc. 91-20404 Filed 8-23-91; 8:45 am]

BILLING CODE 3410-94-M

Commodity Credit Corporation

Final Determinations Regarding Support Prices for Wool on Unshorn Lambs and for Mohair for the 1991 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determinations.

SUMMARY: This notice provides the final determinations concerning the price support levels for wool on unshorn lambs and for mohair for the 1991 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmunt, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, room 3760, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-6734. A Final Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these determinations will result in an annual effect on the economy of \$100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the prices of wool and mohair to producers shall be supported by means of loans, purchases, payments, or other operations. It has been determined that the prices of wool and mohair will be supported for the 1991 through 1995 marketing years by means of payments to producers.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1991 through 1995 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1985) by the ratio of: (i) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (ii) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, which is determined to maintain normal marketing practices for pulled wool, and which is determined necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 percent above or below the comparable percentage of parity at which shorn wool is supported. In order to provide such support on pulled wool, CCC has determined that it will continue to make such support through means of payments on wool on unshorn lambs.

On May 14, 1991, a notice of proposed determinations was published at 56 FR 22148, requesting comments concerning the method of calculating the price support level for wool on unshorn lambs and the level of price support for mohair for the 1991 marketing year. The notice also indicated that the 1991 shorn wool

support price (grease basis) would be \$1.88 per pound.

Only one comment was received. The respondent suggested that price support for wool and mohair be eliminated, citing it as unfair to both producers and taxpayers to support an industry in decline. However, because it is a statutory requirement, price support for wool and mohair must be made available to producers. Accordingly, in order to implement the statutory requirement that the Secretary shall support the prices of wool and mohair for the 1991 through 1995 marketing years, the following determinations have been made with respect to the wool and mohair price support programs for the 1991 marketing year. The determinations affirm 1991 support prices of \$1.88 per pound for shorn wool and \$4.448 per pound for mohair as announced by the Secretary of Agriculture in a press release issued on July 12, 1991. The support rate for wool on unshorn lambs will continue to be calculated as it has been in previous years.

Final Determinations

A. Support Price—Shorn Wool. The average parity index for the 3-year period 1987–89 is 1165.7. The average parity index for the 3-year period of 1958–60 is 297.3. The ratio of these indices is 3.9210. The result of multiplying 3.9210 by the 1965 support price of \$0.62 per pound is \$2.4310. Applying the formula indicated in section 703(b) of the Wool Act, 77.5 percent of \$2.4310 is \$1.88, when rounded to the nearest full cent.

B. Support Price—Wool on Unshorn Lambs. The support price for wool on unshorn lambs for the 1991 marketing year cannot be determined until the 1991 national average market price for shorn wool is calculated, which will occur by April 1992. The method for calculating the support price for wool on unshorn lambs shall be as follows: Once the 1991 national average market price for shorn wool is determined, the support price for wool on unshorn lambs will be determined by taking 80 percent of the difference between the 1991 support price for shorn wool and the 1991 national average market price for shorn wool, multiplied by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb).

C. Support Price—Mohair. The support price for mohair for the 1991 marketing year shall be 85 percent of the percentage of parity at which shorn wool is supported, or \$4.448 per pound. The calculation is as follows: The October 1990 parity prices for shorn wool and for mohair are \$3.27 and \$9.10 per pound, respectively. The support

price for shorn wool for the 1991 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is \$1.88 per pound or 57.5 percent of the October 1990 parity price for shorn wool. The price support level for mohair for the 1991 marketing year is equal to 85 percent of 57.5 percent (the percentage of parity at which shorn wool is supported), which is equal to 48.88 percent. Accordingly, 48.88 percent of the October 1990 parity price for mohair results in a support price for mohair for the 1991 marketing year of \$4.448 per pound.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the program support levels announced in this notice may be recalculated to comply with this Act.

Authority: 15 U.S.C. 714b and 714c and 7 U.S.C. 1781–1787.

Signed at Washington, DC on August 15, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–20405 Filed 8–23–91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Corkindale/Olson Timber Sales, Mt. Baker-Snoqualmie National Forest, Skagit County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Mt. Baker-Snoqualmie National Forest gave notice that an environmental impact statement (EIS) would be prepared for one or two timber sales within the Corkindale/Olson Project Area. The Notice of Intent was published in the January 31, 1991, *Federal Register* (56 FR 3817).

The Forest Service is currently enjoined from auctioning and awarding timber sales in suitable northern spotted owl habitat. Since portions of the Corkindale/Olson Timber Sales are located in suitable habitat, I have decided not to prepare an EIS at this time, and my previous notice is rescinded.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this cancellation to Karen Nolan, Planning Forester, Mt. Baker Ranger District, 2105 Highway 20, Sedro Woolley, WA 98284; phone: (206) 856–5700.

Dated: August 14, 1991.

Robert L. Dunblazier,

Acting Forest Supervisor.

[FR Doc. 91–20348 Filed 8–23–91; 8:45 am]

BILLING CODE 3410-11-M

Coppertayl Timber Sale, Mt. Baker-Snoqualmie National Forest, Skagit County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Mt. Baker-Snoqualmie National Forest gave notice that an environmental impact statement (EIS) would be prepared for a timber sale in the Coppertayl Project Area. The Notice of Intent was published in the August 14, 1990, *Federal Register* (55 FR 33145).

I have decided not to prepare an EIS at this time, and my previous notice is rescinded.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this cancellation to Karen Nolan, Planning Forester, Mt. Baker Ranger District, 2105 Highway 20, Sedro Woolley, WA 98284; phone: (206) 856–5700.

Dated: August 14, 1991.

Robert L. Dunblazier,

Acting Forest Supervisor.

[FR Doc. 91–20349 Filed 8–23–91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of withdrawal of finding of no significant impact.

SUMMARY: Warren M. Lee, responsible Federal official for project administered under the provisions of Public Law 83–566, 16 U.S.C. 10001–1008, in the State of Hawaii is hereby providing notification that a notice to withdraw the Finding of No Significant Impact for the Lahaina Watershed, Lahaina, Maui, Hawaii is being made. The FONSI was published in Vol. 56, No. 21 of the *Federal Register* dated Thursday, January 31, 1991. The withdrawal is a result of the many comments received by the general public during the interagency review period for this project. The Soil Conservation Service is planning to evaluate other alternatives to help alleviate the flooding problems in the project area and to also address the concerns that surfaced during the interagency review of the project. The environmental assessment of the project will be continued to determine the need

to prepare an environmental impact statement.

Further information on the proposed action or the environmental assessment may be obtained from Warren M. Lee, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii, 96850, Telephone (808) 541-2601.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Protection Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials)

Dated: August 15, 1991.

Warren M. Lee,

State Conservationist.

[FR Doc. 91-20309 Filed 8-23-91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48-91]

Foreign-Trade Zone 15—Kansas City, MO; Foreign-Trade Subzone 15E—Kawasaki Engine/Transmission Plant, Nodaway County, MO; Request for Removal of Restrictions

A request has been submitted by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15 and Subzone (SZ) 15E at the small engine/transmission manufacturing plant of Kawasaki Motors Manufacturing Corporation U.S.A. (KMM) in Nodaway County, Missouri, for removal of certain special restrictions in the Board Order approving SZ 15E. It was formally filed on August 15, 1991.

On November 27, 1989, the Board approved subzone status for the KMM plant (Board Order 454, 54 FR 50257, 12/5/89), subject to three special conditions:

1. With regard to all foreign merchandise admitted to the subzone for the manufacture of small industrial engines, KMM shall elect privileged foreign status (19 CFR 146.41) beginning two years from the date of subzone activation (2/1/90).

2. Prior to the expiration of the foregoing two-year time period, the Board shall conduct a review to determine whether KMM is adhering to the domestic sourcing plan stated in the application, and whether there is no significant evidence of harmful economic effects; and, a two-year extension of the original period shall be considered if a positive determination is made on both these factors.

3. KMM shall elect privileged foreign status on any foreign merchandise subject to antidumping and countervailing duty orders upon its admission to the subzone.

KMM requests removal of restrictions 1 and 2.

The KMM plant produces a variety of small gasoline engines and related transmissions for small equipment (construction, farm, garden, etc.), and for motorcycles, jetskis and all-terrain vehicles. Components sourced from abroad include blocks, heads, shafts, connecting rods, bearings, gears, casings, springs, fasteners, gauges, and electrical parts.

Zone procedures exempt KMM from Customs duty payments on foreign components used in products that are exported. On domestic sales, the company is able to choose the rate that applies to completed engines and transmissions (0.0-4.2%). The rates on materials and components range from 0.2 to 11.0 percent.

Restrictions 1 and 2 reflect the fact that the Board's initial approval took into account sourcing plans outlined in the original application, indicating that some 70 percent of the value of each engine model and related transmission would involve domestic inputs within 4 years of the shift of production to the United States of each engine model. The request indicates that KMM has within one year achieved a 70 percent domestic value level for its first two models.

Comments concerned the request are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below on or before October 15, 1991.

A copy of the request is available for public inspection at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716; Washington, DC 20230.

Dated: August 20, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-20426 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 47-91]

Foreign-Trade Zone 40—Cleveland, OH; Application for Subzone Ford Minivan Plant, Avon Lake, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland Cuyahoga County Port Authority, grantee of FTZ 40, requesting authority for special-

purpose subzone status for the passenger and cargo vehicle manufacturing plant of Ford Motor Company, located in Avon Lake, Ohio.

The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 14, 1991.

The Ford plant (420 acres) is located at 650 Miller Road, Avon Lake, Lorain County, Ohio. The facility will be used to produce a new model minivan in both passenger and cargo versions. Some of the components will be sourced abroad, such as engines, transmissions, radio/stereos, switches, relays, controls, power steering pumps, instrument panels, valves, hoses, and wheelcovers. Other drive train components, other electric/electronic components and sheet metal components may also be sourced abroad. Some 7 percent of the finished vehicles will be exported.

Zone procedures would exempt Ford from Customs duty payments on foreign components used in vehicles that are exported. On its domestic sales of passenger vehicles, the company would be able to choose the finished product duty rate (2.5%). The duty rate on the components range from 3.1 to 8.0 percent. On domestic sales of cargo vehicles, which have a higher duty rate (25.0%), the company would be able to defer duty payments on foreign components. The application indicates that zone savings would improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John Nelson, District Director, U.S. Customs Service, North Central Region, 55 Erieview Plaza, Cleveland, OH 44114; and Colonel John W. Morris, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara St., Buffalo, NY 14207.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 15, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 666 Euclid Avenue, room 600, Cleveland, OH 44114.

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, room 3716,
14th and Pennsylvania, NW.,
Washington, DC 20230.

Dated: August 20, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-20428 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-05-M

Signed at Washington, DC, this 19th day of
August, 1991.

Marjorie A. Chorlians,

Acting Assistant Secretary of Commerce for
Import Administration, Chairman, Committee
of Alternates, Foreign-Trade Zones Board.

[FR Doc. 91-20427 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-05-M

ibuprofen from India. Petitioner alleges that sales of ibuprofen to the United States are made by an Indian producer through an unrelated exclusive agent/distributor in the United States.

Petitioner calculated USP pursuant to the purchase price (PP) methodology (19 CFR 353.41(b)). Adjustments were made, where appropriate, for foreign inland freight, foreign inland insurance, foreign brokerage, drug export clearance charges, port charges and credit expenses. These adjustments were based on information contained in a marketing research study and petitioner's own experience.

Petitioner's estimate of Foreign Market Value (FMV) is based on domestic prices of ibuprofen published on a monthly basis in the Indian Chemical Weekly. The prices represent delivered prices offered to certain customers referred to as dealers. Petitioner contends that larger quantities of the subject merchandise also are sold directly to tablet formulators at prices comparable to those published in the Chemical Weekly. The prices were adjusted for inland freight, insurance, packing costs, and credit expenses. Based on a comparison of USP and FMV, petitioner has alleged dumping margins ranging from 33.69 percent to 39.12 percent.

In accordance with our purchase price methodology, we have recalculated credit as a circumstance of sale adjustment to FMV. Also, in the companion countervailing duty case, petitioner alleged that Indian ibuprofen producers benefit from excessive duty drawback. Petitioner did not, however, add uncollected or refunded duties to USP. Pursuant to section 722(d)(1)(B), we have done so for the non-excessive portion of duty drawback. Based on a comparison of FMV to USP, as estimated by the Department, the alleged margins range from 3.00 percent to 7.55 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on ibuprofen from India and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to

[Order No. 532]

Approval for Expansion of Foreign-Trade Zone 8 Toledo, OH

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the Toledo-Lucas County Port Authority, Grantee of Foreign-Trade Zone No. 8, has applied to the Board for authority to expand its general-purpose zone to include a site at the Toledo Express Airport, adjacent to the Toledo Customs port of entry;

Whereas, the application was accepted for filing on July 19, 1990, and notice inviting public comment was given in the *Federal Register* on August 6, 1990 (Docket 31-90, 55 FR 31869);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Toledo area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on July 19, 1990. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the Army District Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

International Trade Administration

[A-533-803]

Initiation of Antidumping Duty Investigation: Bulk Ibuprofen From India

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT:
Tracey Oakes, Office of Countervailing
Duty Investigations, Import
Administration, International Trade
Administration, U.S. Department of
Commerce, room B099, 14th Street and
Constitution Avenue, NW., Washington,
DC 20230; telephone (202) 377-3174.

Initiation

The Petition

On July 31, 1991, the Ethyl Corporation filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing bulk ibuprofen (ibuprofen). In accordance with 19 CFR 353.12, the petitioner alleges that imports of ibuprofen from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, domestic producers of ibuprofen. The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the U.S. industry producing ibuprofen. If any interested party, as described in 19 CFR 353.2(k) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner based U.S. price (USP) on Customs IM 145 data for imports of

determine whether imports of ibuprofen from India are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The product covered by this investigation is all bulk ibuprofen from India. Bulk ibuprofen, a white powder, is a non-steroidal anti-inflammatory agent which also has analgesic and antipyretic activity. It is used in the symptomatic treatment of acute and chronic rheumatoid arthritis, osteoarthritis, primary dysmenorrhea and for the relief of mild to moderate pain. The chemical description of bulk ibuprofen is 2-(4-isobutylphenyl) propionic acid C13 H18 O2. The product covered by this investigation does not include ibuprofen sold in tablet, capsule or similar forms for direct human consumption. Bulk ibuprofen is provided for in the Harmonized Tariff Schedule (HTS) subheading 2916.39.15. Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by September 16, 1991, whether there is a reasonable indication that imports of ibuprofen from India are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before January 7, 1992, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: August 20, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-20430 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from an importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China. The review covers one manufacturer and its related third-country reseller in Hong Kong of this merchandise to the United States and the period December 1, 1989 through November 30, 1990. Clover Enamelware Enterprise Ltd., China, and Lucky Enamelware Factory Ltd., Hong Kong, failed to respond to our questionnaire. As a result, we have determined to use the best information available for cash deposit and appraisement purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes or Tom F. Futtner, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-8120/3814.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 43414) an antidumping duty order on porcelain-on-steel cooking ware ("POS cooking ware") from the People's Republic of China ("PRC"). On December 27, 1990, an importer, CGS International, requested in accordance with 19 CFR § 353.22(a)(1990) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 30, 1991 (56 FR 3445). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of POS cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of

steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under HTS item 7323.94.000. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer in the PRC, Clover Enamelware Enterprise Ltd., and its related third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd., who exported the POS cooking ware to the United States, and the period December 1, 1989 through November 30, 1990.

Clover Enamelware and Lucky Enamelware failed to respond to our questionnaire. As a result, the Department used the best information available for appraisement and estimated cash deposit purposes. The best information available is the rate published in the antidumping duty order.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1989 through November 30, 1990:

Manufacturer/Third-country reseller	Margin (percent)
Clover Enamelware Enterprise Ltd./Lucky Enamelware Factory Ltd. (Hong Kong)	66.65

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions concerning all respondents directly to Customs. Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of porcelain-on-steel cooking

ware from the People's Republic of China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous review or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or, if not covered in this review, the rate from the less-than-fair-value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm, will be 13.76 percent. This is the most current non-BIA rate for any firm in this proceeding.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.22(a) of the Commerce Department's regulations.

Dated: August 19, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-20429 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-804]

Initiation of Countervailing Duty Investigation: Bulk Ibuprofen From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Tracey E. Oakes or Paulo Mendes, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, room B099, 14th Street

and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3174 and (202) 377-5050, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On July 31, 1991, the Ethyl Corporation filed with the Department of Commerce (the Department) a countervailing duty petition on behalf of the United States industry producing bulk ibuprofen (ibuprofen). In accordance with 19 CFR 355.12, the petitioner alleges that producers and exporters of ibuprofen in India receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since India is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation, and the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, the U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party as defined in 19 CFR 355.2(i), and because it has filed the petition on behalf of the U.S. industry producing ibuprofen. If any interested party, as described in 19 CFR 355.2(i) (3), (4), (5), or (6), wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Allegations of Subsidies

Petitioner lists a number of practices by the Government of India which allegedly confer subsidies on producers or exporters of ibuprofen in India. We are initiating an investigation of the following programs:

1. Import Replenishment (REP) Licenses
2. Rebates under the Cash Compensatory Support Program (CCS)
3. Excessive Drawback of Import Duties
4. Grants Under the Market Development Assistance (MDA) Program
5. Diesel Oil Subsidies
6. Preferential Export Financing Through Export Packing Credits
7. Income Tax Deductions for Exporters (Section 80HHC)
8. Preferential Post-Shipment Financing
9. Import Duty Exemptions available through Advance Licenses
10. Sales of Additional Licenses
11. Grants Received Under the Central Investment Subsidy Scheme (CISS)
12. Transportation Subsidies
13. Extension of Free Trade Zones

14. Import Duty Exemptions Available to 100 Percent Export Oriented Units
 15. Preferential Waste Disposal Rates
- #### Initiation of Investigation

Under 19 CFR 355.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the bases on which a countervailing duty may be imposed under section 705 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on ibuprofen from India and find that it meets the requirements of 19 CFR 355.13(a). Therefore, we are initiating a countervailing duty investigation to determine whether Indian producers or exporters of ibuprofen receive subsidies.

In accordance with 19 CFR 355.13(b) we are notifying the ITC of this action.

Any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Scope of Investigation

The product covered by this investigation is all bulk ibuprofen from India. Bulk ibuprofen, a white powder, is a non-steroidal anti-inflammatory agent which also has analgesic and antipyretic activity. It is used in the symptomatic treatment of acute and chronic rheumatoid arthritis, osteoarthritis, primary dysmenorrhea and for the relief of mild to moderate pain. The chemical description of bulk ibuprofen is 2-[4-isobutylphenyl] propionic acid, C13 H18 O2. The product covered by this investigation does not include ibuprofen sold in tablet, capsule or similar forms for direct human consumption. Bulk ibuprofen is provided for in the Harmonized Tariff Schedule (HTS) subheading 2916.39.15. Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

ITC Notification

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in the Department's files; provided the ITC

confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by the ITC

The ITC will determine by September 16, 1991, whether there is a reasonable indication that imports of ibuprofen from India are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before October 24, 1991, unless the investigation is terminated pursuant to 19 CFR 355.17 or the preliminary determination is extended pursuant to 19 CFR 355.15.

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: August 20, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-20431 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-DS-M

Carnegie Institution of Washington; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 4 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket Number: 91-066. *Applicant:* Carnegie Institution of Washington, Washington, DC 20015-1305. *Instrument:* Mass Spectrometer, Model 252.

Manufacturer: Finnigan MAT, West Germany. *Intended use:* See notice at 56 FR 23873, May 24, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The Foreign instrument provides an 8-cup array of Faraday detector elements and an internal precision of 0.005 per mil for 3 bar μ 1 samples of CO₂. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent

scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-20432 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Texas Medical Branch, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-013. *Applicant:* The University of Texas Medical Branch, Galveston, TX 77550.

Instrument: Accessories to Upgrade PlasmaQuad Mass Spectrometer. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 56 FR 8185, February 27, 1991. *Advice Submitted By:* National Institutes of Health, May 30, 1991.

Docket Number: 91-021. *Applicant:* Beth Israel Medical Center, New York, NY 10003. *Instrument:* Optical Disk Upgrade Kit. *Manufacturer:* Image Recognition Systems Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 11545, March 19, 1991. *Advice Submitted By:* National Institutes of Health, May 30, 1991.

Docket Number: 91-032. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Photometric Workstation. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 13625, April 3, 1991. *Advice Submitted By:* National Institutes of Health, June 13, 1991.

Docket Number: 91-048. *Applicant:* U.S. Geological Survey, Menlo Park, CA 94025. *Instrument:* CO₂-Water Equilibration Device with Supporting Hardware and Software. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 56 FR 14930, April 12, 1991. *Advice Submitted By:* National Institutes of Health, July 11, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-20433 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Las Vegas, NV

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at \$165,000 in Federal funds and a minimum of \$29,118 in non-Federal (cost sharing) contributions. Cost-Sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from January 1, 1992 to December 31, 1992. The MBDC will operate in the Las Vegas, Nevada Geographic Service Area.

The award number for this MBDC will be 09-10-92004-01.

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

The MBDC program is designed to provide business development services to the minority business community for

the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

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

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of \$50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue.

Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

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

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

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

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

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for submitting an application is October 4, 1991. Applications must be postmarked on or before October 4, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308-3516, 404/730-3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1290, San Francisco, California 94105 on September 18, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained from the San Francisco Regional Office.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 20, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91-20347 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Rochester, NY

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as \$165,000 in Federal funds, and a minimum of \$29,118 in non-Federal (cost sharing) contribution, from January 1, 1992 to December 31, 1992. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof.

The MBDC will operate in the Rochester N.Y. SMSA geographic service area.

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

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

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

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent"

performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

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

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

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

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

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free-workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants,

and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is September 27, 1991. Applications must be postmarked on or before September 27, 1991.

Proposals will be reviewed by the Washington Regional Office. Mailing address for submission is:

ADDRESSES: Cinal A. Sanchez, Regional Director, Washington Regional Office, Minority Business Development Agency, 14th & Constitution Avenue NW., room 6711, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director New York Regional Office at (212) 264-3263.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

11,800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 19, 1991.

John F. Iglehart,
New York.

[FR Doc. 91-20351 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No. 910897-1197]

Cooperative Research and Development Opportunity To Complete and Operate a Racetrack Microtron With the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks U.S. parties interested in entering into a cooperative research and development program with NIST to relocate, complete and operate a racetrack microtron. Such parties should have—or be able to acquire—expertise in the construction and operation of electron accelerators and should be prepared to invest adequate resources. This program will be undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a), which provides federal laboratories,

including NIST, with the authority to enter into cooperative research agreements (CRDAs) with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program. Contributions from other participants may include funding, personnel, facilities and equipment. This is not a grant program. This program is covered by 15 CFR part 26, Nonprocurement Debarment and Suspension.

DATES: Interested parties should respond in writing at the address shown below no later than February 24, 1991.

ADDRESSES: Dr. Francis J. Schima, National Institute of Standards and Technology, Radiation Physics Building Rm C114, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Francis J. Schima, (301) 975-5537.

SUPPLEMENTARY INFORMATION: (1) NIST has the following equipment available for the effort:

- Two magnets with power supplies
- Main acceleration cavity
- RF power supply with control system computer
- Beam insertion system with control system computer
- Injector power supplies
- Pre-accelerator
- Associated vacuum systems with control computer

(2) NIST has no funding or personnel to contribute to the effort.

(3) While NIST finds it difficult to quantify the size of the contribution required of the collaborator, completion of the facility alone—even before it begins operation—will be a major effort requiring a multiyear commitment of qualified personnel and substantial resources.

(4) Because of the nature of the facility, NIST will be able to work with only one collaborator or group of collaborators.

(5) NIST will select its collaborator or group of collaborators from among the respondents to its notice based on NIST's evaluation of the probability of success in completing and operating the RTM.

(6) Responses from interested parties should address the resources and qualified personnel the party will have available and any other information that will permit NIST to assess the probability of success.

(7) Interested parties may request an RTM Fact Sheet and a tour of the facility from the above contact.

This notice does not contain a collection of information for purposes of the Paperwork Reduction Act.

Dated: August 20, 1991.

John W. Lyons,

Director, National Institute of Standards and Technology.

[FR Doc. 91-20412 Filed 8-23-91; 8:45 am]

BILLING CODE 3610-13-M

National Oceanic and Atmospheric Administration

Subsistence Taking of Northern Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of the 1991 subsistence fur seal harvest outcome.

SUMMARY: This notice briefly summarizes the outcome of the 1991 subsistence fur seal harvest on the Pribilof Islands, Alaska.

DATES: Comments are invited through September 30, 1991.

ADDRESSES: Comments should be addressed to Dr. Aleta Hohn or Lynne Harris, NMFS Office of Protected Resources (F/PR1), 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Lynne Harris or Dr. Aleta Hohn (301) 427-2289.

SUPPLEMENTARY INFORMATION: On August 1, 1991, NMFS issued a final notice of harvest estimates for the annual subsistence fur seal harvest in the Pribilof Islands, Alaska. (56 FR 36735). Actual harvesting of fur seals began on June 30 pursuant to the Fur Seal Act regulations governing the subsistence taking of fur seals by native Alaskans, found at 50 CFR 215.31 *et seq.* On Saturday, July 27, each island reached the lower end of the specified harvest estimates (181 seals on St. George Island, 1145 seals on St. Paul). The regulations require the harvest to be suspended if the lower bound of the harvest estimate is reached, to allow for re-evaluation of subsistence need as provided by 50 CFR 215.32 (e). This suspension is to last no more than 48 hours, during which time the Assistant Administrator for Fisheries is to review the harvest data and determine whether the subsistence needs of the Pribilofians have been met by attaining the lower end of the harvest estimate. If the subsistence needs of the Pribilofians have not been met, the Assistant Administrator must estimate the number of additional seals necessary to meet the remaining needs.

On Friday, July 26, NMFS received word from the chief observer on St. Paul that the Pribilofians on both islands would very likely reach the lower end of the subsistence harvest estimates for

each island soon. In response, NMFS sent a letter to the Pribilofians outlining the type of information NMFS would require to make a determination of remaining subsistence need if the Pribilofians intended to request additional animals.

On Saturday, July 27, both St. Paul and St. George reached the lower end of their respective harvest estimates. The observers present stopped each harvest at that point. The Assistant Administrator was notified of these events on July 29, and later that same day NMFS received formal requests for additional seals from both St. Paul and St. George. On July 30, NMFS requested additional information from the Pribilofians to substantiate their requests. This information was received later that same day. After considering the information presented by the Pribilofians, the information provided by NMFS harvest observers and all harvest data collected during the first 4 weeks of the harvest, the Assistant Administrator authorized the harvesting of up to 100 additional animals on St. George and up to 500 additional animals on St. Paul. This decision was effective on July 31.

Late in the afternoon on July 31, NMFS received notice from the Humane Society of the United States of their intention to file a motion for a Temporary Restraining Order (TRO) to halt the additional harvesting authorized on St. George and St. Paul. Two hearings were held in the United States District Court for the District of Columbia on August 1. During the first of these hearings, the Court requested that NMFS suspend any further harvesting activity in the Pribilof's pending the Court's final decision. The Assistant Administrator immediately announced this suspension to the Pribilofians.

After the hearings and the submission of briefs by both sides, the Court entered an order denying the plaintiff's motion for a TRO. The order was entered at 5:24 p.m. Eastern Daylight Time on August 2. The Pribilofians were immediately notified of the outcome of the proceedings and the harvest was allowed to resume. The harvest concluded on August 8.

The total number of fur seals taken during the 1991 subsistence harvest in the Pribilof Islands is as follows: St. George—261, St. Paul—1645.

NMFS has announced its intent to re-evaluate the current methods used to determine subsistence need and measure waste as they relate to the subsistence fur seal harvest of the Pribilof Islands.

Authority: 16 U.S.C. 1151-1175, 16 U.S.C. 1361-1384.

Dated: August 20, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-20310 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

[Docket No. 910235-1173]

Termination of Status of International Depository Authority Under Budapest Treaty; In Vitro International, Inc.

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that In Vitro International, Inc.'s status as an international depository authority is terminated effective September 25, 1991.

ADDRESS: Questions should be submitted to H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: H. Dieter Hoinkes, Office of Legislation and International Affairs, (703) 557-3065.

SUPPLEMENTARY INFORMATION: Since November 30, 1983, In Vitro International, Inc. (IVI) of Linthicum, Maryland, has been recognized as an international depository authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. The Patent and Trademark Office has received a letter from Dr. Rex A. D'Agostino, President of IVI, dated May 24, 1991, stating that IVI can no longer continue to perform its functions as an international depository authority under the Budapest Treaty.

By letter dated June 25, 1991, the Patent and Trademark Office has notified the Director General of the World Intellectual Property Organization that the "the United States withdraws its declaration of assurances made on behalf of IVI on September 9, 1983". As a consequence, the termination of the status of IVI as an international depository authority takes effect on September 25, 1991.

All deposits stored with IVI under the Budapest Treaty were transferred on June 20, 1991, to a substitute authority, which is the American Type Culture Collection (ATCC), Parklawn Drive, Rockville, Maryland, 20852, (Telephone No. (301) 881-2600). All mail or other communications addressed to IVI regarding those deposits, including all files and other relevant information,

have also been transferred to ATCC. In its capacity as a substitute authority, ATCC has agreed to store all deposits transferred from IVI for an initial period of not less than three months from July 5, 1991, the date of first notice in the Federal Register of IVI's termination as an international depository authority. Patent owners and applicants who wish to preserve their date of original deposit must contact ATCC by October 5, 1991, to make arrangements to pay ATCC's fee for continued maintenance and storage of their deposits past the initial storage period. ATCC will not accept responsibility for continued storage of deposits in respect of which depositors have failed to make appropriate arrangements by October 5, 1991.

For further information, contact H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231; telephone (703) 557-3065.

Dated: August 20, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-20423 Filed 8-23-91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Electronic Security Command (ESC) will meet on 10-11 September 1991 from 8 a.m. to 5 p.m. at San Antonio, TX.

The purpose of this meeting is to address technical issues in forming the new Air Force Intelligence Command; technical implications of Desert Shield/Storm C31 results; and possible solutions to technical shortfalls in a classified ESC mission system. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 703-697-4648.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 91-20424 Filed 8-23-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board ESD Advisory Group will meet on 30 September-1 October 1991 from 0630-1700 and 0830-1200 respectively at Command Management Center, Bldg. 1606, Hanscom AFB, MA.

The purpose of this meeting is to provide advice on the ESD C31 Acquisition Programs related to Command Center Automation to include Standards, Open-system Architecture, COTS, Software, and Software Engineering. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 703-697-4648.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 91-20425 Filed 8-23-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Finding of No Significant Impact for Proposed Construction and Use of a High Energy Test and Containment Facility at Naval Underwater Systems Center Newport, RI

Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing the procedural provisions of the National Environmental Policy Act, the Department of the Navy hereby gives notice that an Environmental Assessment (EA) has been prepared and that an Environmental Impact Statement is not being prepared for the construction and use of a High Energy Test and Containment Facility at the Naval Underwater Systems Center (NUSC) Newport Rhode Island.

The proposed action involves the construction of a heavily reinforced test facility that will permit land-based testing of torpedo and underwater propulsion systems that use lithium-based chemical reactions. The 1,130 square foot facility would be constructed of reinforced concrete test cells designed to contain the effects of a worst-case system failure of a lithium based propulsion system. The facility would consist of an outer, low pressure chamber which would be part of the containment features of the facility, and an inner, high energy chamber which would be used for propulsion testing.

The containment features of the proposed facility will include reinforced concrete walls, floors, and overhead up to 54 inches thick; a double sealed blast resistant door; and blast wall penetrations for test system piping protected by valves suitable for the calculated shock pressures. The high energy chamber will be serviced by floor drains and isolated by valves that will allow any contaminated water to be pumped from an outlet in the low pressure chamber to outside the facility for accumulation and disposal as hazardous waste. The facility will not be connected to sanitary or storm drain systems. The low pressure chamber will be cleaned by a recirculating air scrubber system and mechanical filters.

The Navy tests prototype weapons systems to independently evaluate their effectiveness prior to issuance of these systems to the fleet. Currently, the Navy has not test facility, either at NUSC Newport or any other Navy installation, capable of performing the full range of required tests on present and future generations of lithium-based and other high energy propulsion systems. Existing facilities at NUSC Newport are capable of supporting all necessary tests; however, the existing test enclosures are structurally incapable of safety containing the possible effects of a worst case propulsion system failure. The proposed action is necessary to satisfy the Navy's requirement for a test facility capable of performing the full range of required tests on lithium-based energy propulsion systems in a safe and efficient manner.

Alternatives considered for providing a suitable test facility include no action, construction of the proposed facility at NUSC Newport, and construction of the proposed facility at another Navy installation. The no action alternative would preclude the Navy accomplishing required testing of lithium-based propulsion testing. Without direct Navy testing, in-service testing and full life cycle testing would be totally dependent on private contractors. As such, quality control and independent Navy certification would be sacrificed and in-house Navy technological innovation would diminish. Therefore, the no action alternative was eliminated from further consideration. While the proposed facility could be constructed at a variety of Navy installations, NUSC Newport is the Navy's principal center for research, development, test and evaluation of submarine and anti-submarine warfare

systems. Existing supporting capability for tests, including necessary personnel, test control, centers, research laboratories, instrumentation and data recorders, and highly specialized systems such as a high pressure boiler plant and steam superheating system, already exist at NUSC Newport. Therefore, construction and operation of the proposed facility at NUSC Newport is the most practicable means of conducting the required testing.

The primary siting criterion for the proposed facility is the absence of any inhabited buildings within 400 feet. Additional criteria included the availability of utilities, particularly the proximity to a source of high temperature, high pressure steam, and adequate site access. The proposed site at NUSC Newport, adjacent to buildings 179 and 1180, best meets these siting criteria. Building 179 is used as a propulsion test facility and building 1180 houses a high pressure plant that generates steam for test systems in building 179.

Impacts associated with the proposed action are not significant. The proposed site is a level maintained lawn area. The proposed action will not impact federal or state protected endangered species. Construction of the proposed facility would require excavation of about 1,000 cubic yards of material to a depth of about 7-8 feet. Appropriate erosion control measures, including fabric silt fencing and haybales, will be used during construction to minimize soil erosion.

The proposed site encroaches into the setback area established by the State of Rhode Island for wetland areas, streams and water bodies. The setback criteria establish distances of 50 feet from the edge of wetlands and 100 feet from streams less than 10 feet in width. Construction at the proposed site will place the facility about 70 feet from a stream and about 35 feet from the edge of the nearest wetland area. While the facility would be partially located in the setback area, this area is not a wetland and no construction in or alteration of the nearby wetlands will occur. The Rhode Island Department of Environmental Management has determined that this project is an insignificant alteration in accordance with the Rhode Island Freshwater Wetlands Act, thus allowing construction of the proposed facility in the setback area.

Cultural or historic resources listed, or

eligible for listing, on the National Register of Historic Places will not be impacted by the proposed action.

The proposed action will not significantly affect adjacent land uses. The proposed action has been coordinated with the Middletown Town Council.

No increases in NUSC Newport personnel will occur as a result of the proposed action. Access to the proposed facility will be via the existing access road and parking area for buildings 179 and 1180; no significant increases in vehicular traffic in or around NUSC Newport are anticipated as a result of the proposed action. All utilities will be provided through extensions of utility lines serving the adjacent support buildings, including high temperature, high pressure steam lines. Utility systems have sufficient capacity to accommodate increased demands from the proposed action.

During facility operation, emissions to the atmosphere will be limited to excess heat and an indeterminate amount of water vapor in the form of steam. Most of the heat generated will be cooled by a closed loop cooling system; no cooling water will be discharged to adjacent water bodies or utility systems.

Test operations will also result in an increase in the amount of hazardous waste generated at NUSC Newport. All solid and liquid hazardous waste produced during test operations will be removed from NUSC Newport in compliance with all applicable state and Federal regulations.

The expected number of failures in the test program each year is zero; however, the probability of failure is not sufficiently small to consider their occurrence to not be reasonably foreseeable. The containment facility has been designed to contain materials that could potentially be released to the atmosphere by a worst case propulsion system test failure. The containment facility incorporates a high energy chamber where the tests are conducted and an outer, low pressure chamber separated by a blast resistant door, which will be closed during testing. In addition, an air scrubber system and mechanical filters are included in the facility as active secondary containment.

The primary chemical compound that would be formed during a test failure (94% of products formed) would be lithium hydroxide (monohydrate). About 2% of the products formed would be

aluminum oxide (an abundant corrosion product of aluminum and air) and about 2% would be potassium chloride (a food flavoring substitute for table salt). The remaining 2% of the products formed would be inert solids (i.e., lithium oxide and lead oxide) and inert, non-toxic gases (i.e., sulfur hexafluoride).

Lithium hydroxide (monohydrate) poses a health threat very similar to the caustic powder, lye (sodium hydroxide). A commonly used measure of the health threat of exposure to airborne substances is known as "threshold limit value". This value is generally defined as the level of concentration in air that can be experienced 8 hours a day over 5 days without adverse effects by most persons. The threshold limit value defining the hazardous level for lithium hydroxide (monohydrate) has not been established by the Occupational, Safety and Health Administration (OSHA); however, OSHA has established a threshold limit value of 2.0 milligrams per cubic meter for sodium hydroxide, a similar compound. One manufacturer of lithium hydroxide has listed on its Material Safety Data Sheet a threshold limit value of 2.0 milligrams per cubic meter. For purposes of the proposed action, a threshold limit value of 1.0 milligrams per cubic meter was assumed, which is a safety factor of 100%.

In a worse-case failure, if the total quantity of lithium hydroxide were to be dispersed uniformly in a plume moving away from the facility in a four mile per hour wind (fairly close to still air), the airborne concentration would be 1.8% of the threshold limit value at a distance of 400 feet from the facility. The nearest NUSC Newport boundary from the

proposed site is 760 feet, and the nearest private (off-base) receptor is an apartment complex located about 1,100 feet from the site. This release would persist for only 20 minutes whereas the threshold limit value of exposure is determined for exposures up to 40 hours. No health risk to the general public is anticipated. Based on information gathered during the preparation of the EA, the Navy finds that construction and operation of the proposed high energy test and containment facility at NUSC Newport will not significantly impact the environment. This decision will become final in 30 days from the Federal Register publication date of this Finding Of No Significant Impact. No irretrievable commitments of resources will be taken until this decision is made final. The public is invited to submit comments on the proposed action to the address given below prior to the end of this 30 day period.

The EA prepared for this project is on file and may be reviewed by interested parties at the office of the Commanding Officer, Northern Division, Naval Facilities Engineering Command, Building 77L, US Naval Base, Philadelphia, PA 19112-5094 (Attn: Mr. Robert Ostermueller, Code 202.2), telephone 215-897-6263. A limited number of copies of the EA are available to fill single copy requests.

Dated: August 7, 1991.

Thomas J. Peeling,
Special Assistant for Environmental
Planning, Shore Activities Division, Deputy
Chief of Naval Operations (Logistics).

[FR Doc. 91-19983 Filed 8-23/91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION
[CFDA NOS.: 84.019, 84.022]

Combined Notice Inviting Applications Under Fulbright-Hays Training Grant Programs: Faculty Research Abroad and Doctoral Dissertation Research Abroad for Fiscal Year (FY) 1992 New Awards

Purpose of Programs: Applications are invited for new awards under the Fulbright-Hays Training Grant Programs for Fiscal Year 1992. The Fulbright-Hays Training Grant Programs include the Faculty Research Abroad and Doctoral Dissertation Research Abroad programs. Authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2452(b)(6)).

The Faculty Research Abroad Program offers opportunities to faculty members of institutions of higher education for research and study abroad in modern foreign languages and area studies.

The Doctoral Dissertation Research Abroad Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Eligible Applicants: For the Faculty Research Abroad and Doctoral Dissertation Research Abroad Programs, eligible applicants are institutions of higher education.

Deadline for Transmittal of Faculty Research Abroad and Doctoral Dissertation Research Abroad Applications: November 1, 1991.

Applications Available: August 30, 1991.

FULBRIGHT-HAYS TRAINING GRANT PROGRAMS

Title and CFDA No.	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Faculty Research Abroad (84.019)	\$862,502	\$8,000 to 60,000	\$28,000	30	3 to 12.
Doctoral Dissertation Research Abroad (84.022)	Rs. 540,108* \$1,688,621 Rs. 2,964,892*	\$4,000 to 50,000	17,500	90	6 to 12.

*Rupee allocation from the U.S.-India Fund.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 81, 82, 85 and 86; and

(b) Regulations governing the Higher Education Programs in Modern Foreign

Language Training and Area Studies, 34 CFR parts 662 and 663.

Priorities: The regulations governing the Faculty Research Abroad Program (34 CFR 663.32(c)) and the Doctoral Dissertation Research Abroad (34 CFR 662.32(c)) authorize the Secretary to establish priorities for the selection of applications. Pursuant to 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to Faculty Research

Abroad and Doctoral Dissertation Research Abroad applications that meet the following priority:

Research projects which focus on Africa; East Asia; Eastern Europe and U.S.S.R.; Near East; South Asia; Southeast Asia and the Pacific; or the Western Hemisphere.

Under 34 CFR 75.105 (c)(3) the Secretary funds under this competition only applications that meet this absolute

priority. In accordance with 34 CFR 75.105(c)(2), the Secretary also gives a competitive preference to Faculty Research Abroad and Doctoral Dissertation Research Abroad applications that meet the following competitive priority:

Projects which focus on the Near East, Sub-Saharan Africa or Eastern Europe, and which emphasize one of the following disciplines or types of activity: Anthropology (except the Near East and Sub-Saharan Africa), economics, geography, political science, or 19th and 20th century history.

As authorized under 34 CFR 75.105(c)(2)(i), the Secretary may award 5 selection points to an application that meets one of these competitive priorities in a particularly effective way, in addition to any points awarded to the application under the selection criteria of the Faculty Research Abroad and Doctoral Dissertation Research Abroad programs.

For Applications or Information Contact: Mrs. Merion Kane (Faculty Research Abroad Program), Telephone (202) 708-8763, Ms. Vida Moattar (Doctoral Dissertation Research Abroad Program), Telephone (202) 708-9291, Department of Education, Center for International Education, 400 Maryland Avenue SW., Washington, DC 20202-5331.

Deaf and hearing impaired individuals may call the Federal Dual Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300, between 8 a.m. and 7 p.m., eastern time).

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: August 9, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91-20334 Filed 8-23-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.116A&B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications) Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide grants to or enter into cooperative agreements to improve postsecondary education and educational opportunities.

Eligible Applicants: Institutions of postsecondary education and other non-profit public and private educational institutions and agencies.

Deadline for Transmittal of Preapplications: October 16, 1991.

Deadline for Transmittal of Final Applications: February 28, 1992.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: May 3, 1992.

Applications Available: August 23, 1991.

Available Funds: The Administration has requested a total of \$14,639,000 for the Fund for the Improvement of Postsecondary Education (FIPSE) for FY 1992. Of this amount, it is anticipated that approximately \$5,000,000 will be available for an estimated 75 new awards under the Comprehensive Program. The Congress has not yet completed action on the FY 1992 appropriation. The estimates in this notice assume passage of the Administration's Budget.

Estimated Range of Awards: \$15,000 to \$150,000 per year.

Estimated Average Size of Awards: \$70,000.

Estimated Number of Awards: 75.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86 with the exceptions noted in 34 CFR part 630.4(b); and (b) the regulations for this program in 34 CFR part 630.

Priorities: The Secretary supports a broad range of programs that seek to improve postsecondary education. Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications. Projects that do not meet any of these priorities are also eligible for support if they address other immediate problems or issues in postsecondary education. Applications are invited that seek to—

- (1) Ensure that the undergraduate curricula provide the knowledge and skills needed by educated citizens;
- (2) Ensure that recent increases in access to postsecondary education are made meaningful by improving retention and completion rates without compromising program standards;
- (3) Make campus culture more conducive to academic commitment by all postsecondary students by developing a learning friendly campus ethos;
- (4) Improve the scope and quality of international education;

(5) Improve the quality of undergraduate education and graduate education by raising academic standards, strengthening the liberal arts component of undergraduate professional programs, developing means of assessing programs and institutions, and recognizing and rewarding outstanding undergraduate teaching through hiring, tenure, and promotion policies;

(6) Reform the education of school teachers by increasing current and prospective teachers' mastery of the subjects they teach, ensuring that prospective teachers have a solid grounding in the liberal arts, and attracting more people of commitment and high intellectual ability to the teaching profession;

(7) Reform graduate education by fostering the teaching skills of Ph.D. candidates bound for careers in teaching, and broadening the social and ethical perspectives of students in professional graduate programs generally;

(8) Improve financing and educational reform;

(9) Strengthen postsecondary educational institutions and organizations through faculty development, and by recognizing and rewarding good teaching;

(10) Make postsecondary education responsive to changes in the nation's economy; or

(11) Develop educational uses of technology, including computers, television, and other electronic media.

Selection Criteria: In evaluating preapplications or applications for grants under this Comprehensive Program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* Each proposed project will be reviewed for its significance in improving postsecondary education by determining the extent to which it would—

- (1) Address an important problem or need;
- (2) Represent an improvement upon, or important departure from, existing practice;
- (3) Involve learner-centered improvements;
- (4) Achieve far-reaching impact through improvements that will be useful in a variety of ways in a variety of settings; and
- (5) Increase the cost-effectiveness of services.

(b) *Feasibility.* Each proposed project will be reviewed for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) The contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and
(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

For preapplications (preliminary applications) the selection criteria under *Significance for Postsecondary Education* are more important than those under *Feasibility and Appropriateness of funding projects*, which are equally important. For applications (final applications), all criteria are equally important. Within each of these criteria equal weight will be given to each of the subcriteria. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion. The Secretary then bases final judgement on an overall assessment of the degree to which the applicant addresses all selection criteria.

For Applications or Information Contact: Preston W. Forbes, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3100, ROB-3, Washington, DC 20202-5175. Telephone: (202) 708-5750.

Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 1135.

Dated: August 19, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91-20335 Filed 8-23-91; 8:45 am]

BILLING CODE 4000-01-M

Office of Management

Performance Review Board; Membership

AGENCY: Department of Education.

ACTION: Notice of membership of the performance review board (PRB).

SUMMARY: Notice is hereby given of the names of members of the Department of Education's PRB.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Staff, Personnel Management Service, Office of Management, Department of Education, room 1187-A, FOB-6, 400 Maryland Avenue SW., Washington, DC 20202, Telephone: (202) 401-0546.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Senior Executive Service (SES) PRBs. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive.

The PRB is also responsible for providing recertification recommendations for career SES appointees in accordance with section 3393a of title 5, U.S.C. and § 317.504(f) of title 5, Code of Federal Regulations.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Gary Rasmussen, Chair, Michael Vader, Co-Chair, Mary Jean LeTendre, Alicia Coro, Steven McNamara, John Horn, John Kristy, Neal Peden, J. Bruce Holmberg, Barry Stern, Milton Goldberg, Emerson Elliott, Thomas Skelly, Carol Cichowski, Maureen McLaughlin, William Smith,

Susan Craig, Theodore Sky, John Haines, Carol O'Riley, Mary Frances Widner, Dick Hays, Philip Link, and Daniel Bonner. The following executives have been selected to serve as alternate members of the Performance Review Board: John Tippecanick, Judy Schrag, and Douglas Ponci.

Dated: August 16, 1991.

Gary J. Rasmussen,

Acting Deputy Under Secretary for Management.

[FR Doc. 91-20336 Filed 8-23-91; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Office of Administrative Law Judges; Intent to Compromise a Claim, California Department of Rehabilitation

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the California Department of Rehabilitation now pending before the Office of Administrative Law Judges (OALJ), Docket No. 90-30-R. (20 U.S.C. 1234a(j) (1988)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before October 10, 1991.

ADDRESSES: All comments concerning this notice should be addressed to Jeffrey C. Morhardt, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., (room 4091, FOB-6), Washington, DC 20202-2242.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by writing to Jeffrey C. Morhardt, Esquire.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit of the financial affairs and operations of the California Department of Rehabilitation (DOR) for the fiscal year (FY) that ended June 30, 1987. The audit was performed by the Department's Regional Inspector General for Audit, Region IX. The audit was for the purpose of determining whether the DOR's indirect cost rates were in compliance with Federal cost principles. The auditors found that the DOR had not obtained the Department's approval of its indirect cost proposals for FY 1985

and 1986. Based on this finding, the Chief of the Financial Audit Resolution and Cost Determination Branch (Department) notified the DOR in a program determination letter (PDL), dated June 7, 1990, that it had to repay a total of \$420,798 of Federal grant funds. In failing to receive approval of its indirect cost proposals, the DOR violated the provisions of 34 CFR 74.61 and, further, 34 CFR part 74, appendix C (OMB Circular A-87), part I, J, 1., which states in relevant part that "A plan for the allocation of costs will be required to support the distribution of any joint costs related to the grant program." The DOR appealed the Department's determination to the OALJ.

The Department proposes to comprise the full amount of the \$420,798 claim for \$275,000. At the present time, the DOR is cooperating with the indirect cost rate approval process for its current indirect cost rates. Future audits will determine whether the DOR's indirect costs are being charged in accordance with Federal requirements. Given these factors, the percentage of the claim to be repaid, and the risk and cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding.

The public is invited to comment on the Department's intent to comprise this claim. Additional information may be obtained by writing to Jeffrey C. Morhardt, Esq. at the address given at the beginning of this notice.

Authority: (20 U.S.C. 1234a(f)).

Dated: August 19, 1991.

Gary J. Rasmussen,

Acting Deputy Under Secretary for Management.

[FR Doc. 91-20333 Filed 8-23-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Grant to the American Society of Civil Engineers

AGENCY: Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.7(b)(2) under Grant Number DE-FG01-91RW00238 to the American Society of Civil Engineers (ASCE) for development of a symposium on dynamic analysis and design considerations for high level nuclear

waste repositories, at a total cost of \$82,600 of which \$67,000 will be provided by DOE.

SCOPE: ASCE will issue a call for papers, invite speakers, establish the time and place of the meeting, and make all other arrangements for the symposium. The symposium will bring together industry experts, outstanding researchers, DOE program managers and policy makers, and practitioners in the field of seismic and dynamic analysis issues to present and discuss state-of-the-art topical papers to facilitate the development of an underground repository for permanent disposal of high-level nuclear waste and spent fuel.

BASIS FOR NON-COMPETITIVE AWARD: DOE is awarding this grant on a non-competitive basis for two reasons. First, ASCE could organize and conduct this symposium using its own resources and DOE determined that its support of the activity would enhance the benefits to be derived, and DOE knows of no other entity which is planning to conduct such an activity. Second, this non-profit organization has exclusive capability to successfully conduct the symposium, based upon unique expertise and reputation in the field of dynamic analysis and design considerations, as they relate to geological disposal of nuclear waste.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Nick Graham, PR-322.1, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-20416 Filed 8-23-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to W.B. Driver

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) it is making a financial assistance award under Grant Number DE-FG01-91CE15977 to W.B. Driver for purposes of completing research on the inventor's flexible drill pipe system which was started on a previous grant based on an unsolicited proposal. This grant is necessary for the completion of the grant project and involves modifying the inventor's flexible drill pipe and completing performance tests. The

objective of the grant is to demonstrate the advantages of the invention for recovering large amounts of oil remaining in reservoirs to those who have not been able to recover this oil by primary means. Funding in the amount of \$47,950 is to be provided for this grant by the Department of Energy (DOE).

The application was deemed meritorious for the Energy Related Invention Program (ERIP) based on its careful evaluation and the uniqueness of the proposed method for recovering large amounts of oil which previously could not be recovered through primary means or without expensive special equipment. Since 312 billion barrels of oil remain unrecovered until new technology can change conditions, the potential for energy saving from this flexible pipe technology could amount to billions of dollars.

In accordance with 10 CFR 600.7(b)(2)(i)(A), it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on completion of the activity; therefore a competitive solicitation would be inappropriate.

The anticipated terms of the proposed grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Operations Division "B" Office of Placement and Administration.

[FR Doc. 91-20417 Filed 8-23-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to the Jefferson Foundation

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(B), it is making a noncompetitive financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1). This award will be made under Grant Number DE-FG01-91PE79096 to the Jefferson Foundation for the development of six one-hour programs to be aired on the Public Broadcast System (PBS) in 1992.

SCOPE: The grant will provide \$60,000 in funding to the Jefferson Foundation to assist it in producing three teleconferences which will be edited into six one-hour television programs. Each teleconference will downlink up to 440 participating institutions and numerous corporations, universities, Government agencies and military installations via the Business Channel of the PBS Adult Learning Satellite Service. The Purpose of these teleconferences is to provide a forum for debate where members of academic, political and corporate communities can discuss their respective views about the shape and direction that America's emerging energy-environment policies should take.

ELIGIBILITY: Eligibility for this award is being limited to the Jefferson Foundation. DOE knows of no other entity which is conducting or is planning to conduct such a program.

The term of the grant shall be six months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: James F. Thompson, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,
Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-20418 Filed 8-23-91; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Grant; Financial Assistance Award to New England Research, Inc.

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance application for a grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 6-month grant to the New England Research, Inc. (NER), 76 Olcott Drive, White Junction, VT 05001, with an associated budget of approximately \$45,000; the budget includes a 22% participant cost share.

FOR FURTHER INFORMATION CONTACT: Mary C. Spatafore, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4253, Procurement Request No. 21-91MC28079.000.

SUPPLEMENTARY INFORMATION: The pending award involves development of a numerical model which will provide insight and understanding into the relationship of seismic reflections and refractions to gas hydrate deposits. Technically this research effort will provide significant information for developing both technical and economical production methods. Furthermore, NER possesses a significant base of fundamental and preparatory work on the hydrate zones and brings a significant amount of experience to the project; in addition, the DOE knows of no other entity which is planning to conduct the specifically proposed research. Overall, the project will provide much needed information on the potential production of gas from hydrates, and thus aid in the upgrading of the gas reserves and ultimately aid in the reduction of imported oil. The public will benefit by the research technology as DOE support will allow for greater dissemination of the project results to industry in a timely fashion.

Dated: August 15, 1991.

Louie L. Calaway,
Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91-20419 Filed 8-23-91; 8:45 am]

BILLING CODE 6450-01-M

James W. O'Neill and Co., Division of Different Approaches Inc.

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to James W. O'Neill and Company, Division of Different Approaches Inc. of Albany, CA, an exclusive license to practice the invention described in U.S. Patent No. 4,529,837, entitled "Multistrand Superconductor Cable." The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Intellectual Property, Department of Energy, Washington, DC 20585, receives

in writing any of the following, together with supporting documents:

- (i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or
- (ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments nonexclusive license applications are to be received at the address listed below no later than October 25, 1991.

ADDRESSES: Office of Assistant General Counsel for Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Intellectual Property, U.S. Department of Energy, Forrestal Building, room 6F-067, 1000 Independence Avenue, 20585; Telephone (202) 588-4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

James W. O'Neill and Company, a division of Different Approaches Inc., of Albany, CA, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,529,837, and has a plan for commercialization of the invention.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC on August 19, 1991.

John J. Easton, Jr.,

Acting General Counsel.

[FR Doc. 91-20420 Filed 8-23-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 728 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA-800-804, 806, 807, 810-814, 816, 817, 818, 820 and 825
3. 1905-0165
4. Petroleum Supply Reporting System
5. Extension for 1 year through April 30, 1993. The confidentiality provisions are being modified to indicate that data collected on these forms may be provided, upon request, to other Federal departments, officials, or agencies for official use.
6. Weekly, Monthly, Annually, Triennially
7. Mandatory
8. Businesses or other for-profit
9. 3,339 respondents
10. 14.53 responses
11. 1.15 hour per response
12. 55,857 hours
13. The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude petroleum, petroleum products, and natural gas liquids. These data are published by the EIA. Respondents are operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities tankers and barges, and oil importers.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, August 21, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-20421 Filed 8-23-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-2766-000, et al.]

Sea Robin Pipeline Co., et al.; Natural Gas Certificate Filings

August 18, 1991.

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Company

[Docket No. CP91-2766-000]

Take notice that on August 12, 1991, Sea Robin Pipeline Company (Sea Robin) Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-2766-000 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 behalf of Arco Natural Gas Marketing (Arco), under the authorization issued in Docket No. CP88-824-000 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.

Sea Robin would perform the proposed interruptible transportation service for Arco, pursuant to an gas transportation service agreement dated June 20, 1991 (service agreement no. 822290). The term of the transportation agreement is from June 20, 1991, for a primary term of one month from the date of first delivery of gas and shall continue and remain in full force and effect for successive terms of one month each thereafter unless and until canceled by either party giving thirty days written notice to the other party period to the end of the primary term of any monthly extension thereof. Sea Robin proposes to transport on a peak day up to 200,000 Mcf; on an average day up to 200,000 Mcf, and on an annual basis up to 73,000,000 Mcf of natural gas for Arco. Sea Robin states that it would receive the gas at existing receipt points along its pipeline system in offshore Louisiana and deliver the volumes to existing points of delivery in Louisiana. It is alleged the rate to be charged Arco for the proposed transportation shall not be more than the maximum rate under Rate Schedule ITS or such other rate as may be just and reasonable and acceptable to Sea Robin. Sea Robin avers that construction of facilities would not be 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. Sea Robin commenced such self-implementing service on July 1, 1991, as reported in Docket No. ST91-9685-000

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

Freeport-McMoRan Oil & Gas Company (Successor-in-Interest to FMP Operating Company)

[Docket No. CI81-86-001, *et al.*]

Take notice that on January 22, 1991, Freeport-McMoRan Oil & Gas Company (Freeport-McMoRan) of 1615 Poydras Street, New Orleans, Louisiana 70112, filed an application pursuant to section 7 of the Natural Gas Act and parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to FMP Operating Company (FMP) for certificates of public convenience and necessity to continue the sales previously made by FMP under the certificates listed in the appendix and to redesignate the related rate schedules as rate schedules of Freeport-McMoRan, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

All of the properties listed in the attached appendix were acquired by Freeport-McMoRan from FMP in a March 30, 1990 corporate reorganization in which FMP was merged into Freeport-McMoRan. Included in the application are properties from which gas has been sold pursuant to small producer certificates. Freeport-McMoRan requests certificates and rate schedule designations for the services provided under these contracts.

Comment date: September 5, 1991, in accordance with Standard Paragraph J at the end of this notice.

Appendix

FMP Operating Co. FERC gas rate schedule No.	Certificate docket No.	Purchaser
9.....	CI81-86	Florida Gas Transmission Co.
10.....	CI81-275	Transcontinental Gas Pipe Line Corp.
16.....	CI83-39	Tennessee Gas Pipeline Co.
23.....	CI83-43	Tennessee Gas Pipeline Co.
24.....	CI83-448	Texas Eastern Transmission Corp.
27.....	CI75-666	KN Energy, Inc.
31.....	CI86-524	Columbia Gas Transmission Corp.

FMP Operating Co. FERC gas rate schedule No.	Certificate docket No.	Purchaser
35.....	CI86-749	Williams Natural Gas Co.
(1).....	(1)	Northern Natural Gas Co. (Contract date 10/7/82).
NA.....	CS73-158	Natural Gas Pipeline Co. of America (Contract date 5/1/85).
NA.....	CS72-203	Panhandle Eastern Pipe Line Co. (Contract date 6/8/78).
NA.....	CS72-203	Williams Natural Gas Co. (Contract date 8/29/61).
NA.....	CS72-203	Florida Gas Transmission Co. (Contract date 8/1/79).
NA.....	CS72-204	Columbia Gas Transmission Corp. (Contracts dated 8/11/80).
NA.....	CS72-204	Trunkline Gas Co. (Contract date 2/20/80).
NA.....	CS72-204	Trunkline Gas Co. (Contract date 4/19/80).
NA.....	CS72-204	Trunkline Gas Co. (Contract date 5/1/80).
NA.....	CS72-204	Trunkline Gas Co. (Contract date 4/28/80).
NA.....	CS72-204	United Gas Pipe Line Co. (Contract date 11/14/79).
NA.....	CS72-204	United Gas Pipe Line Co. (Contract date 4/24/80).
NA.....	CS72-204	United Gas Pipe Line Co. (Contract dated 1/16/80).
NA.....	CS72-204	ANR Pipeline Co. (Contracts dated 9/1/79).

¹ Unable to locate.

3. Northern Natural Gas Company

[Docket No. CP91-2673-000]

Take notice that on August 6, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP91-2673-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to reassign certain volumes and to upgrade a related existing delivery point for use as

a sales facility to accommodate natural gas deliveries to Northern States Power Company (NSP), under its blanket certificate issued in Docket No. CP82-401-000 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 to public inspection.

Northern proposes to reassign certain volumes of natural gas and upgrade an existing delivery point, the Winona TBS #1 which is located in Winona County, Minnesota, in order to accommodate natural gas deliveries under Northern's CD-1, SS-1, PS-1, and FT-1 Rate Schedules to NSP for resale in the vicinity of Winona, Minnesota. Northern states that in the event Northern's "New Services" proposal pending at Docket No. RP88-259, *et al.*, is approved by August 31, 1991, service through the upgraded delivery point would be under Northern's proposed Rate Schedule TF (TF12 and TF5 service). It is stated that NSP has requested this reassignment of volumes and the related upgrade of the delivery point due to the expansion of its distribution system into new areas.

Northern states that the estimated volumes proposed to be delivered to NSP after the proposed realignment would be within the currently authorized level of firm entitlements for NSP. It is further stated that the reassignment of volumes, as requested herein, is expected to result in an increase in Northern's peak day deliveries of 30,355 Mcf and annual deliveries of 756,224 Mcf. The attached appendix provides additional details of Northern's realignment of volumes.

Northern indicates that natural gas is transported to the existing Winona TBS via a 10-inch La Crosse Branchline. As part of the proposal, Northern would also construct and operate approximately 8.1 miles of 12-inch loop in the existing branchline, beginning at the take-off in section 6, T104N, R21W and ending at milepost 8.1 in section 4, T104N, R20W, all located in Freeborn County, Minnesota.

Northern states that the proposed facilities would be financed in accordance with paragraph 2 of the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1. Northern estimates that the total cost to upgrade the delivery point would be \$300,000.

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

Appendix

NORTHERN NATURAL GAS COMPANY

[Realignment of current CD-1 & SS-1 entitlements or proposed new services TF 12 & TF 5 entitlements by community for Northern States Power]

Service/community served	Volumes in Mcf/d		
	Existing authority	Proposed authority	Net change
Current CD-1:			
Fairbault, MN	5,137	681	(4,456)
Winona, MN	4,432	8,888	4,456
Current SS-1:			
St. Paul/Lake Elmo, MN	19,650	16,106	(3,544)
Winona, MN	1,978	5,522	3,544
Proposed New Services TF 12:			
Fairbault, MN	(¹)	681	(¹)
Winona, MN	(¹)	8,888	(¹)
Proposed New Services TF 5:			
St. Paul/Lake Elmo, MN	(¹)	16,106	(¹)
Winona, MN	(¹)	5,522	(¹)

¹ Volumes in the New Services Settlement which is pending at Docket No. RP88-259, *et al.*, are not assigned to individual communities.

4. Algonquin Gas Transmission Company

[Docket Nos. CP91-2780-000¹, CP91-2781-000, CP91-2782-000, CP91-2783-000]

Take notice that on August 14, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 01235, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket No. CP89-948-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

¹ These prior notice requests are not consolidated.

Information applicable to each transaction including the identity of the shipper, the contract date of the transportation agreement between Algonquin and the respective shipper, the transportation agreement number, function of the shipper, i.e., marketer, producer, intrastate pipeline, etc., the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Algonquin and is included in the attached appendix.

Algonquin alleges that it would provide the proposed service for each shipper under an executed gas transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. trans. agree. (tran. agr. No.)	Shipper name	Shipper's function	Peak day ¹ avg, annual	Points of		Start up date, rate schedule, service type	Related ² dockets
				Receipt	Delivery		
CP91-2780-000 5-10-91 (9110020)	Polaris Pipeline Corp.	Marketer	160,036 160,036 58,413,140	MA, CT, NY, & NJ	NY	6-5-91, AIT-1, Interruptible.	ST91-9900-000.
CP91-2781-000 4-4-90 (9010056)	Citizens Gas Supply Corp.	Marketer	300,000 300,000 109,500,000	MA, CT, NY, & NJ	NY	7-1-91, AIT-1, Interruptible.	ST91-9898-000.
CP91-2782-000 5-13-91 (9110021)	Northeast Energy Associates.	1,294,188 1,294,188 472,378,620	MA, RI, & NJ	MA	6-2-91, AIT-1, Firm.	ST91-9901-000.
CP91-2783-000 5-21-91 (9110022)	CNG Producing Co...	Marketer	96,000 96,000 35,040,000	MA, NY, & NY	CT	6-19-91, AIT-1, Interruptible.	ST91-9899-000.

¹ Quantities are shown in MMBtu.

² The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

5. Tennessee Gas Pipeline Company

[Docket No. CP91-2779-000]

Take notice that on August 14, 1991, Tennessee Gas Pipeline Company, (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2779-000 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 behalf of Arco Natural Gas Marketing, Inc. (Arco), under the authorization 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 which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Arco, a marketer of natural gas, pursuant to a gas transportation agreement dated November 23, 1988, and as amended (LHO/R-4166/P-3148/T-3595). The term of the transportation agreement is from November 23, 1988, and shall remain in full force and effect for a term of five years and month to month thereafter; provided, however, that either party may terminate the agreement at any time upon at least 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 400,000 dekatherms; on an average day up to 400,000 dekatherms; and on an annual basis 146,000,000 dekatherms of natural gas for Arco. It is alleged the rate Tennessee

would charge Arco is pursuant to Tennessee's Rate Schedule IT. Tennessee proposes to transport gas for Arco from receipt points located in Offshore Texas and Offshore Louisiana, Louisiana and Texas to delivery points located in Texas, Louisiana, Massachusetts, Mississippi, Alabama, West Virginia, New Jersey, Tennessee, New York, Pennsylvania, Connecticut, Kentucky, and Ohio. The ultimate points of delivery are located in Texas, Louisiana, Alabama, and Mississippi. Tennessee avers that construction of facilities would not be required to provide the proposed service.

Tennessee contends that in Docket No. CP89-544-000 it was authorized to transport up to 100,000 dekatherms per day for Arco. The November 23, 1988,

contract between Tennessee and Arco has been amended to increase the volumes by an additional 400,000 dekatherms. Tennessee alleges that through administrative oversight, it failed to file a timely initial report for the increased volumes. Based on the circumstance of this matter, Tennessee submits that the hardship to the shipper of interrupting the transportation service outweighs the potential benefit of strict adherence to the 120-day limitation in § 284.223(1)(1) of the Commission's Regulations.² Tennessee, has therefore requested, that the Commission waive its Regulations to allow this service to continue by extending the 120-day limit until the proposed prior notice filing is authorized.

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Gas Transport, Inc.

[Docket No. CP91-2768-000]

Take notice that on August 12, 1991, Gas Transport Company (Gas Transport) 109 North Broad Street, Lancaster, Ohio 43130, filed in Docket No. CP91-2768-000 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 behalf of Northeast Ohio Gas Marketing, Inc. (Northeast Ohio), under the authorization issued in Docket No. CP88-824-000 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.

Gas Transport would perform the proposed interruptible transportation service for Northeast Ohio pursuant to a service agreement for ITS-1 rate schedule dated June 25, 1991. The term of the transportation agreement is from June 25, 1991, and shall continue in effect for a one-year term period and year-to-year thereafter; provided however, that either Northeast Ohio or Gas Transport may terminate the agreement by providing to the other written notice of intent to at least sixty days prior to June 24, of any year. Gas Transport proposes to transport on a peak day up to 10,000 MMBtu; on an average day up to 5,000 MMBtu; and on an annual basis up to 3,650,000 MMBtu of natural gas for Northeast Ohio. Gas

² It is explained that Tennessee is currently performing transportation service pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Tennessee commenced such self-implementing service on July 23, 1991, as reported in Docket No. ST91-9707-000.

Transport states that it would gas receive onehalf of Northeast Ohio from points of receipt at either existing connections with Columbia Gas Transmission Corporation in Wood County, West Virginia, or existing interconnections with local producers in Washington County, Ohio, for delivery to Hope Gas, Inc., near Minerals Wells and Parkersburg, Wood County, West Virginia. It is alleged the rate to be charged Northeast Ohio for the proposed transportation shall be at the maximum rate set forth in Gas Transport's rate schedule ITS-1. Gas Transport avers that construction of facilities would not be 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. Gas Transport commenced such self-implementing service on July 25, 1991, as reported in Docket No. ST91-9717-000.

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP91-2709-000]

Take notice that on August 9, 1991, Tennessee Gas Pipeline Company, (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2709-000 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 behalf of Kimball Resources, Inc. (Kimball), under the authorization 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 which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Kimball, a marketer of natural gas, pursuant to a gas transportation agreement dated April 22, 1988 (MRS/R-2313/p-2265/T-3092)). The term of the transportation agreement is from April 22, 1988, and shall remain in full force and effect for a term of two years and month to month thereafter; provided, however, that either party may terminate the agreement at any time upon at least 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 50,000 dekatherms; on an average day up to 50,000 dekatherms; and on an annual basis 18,250,000 dekatherms of natural gas for

Kimball. It is alleged the rate Tennessee would charge Kimball is pursuant to Tennessee's Rate Schedule IT. Tennessee proposes to transport gas for Kimball from receipt points located in Offshore Texas and Offshore Louisiana, Louisiana, Texas, Mississippi, and Alabama to delivery points located in Offshore Louisiana, West Virginia, Ohio, Pennsylvania, and Ohio. The ultimate points of delivery are located in Ohio, New York, and Pennsylvania. Tennessee avers that construction of facilities would not be required to provide the proposed service.

Tennessee contends that the proposed transportation service replaces the former section 311 of NGPA terminated services and retains the scheduling priority that existed under the section 311 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. Tennessee commenced such self-implementing service on August 2, 1991, as reported in Docket No. ST91-9872-000.

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket Nos. CP91-2774-000³, CP91-2775-000, CP91-2776-000]

Take notice that on August 13, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identify of the shipper, the contract date of the transportation agreement between Panhandle and the respective shipper, the transportation agreement number, function of the shipper, i.e., marketer, producer, intrastate pipeline, etc., the type of transportation service, the appropriate transportation rate schedule, the peak day, average day,

³ These prior notice requests are not consolidated.

and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Panhandle and is included in the attached appendix.

Panhandle alleges that it would provide the proposed service for each shipper under an executed gas transportation agreement and would charge rates and abide by the terms and

conditions of the referenced transportation rate schedules.

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. trans. agree. (tran. agr. No.)	Shipper name	Shipper's function	Peak day, ¹ average, annual		Delivery	Start up date, rate schedule, service type	Related ² dockets
			Points of	Receipt			
CP91-2774-000 9-14-89 (P-PLT-3030)	Tarpon Gas Marketing Ltd.	Marketer	80,000 80,000 29,200,000	OK, TX, KS & CO	KS	6-29-91, PT, Interruptible.	ST91-9636-000.
CP91-2775-000 6-18-91 (P-PLT-3744)	Panhandle Trading Co.	Marketer	100,000 100,000 36,500,000	Various Existing Points.	Various Existing Points.	6-19-91, PT, Interruptible.	ST91-9570-000.
CP91-2776-000 12-1-87 (P-PLT-1915)	Midcon Marketing Corp.	Marketer	100,000 100,000 36,500,000	Various Existing Points.	KS	6-25-91, PT, Interruptible.	ST91-9566-000.

¹ Quantities are shown in Dt.

² The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

9. Northern Natural Gas Company Corporation

[Docket Nos. CP91-2706-000⁴, CP91-2707-000, CP91-2708-000]

Take notice that on August 9, 1991, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on

behalf of various shippers under its blanket certificates issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the contract date of the interruptible transportation agreement between Northern and the respective shipper, the interruptible transportation agreement number, function of the shipper, i.e., marketer, producer, intrastate pipeline, etc., the type of transportation service, the appropriate

transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Northern and is included in the attached appendix.

Northern alleges that it would provide the proposed service for each shipper under an executed gas transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

⁴ These prior notice requests are not consolidated.

Docket No. trans. agree. (tran. agr. No.)	Shipper name	Shipper's function	Peak day, ¹ average annual	Points of		Start up date, rate schedule, service type	Related ² dockets
				Receipt	Delivery		
CP91-2706-000 7-3-91 (6250)	Enron Gas Marketing, Inc.	Marketer	100,000 75,000 36,500,000	OK & TX	TX	7-3-91, IT-1, Interruptible.	ST91-9644-000.
CP91-2707-000 7-3-91 (6251)	Enron Gas Marketing, Inc.	Marketer	100,000 75,000 36,500,000	Various Existing Points.	TX	7-3-91, IT-1, Interruptible.	ST91-9643-000.
CP91-2708-000 7-1-91 (6318)	Gas Energy Development Co.	End-User	20,000 15,000 7,300,000	Various Existing Points.	KS	7-1-91, IT-1, Interruptible.	ST91-9642-000.

¹ Quantities are shown in MMBtu.

² The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

10. Williston Basin Interstate Pipeline Company

[Docket No. CP91-2686-000]

Take notice that on August 7, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-2686-000 a request pursuant to

§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add two receipt points and three delivery points to currently authorized interruptible transportation service for Pacific Enterprises Oil Company (Pacific), a producer, under the blanket certificate issued in Docket No. CP89-1118-000 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 to public inspection.

Williston Basin requests authorization to add an additional receipt point at the WBI Storage facility in Park County, WY and at Pacific Enterprises Oil Company, U.S.A. in Big Horn County, WY. Williston Basin also intends to add

additional delivery points at the WBI Storage facility; Colorado Interstate Company in Park County, WY; and KN Energy in Fremont County, WY, in order to provide transportation service for Pacific.

Comment date: September 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

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.

J. Any person desiring to be heard or make any protest with reference to said filings 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, .214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20330 Filed 8-23-91; 8:45 am]

BILLING CODE 6717-01-M

[FERC No. JD91-08847T]

Determination Designating Tight Formation

August 19, 1991.

Take notice that on August 13, 1991, the Department of Natural Resources and Conservation, Board of Oil and Gas

Conservation for the State of Montana (Montana), and the United States Department of the Interior, Bureau of Land Management (BLM), submitted the above-referenced joint notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Bowdoin member of the Carlile Formation, hereafter referred to as the Bowdoin (Carlile) Formation, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers certain State and Federal lands located in Phillips and Valley Counties, Montana, and consists of Sections 1-18, the E½ of Section 19, Sections 20-28, the N½ and the SE¼ of Section 29, the N½ and the SE¼ of Section 33, and Sections 34-36 in T32N, R35E (MPM). The notice of determination also contains both Montana's and the BLM's findings that the referenced portion of the Bowdoin (Carlile) Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The notice of determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to this determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20324 Filed 8-23-91; 8:45 a.m.]

BILLING CODE 6717-01-M

[FERC No. JD91-08848T Montana-6]

Determination Designating Tight Formation

August 19, 1991.

Take notice that on August 13, 1991, the Department of Natural Resources and Conservation, Board of Oil and Gas Conservation for the State of Montana (Montana), and the United States Department of the Interior, Bureau of Land Management (BLM), submitted the above-referenced joint notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Greenhorn Limestone member and the Phillips (Lower Greenhorn) member of the Greenhorn Formation qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers certain State and Federal lands located in Phillips and Valley Counties,

Montana. The designated acreage applicable to each member of the Greenhorn Formation is the same, and consists of Sections 1-18, the E½ of Section 19, Sections 20-28, the N½ and the SE¼ of Section 29, the N½ and the SE¼ of Section 33, and Sections 34-36 in T32N, R35E (MPM). The notice of determination also contains both Montana's and the BLM's findings that the Greenhorn member and the Phillips (Lower Greenhorn) member of the Greenhorn Formation, within the designated area, meet the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The notice of determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to this determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20325 Filed 8-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-161-000, RP89-172-000, CP90-2275-000, and CP91-687-000]

ANR Pipeline Co.; Informal Settlement Conference

August 19, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on September 11 and 12, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), in invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Coteur at (202) 208-1076 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20327 Filed 8-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-66-000]

**Superior Offshore Pipeline Co.;
Proposed Changes in FERC Gas Tariff**

August 19, 1991.

Take notice that on August 8, 1991, Superior Offshore Pipeline Company ("SOPCO") tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1.

FERC Gas Tariff, Original Volume No. 1
Sixth Revised Sheet No. 5

SOPCO notes that the revised tariff sheet is being filed to amend SOPCO's initial FERC Annual Charge Adjustment ("ACA") related tariff sheet to reflect the change in the FERC ACA Unit charge. SOPCO has received an Annual Charges Billing from the Commission for the fiscal year 1991 and has already remitted to the Commission SOPCO's portion of the Commission deficit. For the purpose of recovering this payment, SOPCO has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA Unit Charge. As set forth by the Commission on SOPCO's Annual Charges Bill, SOPCO's ACA Unit Charge will change from \$0.0018/MMBtu to \$0.0023/MMBtu. SOPCO proposed that this change be made effective October 1, 1991.

Any person desiring to be heard or 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 the Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 26, 1991. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20326 Filed 8-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18369-001, et al.]

**Torch Oil & Gas Co.; Notice of
Application**

August 19, 1991.

Take notice that on January 22, 1991, Torch Oil & Gas Company (Torch) of 1221 Lamar, Suite 1600, Houston, Texas

77010, filed an application pursuant to Section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to Felmont Oil & Gas Company (successor-in-interest to Felmont Oil Corporation) (Felmont) for authorization to continue the sales previously made by Felmont under the certificates listed in the Appendix and requesting that the related rate schedules be redesignated as those of Torch, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By assignment dated September 25, 1989, and effective September 1, 1989, Felmont Oil Corporation assigned its interests to Felmont Oil & Gas Company which later filed a Certificate of amendment changing its corporate title to Torch Oil & Gas Company effective January 25, 1990. Torch is now seeking authorization to continue sales from the acquired interests.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 5, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition 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). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Torch to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

APPENDIX

Certificate docket No.	Felmont Oil Corporation FERC gas rate schedule No.	Purchaser
G-18369	11	Transcontinental Gas Pipe Line Corporation.
CI67-1077	14	Transcontinental Gas Pipe Line Corporation.
CI69-917	15	Transcontinental Gas Pipe Line Corporation.
CI69-673	16	Transcontinental Gas Pipe Line Corporation.

APPENDIX—Continued

Certificate docket No.	Felmont Oil Corporation FERC gas rate schedule No.	Purchaser
CI69-918	17	Transcontinental Gas Pipe Line Corporation.
CI71-355	18	ANR Pipeline Company.
CI73-642	19	Columbia Gas Transmission Corporation.
CI73-905	20	Transwestern Pipeline Company.
CI75-741	21	Transwestern Pipeline Company.
CI76-75	22	El Paso Natural Gas Company.
CI76-265	23	Texas Eastern Transmission Corporation.
CI76-318	24	Columbia Gas Transmission Corporation.
CI77-716	25	El Paso Natural Gas Company.
CI78-427	26	El Paso Natural Gas Company.
CI78-678	27	Columbia Gas Transmission Corporation.
CI78-642	28	Northern Natural Gas Company.
CI78-679	29	Columbia Gas Transmission Corporation.
CI78-668	30	Columbia Gas Transmission Corporation.
CI78-669	31	Columbia Gas Transmission Corporation.
CI79-280	32	Tennessee Gas Pipeline Company.
CI79-418	33	Texas Eastern Transmission Corporation.
CI80-105	35	Southern Natural Gas Company & United Gas Pipe Line Company.
CI80-202	36	Columbia Gas Transmission Corporation.
CI80-229	37	Northern Natural Gas Company.
CI80-230	38	Northern Natural Gas Company.
CI80-349	39	Columbia Gas Transmission Corporation.
CI81-52	40	Columbia Gas Transmission Corporation.
CI81-174	41	Transcontinental Gas Pipe Line Corporation.
CI81-203	42	Columbia Gas Transmission Corporation.
CI81-267	43	Columbia Gas Transmission Corporation.
CI81-273	44	Transcontinental Gas Pipe Line Corporation.
CI82-335	45	Transcontinental Gas Pipe Line Corporation.
CI82-330	46	Transcontinental Gas Pipe Line Corporation.
CI82-340	47	Transcontinental Gas Pipe Line Corporation.

APPENDIX—Continued

Certificate docket No.	Felmont Oil Corporation FERC gas rate schedule No.	Purchaser
CI82-395	48	Tennessee Gas Pipeline Company.
CI84-603	49	Natural Gas Pipeline Company of America.
CI85-517	50	Natural Gas Pipeline Company of America.
CI86-175	51	Brooklyn Union Gas Company.

[FR Doc. 91-20328 Filed 8-23-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of \$15,000,000, plus accrued interest, received from AOC Acquisition Corp. under the terms of a settlement agreement concerning alleged crude oil and refined petroleum product violations by Apex Oil Co., Clark Oil & Refining Corp., Novelty Oil Co., Goldstein Oil Co., and Apex Holding Co., Case No. LEF-0003. The OHA has determined that \$3,620,649, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, and that the remaining \$11,379,351, plus accrued interest, will be distributed to customers who purchased refined petroleum products from Clark Oil & Refining Corp. during the period August 19, 1973 through January 27, 1981.

DATES AND ADDRESSES: Applications for Refund to either the crude oil or refined product pool must be filed in duplicate, addressed to "subpart V Crude Oil Overcharge Funds" or "Apex/Clark Special Refund Proceeding" as appropriate, and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

Applications to the crude oil pool must be postmarked by June 30, 1992. Applications to the refined product pool

should display a prominent reference to case number "LEF-0003" and be postmarked by July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants \$15,000,000, plus accrued interest, obtained by the DOE under the terms of a settlement agreement entered into with AOC Acquisition Corp. (AOC) on November 25, 1988. The funds were paid by AOC towards the settlement of alleged violations of the DOE price and allocation regulations relating to transactions by Apex Oil Co. (Apex), Clark Oil & Refining Corp. (Clark), Novelty Oil Co., Goldstein Oil Co., and Apex Holding Co. involving the sale and marketing of crude oil and refined petroleum products during the period of August 19, 1973 through January 27, 1981 (the settlement agreement period).

The OHA will divide the AOC settlement agreement fund into two different refund pools based on alleged crude oil overcharges and alleged refined petroleum product overcharges.

For the crude oil refund pool (\$3,620,649 plus accrued interest), the OHA has determined that these funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

With respect to the refined product refund pool (\$11,379,351 plus accrued interest), the OHA has determined that it will distribute these funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Clark who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order

to receive a refund are set out in section VI of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of refined petroleum products which they purchased from Clark.

If any funds remain in the refined product refund pool after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07.

Applications for Refund to the crude oil pool must be postmarked by June 30, 1992. Any claimant which has already filed a subpart V crude oil refund application should not file another application, as the prior application will be deemed to be filed in this crude oil refund proceeding. Purchasers of regulated petroleum products from Clark during the period August 19, 1973, through January 27, 1981, may file Applications for Refund from the refined product pool. The refined product refund applications must be postmarked by July 31, 1991. Instructions for the completion of crude oil and refined product refund applications are set forth in the Decision that immediately follows this notice. Crude oil and refined product refund claims should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: August 20, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Names of Firms: Apex Oil Co., Apex Holding Co., Clark Oil & Refining Corp., Goldstein Oil Co., Novelty Oil Co.

Date of Filing: November 3, 1989.

Case Number: LEF-0003.

On November 3, 1989, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which AOC Acquisition Corp. (AOC) remitted to the DOE pursuant to a settlement, dated November 25, 1988, between the DOE and AOC. AOC has remitted \$15,000,000

pursuant to the settlement, to which \$3,196,450.57 in interest has accrued as of June 30, 1991. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the AOC settlement agreement. This Decision and Order establishes the procedures which OHA will employ to distribute these funds.

I. Background

In 1981, Apex Oil Company (Apex) acquired the Clark Oil & Refining Corporation (Clark) through its wholly-owned subsidiary, Apex Holding Company (AHC), a Missouri corporation. At the time of the acquisition, Apex was a partnership owned entirely by two Missouri corporations, Novelty Oil Company (Novelty) and Goldstein Oil Company (Goldstein).

Between 1984 and 1987 the ERA issued six Proposed Remedial Orders (PROs) in the matters of Apex (Case Number 6COX00257); Clark and Apex (Case Number RCKH00300); and Clark, Apex, Novelty, Goldstein, and AHC (Case Numbers RCKH016A1, RCKH001A1, RCKB00101, and RCKL000A1). For the purposes of these PROs, the ERA alleged that Apex was a reseller of crude oil and that Clark was a refiner and seller of refined petroleum products. Novelty and Goldstein, because of their control of Apex, and AHC, because of its control of Clark, were each considered by the ERA to be part of the same "firm" as Apex and Clark. In each of these cases the ERA alleged violations of the Federal petroleum price and allocation regulations. Objections were filed with the OHA in each case. A Remedial Order was issued by OHA on October 10, 1985, for ERA Case Number RCKH00300. See *Clark Oil & Refining Corp.*, 13 DOE ¶ 83,039 (1985). Another Remedial Order was issued on February 18, 1988, for ERA Case Number 6COX00257. See *Apex Oil Co.*, 17 DOE ¶ 83,004 (1988).

In 1987, various bankruptcy proceedings were commenced by the companies involved in these cases. These proceedings were subsequently consolidated, and on August 30, 1988, the various debtors filed a motion for approval for the AOC Acquisition Corporation (AOC) to purchase their assets. The DOE's objection to the acquisition was withdrawn following an agreement dated November 25, 1988, between AOC and DOE to settle all of

the DOE's claims based on the six PROs for alleged regulatory violations during the period August 19, 1973 through January 20, 1981 (the AOC settlement agreement period). On August 3, 1989, OHA dismissed all pending proceedings involving the four PROs and two Remedial Orders.

Pursuant to the settlement agreement, AOC remitted \$15,000,000 to the DOE, to which \$3,196,450.57 in interest has accrued as of June 30, 1991. Therefore, a total of \$18,196,450.57 (the AOC settlement agreement fund) is available for distribution through subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 et seq., Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the AOC settlement agreement fund and have determined that such a proceeding is appropriate. This Decision and Order sets forth the OHA's plan to distribute this fund.

III. The Proposed Decision and Order and Analysis of Comments Received

On February 15, 1991, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the AOC settlement agreement fund. That PD&O was published in the *Federal Register*, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 56 FR 7371 (February 22, 1991). In addition, OHA mailed the PD&O to many interested parties. Only one written comment was filed regarding our proposed refund procedures. That comment focused on the demonstration of injury required of refiners, resellers, or retailers, which do not elect to utilize either the "small claims" or "mid-level claims" presumptions discussed below. The

commentor suggests that the method of demonstrating injury stated in the PD&O should not be the exclusive method of demonstrating injury. We agree. The OHA will consider any evidence presented by an applicant in determining whether the applicant was injured and should receive a refund.

OHA has decided to make one amendment to the proposed refund procedures *sua sponte*. In the PD&O we proposed that under the "small claims" presumption, a refiner, reseller, or retailer seeking a refund of \$5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of Clark products it purchased during the period of overcharges. In order to reduce the burden on smaller claimants, and in view of the relatively large volumetric refund, we have decided to raise the limit of the small claims presumption to \$10,000. See *Texaco Inc.*, 20 DOE ¶ 85,147, at 88,320 (1990); see also Refund Procedures *infra*.

Therefore, except for the revision discussed, we will adopt the refund procedures of the PD&O, set forth below, in final form.

IV. Division of the AOC Settlement Agreement Fund

The PRO issued to Apex alone, 6COX00257, alleged that Apex violated DOE regulations by failing to certify properly the crude oil it sold and by charging prices in excess of its permissible average markup. The Remedial order issued by OHA on February 18, 1988, determined that these violations amount to \$3,620,649. Because these violations were fully adjudicated in the Remedial Order, we believe that it is most equitable to direct \$3,620,649, plus accrued interest, of the AOC settlement agreement fund into a crude oil refund pool.

The remaining PROs alleged numerous violations of DOE regulations governing the sale of refined petroleum products. During the period of petroleum price controls, the ERA conducted several audits of Clark's operations to determine its compliance with the DOE regulations. As a result of these audits, the ERA issued Notices of Probable Violation (NOPVs) alleging that Clark had not complied with the refiner price regulations in its refined product sales. Although the total amount of violations alleged exceeded \$150,000,000, the major issues had not as yet been fully resolved at the time of settlement agreement between the DOE and AOC. Therefore, we will direct the remaining \$11,379,351, plus accrued interest, of the AOC

settlement agreement fund into a refined product refund pool.

V. Crude Oil Refund Procedures

A. Crude Oil Refund Policy

The portion of the AOC settlement agreement fund in the crude oil pool will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See *City of Columbus, Georgia*, 18 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on

the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, e.g., *Shell Oil Co.*, 17 DOE ¶ 85,204 (1986) (*Shell*); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).

B. Refund Claims

We will adopt the DOE's standard procedures to distribute the crude oil portion of the AOC settlement agreement fund. As stated above, \$3,620,649, plus accrued interest, is the amount covered by the crude oil portion of this Decision. We have chosen to initially reserve twenty percent of these funds, or \$724,129.80, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See *Mountain Fuel*, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the Apex crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. 751-760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See *Shell*, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also *Petroleum Overcharge Distribution and Restitution Act section 3003(b)(2)*, 15 U.S.C. 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrow accounts established by the Stripper Well

Settlement Agreement, it has waived its right to file an application for Apex crude oil refund monies. See *Mid-America Dairymen v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 28,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 28,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE should not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date.

C. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application. If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has

waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) If the applicant is not an end-user, was covered by the DOE price regulations, or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(8) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(9) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is June 30, 1992. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

D. Payments to the Federal Government and the States

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil overcharged amounts subject to this Decision, or \$2,896,519.20, plus accrued interest, should be disbursed in equal shares to the Federal government and the states for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

VI. Refined Product Refund Procedures

We will implement a two-stage refund procedure for the refined product portion of the AOC settlement fund. Purchasers of Clark refined products during the settlement agreement period may submit Applications for Refund in the initial stage. From our experience with subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities and cooperatives; and (iii) refiners, resellers and retailers (hereinafter collectively referred to as "resellers"). The submission of a refund application for a share of the AOC crude oil pool will not be considered as a request for a refund from the AOC refined product pool; therefore, a separate refined product application must be submitted.

A. Claims Based Upon Alleged Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Clark refined petroleum products during the settlement agreement period. If the product was not purchased directly from Clark, the claimant must establish that the product originated with Clark. Additionally, a reseller claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Clark's alleged overcharges. This showing will generally consist of two distinct elements. First, a reseller claimant will be required to show that it had "banks" of unrecouped increased product costs

in excess of the refund claimed.¹ Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. See *Vickers Energy Corp./Hutchens Oil Co.*, 11 DOE ¶ 85,070 at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Clark. See *National Helium Co./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

1. The Use of Presumptions

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, e.g., *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 CFR 205.282(e). Accordingly, we will adopt the presumptions set forth below.

a. Calculation of Refunds

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Clark's sales of refined petroleum products during the settlement agreement period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.² In the absence of

¹ Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from any cost banks submitted in this refund proceeding. See *Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum product) or for any prior month. See *Standard Oil Co. (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. See, e.g., *Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986).

² If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forgo this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Clark's alleged overcharges. See, e.g., *Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil/Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989).

better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the AOC settlement agreement fund is equal to the number of gallons purchased from Clark during the applicable settlement agreement period times the per gallon refund amount. In the present case, the per gallon refund is \$.0011. We derived this figure by dividing the refined product portion of the settlement fund, \$11,379,351, by 10,506,641,585 gallons, the volume of gallons of covered refined products which Clark sold from August 19, 1973, through the date of decontrol of the various products.³ Using this volumetric amount, a claimant would be eligible for a refund of \$1,100 per one million gallons purchased. A firm that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rate share of the accrued interest.⁴

In addition to the volumetric presumption, we will also adopt a number of presumptions regarding injury for claimants in each category listed below.

b. End-Users

In accordance with prior subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of Clark petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges resolved by the settlement agreement. See, e.g., *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the settlement agreement period, and were not required to keep records which justified selling price increases by

reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* Accordingly, end-users of Clark refined petroleum products need only document their purchase volumes from Clark during the settlement agreement period to make a sufficient showing that they were injured by the alleged overcharges.

c. Regulated Firms and Cooperatives

In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *i.e.* a public utility or an agricultural cooperative, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. See *Marathon*, 14 DOE at 88,514-15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.⁵

d. Refiners, Resellers and Retailers

i. Small Claims Presumption

We will adopt a "small claims" presumption that a firm which resold Clark products and requests a small refund was injured by the alleged overcharges. Under the small claims presumption, a refiner, reseller or retailer seeking a refund of \$10,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of

Clark products it purchased during the settlement agreement period. See *Texaco Inc.*, 20 DOE ¶85,147, at 88,320 (1990). This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might possibly exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.⁶

ii. Mid-Level Claim Presumption

In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds \$10,000, excluding interest, may elect to receive as its refund either \$10,000 or 40 percent of its allocable share, up to \$50,000, whichever is larger.⁷ The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the alleged overcharges. See *Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analyses in order to determine product-specific levels of injury. See, e.g., *Getty Oil Co.*, 15 DOE ¶85,064 (1986). However, in *Gulf Oil Corp.*, 16 DOE ¶85,381 at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we will therefore adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Clark refined petroleum products

³ Refund applications may only be based upon purchases of refined products between August 19, 1973 and the day preceding the relevant decontrol date for each product as summarized below:

Road Oil and Asphalt: April 1, 1974.

No. 5 and No. 6 Fuel Oil: June 1, 1976.

No. 1 and No. 2 Fuel Oil, and Diesel Fuel: July 1, 1976.

Butane and Isobutane: January 1, 1980.

Motor Gasoline and Propane: January 28, 1981.

⁴ As in previous cases, we will establish a minimum refund amount of \$15. In this determination, any potential claimant purchasing less than 13,636 gallons of petroleum products from Clark would have an allocable share of less than \$15. We have found through our experience that the cost of processing claims in which refunds for amounts less than \$15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,590 at 89,150 (1988) (*Exxon*).

⁵ A cooperative's purchases of Clark petroleum products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See *Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,215 (1989).

⁶ In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 9,090,909 gallons of Clark refined petroleum products during the settlement agreement period.

⁷ Under the mid-level injury presumption, a claimant which purchased between 9,090,909 gallons and 22,727,273 gallons of Clark petroleum products would be eligible to receive a principal refund, exclusive of interest, of \$10,000. A claimant purchasing between 22,727,273 gallons and 113,636,364 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share, and an applicant with a purchase volume in excess of 113,636,364 gallons would be eligible for a principal refund of \$50,000.

during the settlement agreement period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to \$50,000, or \$10,000, whichever is greater.⁸

iii. Spot Purchasers

We will adopt a rebuttable presumption that a reseller that made only spot purchases from Clark did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See, e.g., *Vickers*, 8 DOE at 85,396-97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to establish the extent to which it was injured as a result of its spot purchases from Clark.⁹

B. Allocation Claims

We may also receive claims based upon Clark's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in subpart V implementation cases such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988); *Marathon Petroleum Co./Research Fuels, Inc.*, 10 DOE ¶ 85,575 (1989), action for review pending, No. CA3-89-2983G (N.D. Tex. filed Nov. 22, 1989) (*Marathon/RFI*). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with Clark and the likelihood that Clark failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the

⁸ A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it was injured in an amount less than the presumed level refund, may not necessarily receive a full presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application.

⁹ In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) They made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (2) they were forced by market conditions to resell the product at a loss.

claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Clark may have had to the alleged allocation violation. See *Marathon/RFI*. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Clark. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the AOC settlement agreement fund that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the AOC settlement agreement reflects a negotiated compromise of the issues involved in the enforcement proceedings against Clark and the settlement agreement amount is less than Clark's potential liability in those proceedings, we will reduce allocation refunds which would otherwise be disproportionately large. See *Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319, at 88,596 (1989) (refund reduced by the ratio of the settlement fund to the aggregate amount of alleged overcharges).

C. Refined Product Application Requirements

To apply for a refund from the AOC refined product pool, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) The applicant's use(s) of the Clark petroleum products: e.g., retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative, or public utility;

(3) For each petroleum product which the applicant purchased from Clark, a

separate monthly purchase schedule covering the period between the beginning of the refund period (August 19, 1973) and the date of decontrol of the petroleum product. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant was a direct purchaser from Clark, it should provide its customer number. If the applicant was an indirect purchaser from Clark (e.g., it purchased Clark petroleum product through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the petroleum products claimed were originally sold by Clark;

(5) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds \$10,000 (i.e., whose purchases equal or exceed 9,090,909 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of \$10,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Clark's alleged overcharges. See section VI.A *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the AOC refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If the applicant is or was partially or entirely owned by AOC, Apex, Clark, Goldstein, or Novelly, it should explain this affiliation, including the years in which it was affiliated with any of those entities;¹⁰

¹⁰ As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates or subsidiaries of AOC, Apex, Clark, Goldstein, and Novelly were not injured by Clark's alleged overcharges. See, e.g.,

(9) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreement, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Apex/Clark Special Refund Proceeding, Case No. LEF-0003." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than July 31, 1992, and sent to: Apex/Clark Special Refund

Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶85,288 (1987). This is so because Clark presumably would not have sold petroleum products to an affiliate or subsidiary if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶85,611 (1987), amended claim denied, 17 DOE ¶85,291 (1988), reconsideration denied, 20 DOE ¶85,236 (1990). Additionally, if an affiliate or subsidiary of Clark was granted a refund, Clark would be indirectly compensated from a consent order fund remitted to settle its own alleged violations.

Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

D. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the AOC settlement agreement escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil pool, remitted to the Department of Energy by AOC Acquisition Corporation pursuant to the Settlement Agreement, dated November 25, 1988, may now be filed.

(2) All crude oil refund applications submitted pursuant to Paragraph (1) above must be postmarked no later than June 30, 1992.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Controller's Office, Department of Energy, shall take appropriate action to transfer the funds specified in Paragraphs (4), (5), and (6) below from the subaccount denominated "AOC Acquisition Corporation," Account No. RCKH016A1Z.

(4) The Director of Special Accounts and Payroll shall transfer \$1,448,259.60 (and accrued interest) of the funds obtained pursuant to paragraph (3) above into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer \$1,448,259.60 (and accrued interest) of the funds obtained pursuant to paragraph (3) above into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer \$724,129.80 (and accrued interest) of the funds obtained pursuant to paragraph (3) above into the subaccount denominated

"Crude Tracking-Claimants 4," Account No. 999DOE010Z.

(7) Applications for Refund from the refined product pool, remitted by AOC Acquisition Corporation pursuant to the Settlement Agreement, dated November 25, 1988, may now be filed.

(8) Applications for Refund from the refined product pool must be postmarked no later than July 31, 1992.

Dated: August 20, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-20422 Filed 8-23-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3988-6]

Air Pollution Control; Motor Vehicle Emission Factors—Notice of Model Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of revised highway motor vehicle emission factor model.

SUMMARY: Section 130 of the CAA required ERA to review and, if necessary, revise the emission factors used to estimate emissions of carbon monoxide (CO), volatile organic compounds (VOC), and oxides of nitrogen (NO_x) from area and mobile sources. This review and revision has been completed with respect to highway motor vehicles, and the result is the release of a revision of the MOBILE4 emission factor model. This model, referred to as MOBILE4.1, is the model that EPA will require States and local and regional air quality planners to use in the development of the highway mobile source portion of the base year emission inventories, required of all ozone and carbon monoxide nonattainment areas under the 1990 amendments to the Clean Air Act.

DATES: The revised model was completed on July 29, 1991. Copies of the model will be available after August 10, 1991 to State, local, and regional government agencies with responsibility for preparing emission inventories for submission to EPA. The model will be available to others through the National Technical Information Service (NTIS) approximately August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Terry P. Newell, Test and Evaluation Branch, U.S. EPA Motor Vehicle Emission Laboratory, 2565 Plymouth

Road, Ann Arbor, MI 48105. Telephone: (313) 668-4462, FTS 374-8462.

SUPPLEMENTARY INFORMATION: Section 130 of the Clean Air Act (CAA), as amended by the CAA Amendments of 1990, requires EPA to "review and, if necessary, revise the * * * emission factors used * * * to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen from sources of such air pollutants * * * including mobile sources." EPA's estimates of highway vehicle emission factors are developed using the a computer program which estimates emission factors for eight types of highway vehicles at a range of user-specified conditions (e.g., average speed, ambient temperature). The previous version of the model, MOBILE4, was released in March 1989. This notice announces completion of EPA's review of and revisions to the model. The model revision, MOBILE4.1, is now available.

The first requirement for use of this updated emission factor model will be the preparation of base year (1990) inventories for ozone and CO nonattainment areas, in accordance with the CAA amendments. Given the primary importance of these inventories, which will form the baseline for States' control strategies and requirements, and the relatively short time provided by the Act for an initial revision to the model, EPA decided to limit revisions to MOBILE4 at this time to those affecting calculation of 1990 emissions. Thus, aspects of the model such as updating basic emission rates and speed correction factors for late-model vehicles on the basis of additional test data are included in MOBILE4.1, while modeling the effects of new tailpipe standards and other future CAAA requirements generally are not included.

An important exception to this 1990 calendar year focus concerns carbon monoxide (CO) emissions. Due to the tighter time constraints placed on CO (relative to ozone) nonattainment areas for the preparation and submission of projection year inventories to EPA, the new "Tier I" exhaust CO standard for light-duty trucks and the "cold CO" standards applicable at 20°F for both light-duty vehicles and light-duty trucks have been included in MOBILE4.1. This will enable States and others with the responsibility for preparing inventories for CO nonattainment areas to use MOBILE4.1 in modeling calendar year 1993 and 1996 highway vehicle CO emission factors.

While not an exhaustive list of all of the revisions that have been made to the

emission factor model, the following list provides a summary of the type and extent of the model revisions:

- The impact of oxygenated fuels on exhaust carbon monoxide emissions is included in the model.
- Ozone precursor emissions (primarily hydrocarbons in the case of highway motor vehicles) can be estimated in several ways (total HC, nonmethane HC, nonmethane organic compounds, volatile organic compounds, total organic gases).
- Evaporative emission factors can be provided in different units for different applications.
- The most recent 25 model years' vehicles are considered in the fleet for any given calendar year (up from 20 in MOBILE4).
- Basic emission rates from light-duty vehicles and trucks have been updated using new test data.
- The impact of passing/failing purge and/or pressure checks of a vehicle's evaporative emission control system are modeled.
- Tampering rates have been updated.
- Running loss HC emission factors have been revised, and are now direct functions of vehicle speed as well as temperature and fuel volatility.
- Refueling emissions are now direct functions of input temperatures and volatilities.
- Resting loss HC emissions have been added as a distinct category.
- Methane emissions for gas vehicle types have been revised and updated.
- New CO emission standards for LDVs and LDTs are modeled, including the "cold CO" standard.
- Adjustments to idle emissions for temperature, fuel volatility, and operating modes are modeled.
- Speed correction factors for 1981 and later vehicles have been updated, and the maximum speed for which emission factors can be modeled has been increased to 65 mph (from 55 mph).
- The effects of fuel volatility on exhaust emissions at lower temperatures (under 75°F) have been updated.
- Decentralized computerized (as well as decentralized manual) I/M program benefits are reduced by 50 percent relative to centralized programs.
- New vehicle registration distributions, vehicle counts, and diesel sales fractions have been incorporated.

The model will be made available on diskettes that will operate in the personal computer environment (i.e., IBM PC XT, PC AT, PS-2, and clones of these machines, and Macintosh

computers), as well as on a nine-track tape ("mainframe version"). The same user documentation will apply for both platforms.

EPA plans to develop another revision to the model, incorporating the effects of new CAA mandates on future vehicle emission projections, for release in approximately six months. This approach will allow States to perform the most accurate modeling of base year emissions, which are not affected by any of the CAA's new requirements, and give EPA additional time to develop the best approaches to modeling future requirements and their impacts on emissions.

Dated: August 20, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-20402 Filed 8-23-91; 8:45 am]

BILLING CODE 6560-50-W

[FRL-3988-5]

Class II Underground Injection Control Program Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Advisory committee meeting.

SUMMARY: The Class II Underground Injection Advisory Committee will meet on September 24 and 25 in Alexandria, Va.

DATES: On September 24, the meeting will begin at 9 a.m. and end at 5 p.m. On September 25, the meeting will begin at 8:30 a.m. and end at 1 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn Old Town Alexandria, 408 King Street, Alexandria, Virginia, Telephone: 703-549-6080.

FOR FURTHER INFORMATION CONTACT: If you need further information on substantive issues, please contact Jeffrey Smith, EPA, Office of Water, at (202) 382-5586. If you need information on administrative matters, please contact Angela Suber, EPA, Regulatory Development Branch, at (202) 382-7205, or John Lingelbach, Committee Co-Chair, at (202) 887-1037.

Dated: August 19, 1991.

Charles Kirtz,

UIC Advisory Committee Designated Federal Official.

[FR Doc. 91-20400 Filed 8-23-91; 8:45 am]

BILLING CODE 6560-50-W

[OPTS-42052; FRL 3936-8]

Draft 1991 Master Testing List; Notice of Public Meeting**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of Public Meeting.**SUMMARY:** This notice announces a public meeting to discuss the 1991 Draft Master Testing List (MTL). Copies of the 1991 Draft MTL are available through the EPA Office of Toxic Substances (OTS) Hotline.**DATES:** Written comments must be submitted by September 26, 1991. A public meeting will be held on October 3, 1991 from 9:00 am to 5:00 pm. Persons interested in attending the public meeting should notify EPA by calling the TSCA Hotline, (202) 554-1404, TDD (202) 554-0551 by September 19, 1991. Persons interested in obtaining copies of the MTL may call the TSCA Hotline 8:30 am to 4:00 pm Monday through Friday.**ADDRESSES:** Written comments should be submitted in triplicate to: TSCA Public Docket Office (TS-793), Attn: TSCA section 4 1991 Draft Master Testing List, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460. The public meeting will be held at the Du Pont Plaza Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.**FOR FURTHER INFORMATION CONTACT:** David Kling, Acting Director, Environmental Assistance Division, (TS-799), Office of Toxic Substances, Rm. E-543B 401 M St., SW., Washington, DC 20460. (202) 554-1404, TDD (202) 554-0557.**SUPPLEMENTARY INFORMATION:** The MTL is the mechanism through which OTS will identify and rank testing needs for chemical substances. Testing of chemical substances on the MTL could take place under the authority of section 4 of the Toxic Substances Control Act (TSCA), through voluntary means, or through Federal funding. The draft MTL includes chemicals and categories of chemicals that the Agency believes it should begin efforts to obtain test data on within the next 2 to 3 years. Through the public meeting, EPA hopes to obtain opinions from interested parties on such issues as: identification of additional testing candidates for inclusion on the MTL, relative priorities for testing the chemicals or chemical categories on the MTL; suggestions for improvements in the current MTL development process; areas where voluntary programs (as opposed to regulatory) may be most successful; and opinions on considerations such as international

testing programs, laboratory capacity, etc. as they may affect the MTL and its development. In addition, persons may wish to inform the Agency of chemicals on the draft MTL that they believe should not be included on the 1991 final MTL because test data already exist, or for other reasons.

Following this public meeting, EPA intends to issue a final MTL for 1991. Future updates of the MTL will reflect changes in chemical status and testing priorities.

Authority: 15 U.S.C. 2603**Dated:** August 14, 1991.**James B. Willis,***Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.*

[FR Doc. 91-20397 Filed 8-23-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-59913; FRL 3943-3]

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 one such PMN(s) and provides a summary of each.**DATES:** Close of review periods:

Y 91-200, September 3, 1991.

FOR FURTHER INFORMATION CONTACT:

David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., 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 TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91-200

*Manufacturer. Confidential.**Chemical. (G) Dimer fatty acid isophthalate polyester polymer.**Use/Production. (S) Binder for general metal coatings. Prod. range: Confidential.***Dated:** August 20, 1991.**Steven Newburg-Rinn,***Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 91-20398 Filed 8-23-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-59300B; FRL-3941-6]

Certain Chemicals; Approval of a Test Marketing Exemption**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-91-23. The test marketing conditions are described below.**EFFECTIVE DATE:** August 9, 1991.**FOR FURTHER INFORMATION CONTACT:**

Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460. (202) 382-7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities

and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-91-23. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-91-23:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be dermally exposed to the substance shall use:

a. Gloves determined by the Company to be impervious to the substance under the conditions of exposure, including the duration of exposure. The Company shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances; and

b. Chemical safety goggles or equivalent eye protection.

3. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Contact with skin and eyes may be harmful. Chemicals similar in structure to (insert appropriate name) have been found to cause delayed neurotoxicity, developmental and reproductive toxicity, skin irritation, and severe eye irritation. To protect yourself, you must wear protective gloves and goggles.

4. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the bill of lading that accompanies each shipment of the substance.

e. Copies of any determination under paragraph 2.a. above that the protective gloves and goggles used by the Company are impervious to the substance.

T-91-23

Date of Receipt: May 31, 1991.

Notice of Receipt: June 28, 1991 (56 FR 29651).

Applicant: Albright & Wilson American.

Chemical: (G) Neutral phosphonate ester.

Use: (G) Redfactory patching additive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year from commencement of manufacture.

Risk Assessment: EPA identified concerns for delayed neurotoxicity, developmental and reproductive toxicity, skin irritation, and severe eye irritation based on submitted data. However, during manufacturing, processing, and use, exposure to workers will be prevented by protective gloves and goggles. Therefore, the test market activities will not present an unreasonable risk of injury to health. EPA identified no significant environmental concerns for the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: August 9, 1991.

Linda V. Moos,

Acting Director, Chemical Control Division,
Office of Toxic Substances.

[FR Doc. 91-20396; Filed 8-23-91 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 80-286 87-339 and DA 91-889]

Program to Monitor the Impact of Joint Board Decisions

AGENCY: Federal Communications Commission.

ACTION: Notice request for comments.

SUMMARY: In 1987 the Commission established a five year Joint Board monitoring program. That program is currently scheduled to expire in 1992. This item requests comments on extending that Joint Board monitoring program for an additional five years in a modified form. The proposed modifications include eliminating the section on bypass and adding a section on revenues, expenses and investment and a section on infrastructure and new services.

DATES: Comments must be filed on or before September 5, 1991 and reply comments must be filed on or before September 26, 1991.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Belinfante, Common Carrier Bureau, Industry Analysis Division, (202) 632-0745.

SUPPLEMENTARY INFORMATION: This item proposes that the Joint Board staff publish two monitoring reports per year, in January and July, for a period of five years, until 1997. These reports will publish information in eight categories: (1) Subscribership and penetration levels; (2) lifeline assistance plans; (3) high cost assistance; (4) network usage and growth; (5) rates; (6) revenues, expenses and investment; (7) pooling; and (8) infrastructure and new services.

To file formally in this proceeding, participants must file an original and four copies of all comments and reply comments with the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, one copy should be filed with the Downtown Copy Center, 1919 M Street NW., room 246, and each person listed in appendix A should be served with one copy. The full text of this request for comments is available for inspection and copying during regular business hours in the Docket Reference Room, and may be purchased from the Downtown Copy Center, (202) 452-1422. Comments and reply comments will be available for public inspection during regular

business hours in the Docket Reference Room, 1919 M Street NW., room 239.

Comments are invited pursuant to 47 CFR 0.91 and 0.292. Filing procedures are pursuant to 47 CFR 1.415 and 1.419. Service requirements are pursuant to 47 CFR 1.51(e).

Carl D. Lawson,

Deputy Chief, Common Carrier Bureau.

Appendix A

Docket No. 80-286 Joint Board Members

Chairman Alfred C. Sikes, Federal Communications Commission, 1919 M St., NW., room 814, Washington, DC 20554.

Commissioner Ervin S. Duggan, Federal Communications Commission, 1919 M St., NW., room 832, Washington, DC 20554.

Commissioner Andrew C. Barrett, Federal Communications Commission, 1919 M St., NW., room 844, Washington, DC 20554.

Chairman Thomas Beard, Florida Public Service Commission, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0850.

Commissioner George H. Barbour, New Jersey Board of Public Utilities, 2 Gateway Center, Newark, New Jersey 07102.

Chairman Dennis J. Nagel, Iowa Utilities Board, Lucas State Office Bldg., Des Moines, IA 50319.

Commissioner William E. Long, Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan 48910.

Docket No. 80-286 Federal-State Joint Board Staff

Ronald Choura, Chairman, Federal-State Joint Board Staff, Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan 48910.

Elton Calder, Georgia Public Service Commission, 162 State Office Building, 244 Washington Street, SW., Atlanta, Georgia 30334.

Rowland Curry, Texas Public Utility Commission, suite 400 N, 7800 Shoal Creek Blvd., Austin, Texas 78757.

Paul Pederson, Missouri Public Service Commission, Harry S Truman Bldg., 5th Floor, P.O. Box 360, Jefferson City, Missouri 65102.

Sam Loudenslager, Arkansas Public Service Commission, 1000 Center Street, P.O. Box C-400, Little Rock, Arkansas 72203.

Dean Evans, California Public Utilities Commission, 505 Van Ness Avenue, room 3210, San Francisco, California 94102.

Michael P. Gallagher, New Jersey Board of Public Utilities, 2 Gateway Center, Newark, New Jersey 07102.

Mark Jamison, Iowa Utilities Board, Lucas State Office Bldg., Des Moines, IA 50319.

Fred Sistarenik, New York Public Service Commission 3 Empire State Plaza, Albany, New York 12223.

Joel B. Shifman, Maine Public Utilities Commission, State House Station #18, Augusta, Maine 04333.

Mary Steel, North Carolina Utilities Commission, Box 29510, Raleigh, North Carolina 27626-0510, (if hand delivered: Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602).

Jay Atkinson, Chief Coast Analysis Branch, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554, (if hand delivered: 2000 L Street, NW., room 257, Washington, DC 20554).

Brenda Buchan, Florida Public Service Commission, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0850.

Charles Gray, National Association of Regulatory Utility Commissioners, 1102 ICC Building, Constitution Ave. & 12th St., NW., Washington, DC 20044.

Robert Loube, D.C. Public Service Commission, 450 Fifth St. NW., Washington, DC 20001.

Other Federal Staff

Alexander Belinfante, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., room 538, Washington, DC 20554.

Peyton L. Wynns, Chief, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., room 538, Washington, DC 20554.

Jonathan Kraushaar, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., room 538, Washington, DC 20554.

Ramses Mina, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., room 538, Washington, DC 20554.

James Lande, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., room 538, Washington, DC 20554.

Laurence Povich, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., room 538, Washington, DC 20554.

Linda Blake, Public Reference Room, Industry Analysis Division, Common Carrier Bureau, Federal

Communications Commission, 1919 M Street, NW., room 538, Washington, DC 20554.

[FR Doc. 91-20290 Filed 8-23-91; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1857]

Petitions for Reconsideration of Actions in Rule Making Proceedings

August 20, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed September 11, 1991. § 1.4(b)(1) of the Commission's rules [47 CFR 1.4(b)(1)]. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Billings and Lewistown, Montana) (MM Docket No. 89-91, RM No. 6659), Number of Petitions Received: 1.

Subject: Television Satellite Stations Review of Policy and Rules. (MM Docket No. 87-8) Number of Petitions Received: 1.

Subject: Amendment of Rules to Eliminate Grandfathering Provisions Applicable to Licensees on MAS Frequencies. (PR Docket No. 90-260), Number of Petitions Received: 2.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-20373 Filed 8-23-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Kawasaki Kisen Kaisha, Ltd.; et al. Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573,

within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010905-003.

Title: Far East-U.S. Discussion Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Liner System, Ltd. (NLS), Nippon Yusen Kaisha (NYK).

Synopsis: The proposed amendment would permit NYK and NLS to merge their services and operate as a single entity under the name of Nippon Yusen Kaisha. The memberships of NYK and NLS shall be consolidated and transferred to NYK, effective October 1, 1991. It would also make other nonsubstantive changes.

Agreement No.: 213-010972-003.

Title: Three Lines' Far East Atlantic Coast Space Charter and Sailing Agreement.

Parties: Mitsui O.S.K. Lines, Ltd., Nippon Yusen (NYK), Nippon Liner System, Ltd. (NLS).

Synopsis: The proposed amendment would permit NYK and NLS to merge their services and operate as a single entity under the name of Nippon Yusen Kaisha. The memberships of NYK and NLS shall be consolidated and transferred to NYK, effective October 1, 1991. The amendment would also add a Force Majeure-Deviation provision authorizing the parties to discharge or load cargo at any port in the U.S. upon the unanimous agreement of the parties.

Agreement No.: 232-011337-001.

Title: NOL, NLS & NYK Space Charter and Sailing Agreement.

Parties: Neptune Orient Lines, Ltd., Nippon Liner System, Ltd. (NLS), Nippon Yusen Kaisha (NYK).

Synopsis: The proposed amendment would permit NYK and NLS to merge their services and operate as a single entity under the name of Nippon Yusen Kaisha. The memberships of NYK and NLS shall be consolidated and transferred to NYK, effective October 1, 1991. The amendment would also revise the voting procedures to provide that decisions under the agreement will be taken upon the mutual agreement of the parties.

Dated: August 20, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-20338 Filed 8-23-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than **September 9, 1991**.

A. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond, Virginia
23261:

1. *Community Bancshares, Inc.*, North Wilkesboro, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Wilkes National Bank (in organization), North Wilkesboro, North Carolina, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20368 Filed 8-23-91; 8:45 am]

BILLING CODE 6210-01-F

Fulton Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than **September 16, 1991**.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fulton Financial Corporation*, Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of Great Valley Savings Bank, Lancaster, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Peoples Independent Bancshares*, Boaz, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Independent Bank of Boaz, Boaz, Alabama.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Appleton City Bancshares, Inc.*, Appleton City, Missouri; to acquire at least 86.4 percent of the voting shares of Deepwater State Bank, Deepwater, Missouri.

2. *First Laurel Security Company*, Laurel, Nebraska; to merge with First Osmond Corporation, Osmond, Nebraska, parent of Osmond State

Bank, Osmond, Nebraska. After the merger, Company will be liquidated and Osmond State Bank will become a direct subsidiary of Applicant.

Board of Governors of the Federal Reserve System, August 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20369 Filed 8-23-91; 8:45 am]

BILLING CODE 6210-01-F

James H. Kruger; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 16, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *James H. Kruger*, Omaha, Nebraska; to acquire 11.6 percent of the voting shares of First Continental Financial, Inc., Omaha, Nebraska, parent of River City National Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, August 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20370 Filed 8-23-91; 8:45 am]

BILLING CODE 6210-01-F

National Penn Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or

control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire Sellersville Interim Federal Savings and Loan Association, Boyertown, Pennsylvania, and thereby engage in savings association activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20371 Filed 8-23-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement 173]

Cooperative Agreement for the Development of State-Level Surveillance Systems and Epidemiologic Training Programs for State Health Agencies; Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1991 for a cooperative agreement with the Council for State and Territorial Epidemiologists (CSTE), an affiliate of the Association of State and Territorial Health Officials (ASTHO), to provide assistance in developing public health surveillance and epidemiologic systems; to expand training of state-based epidemiologists; and to assist CSTE in creating a systematic method for implementing resolutions that will ultimately increase interest by promoting the science-based practice of epidemiology and prevention as an exciting and appealing field.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of surveillance and data. (For ordering Healthy People 2000 see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This project is authorized by section 317(k)(3) of the Public Health Service Act [42 U.S.C. 247b(k)(3)], as amended.

Eligible Applicants

Assistance will be provided only to the Council for State and Territorial Epidemiologists (CSTE). No other organization has the established relationship with state health departments and state epidemiologists and expertise which is necessary to carry out the project. CSTE is a unique organization because of the technical expertise of its members, especially relating to the application of epidemiologic principles to disease and injury problems at the national, state and local levels. No other applications will be solicited.

Availability of Funds

It is expected that approximately \$195,000 will be available in Fiscal Year 1991 to fund this cooperative agreement with a project period of up to 5 years. The award will begin on or about September 30, 1991, for a 12-month budget period. Funding for future years depends on availability of funds and demonstrated progress. Funding estimates may vary and are subject to change.

Purpose

The purposes of this cooperative agreement are: (1) To maintain effective public health surveillance, (2) to promote epidemiologic practice, and (3) to facilitate effective epidemiologic training in state health agencies. This agreement supports the missions of both CSTE and CDC including the management of CSTE resolutions and the development of epidemiologic policy.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below, and CDC will be responsible for conducting activities under B. below:

A. Recipient Activities

1. Collect, examine and evaluate from members (state and territorial epidemiologists and health officers) epidemiologic assessments for training, resources, and technology.
2. Develop a "model" comprehensive surveillance system for use by states and territories.
3. Assess epidemiologic training needs at the local, state and territorial levels and to develop materials to address those needs.
4. Develop and maintain an officially recognized forum for state, regional and national exchange of epidemiologic and other public health information (e.g. an annual meeting to discuss policy issues/recommendations).
5. Identify and propose project activities in response to findings in 1 through 3 above.

B. CDC Activities

1. Participate in defining the scope of epidemiologic training needs at the local, state and territorial levels, and review proposed training material to address those needs.
2. Assist in the support of an annual forum for state, regional and national exchange of epidemiologic and other public health information.

3. Assist CSTE in the selection and performance of proposed project activities.

Evaluation Criteria

The application will be reviewed based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

A. Extent to which the applicant understand the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement (25%);

B. Degree to which the applicant provides evidence of an ability to carry out the proposed project and the extent to which the applicant documents demonstrated capability to achieve objectives similar to those of this project (25%);

C. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the purpose of this project (20%);

D. Extent to which professional personnel involved in this project are qualified, including evidence of past achievements appropriate to this project (20%); and

E. Adequacy of plans for administering the project (10%).

F. The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the use of funds (Not Scored).

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.283.

Application Submission and Deadline

The CSTE must submit an original and two copies of application Form PHS 5161-1 on or before **September 20, 1991** to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E14, Atlanta, Georgia 30305.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 173 and contact the following:

Business Management Technical Assistance: Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E14, Atlanta, GA 30305, Telephone: (404) 842-6630 or FTS 236-6630.

Programmatic Technical Assistance: Joy Herndon, Office of the Director, Epidemiology Program Office, Centers for Disease Control, Atlanta, GA 30333, Telephone: (404) 639-3411 or FTS 236-3411.

A copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, Telephone (202) 783-3238.

Dated August 16, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-20350 Filed 8-23-91; 8:45 am]

BILLING CODE 4160-16-M

Biodynamics of Frequent Asymmetric Manual Lifting, National Institute for Occupational Safety and Health; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Biodynamics of Frequent Asymmetric Manual Lifting.

Time and Date: 9 a.m.-2:30 p.m.,

September 19, 1991.

Place: Robert A. Taft Laboratories, Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a research protocol to study the effects of task frequency and asymmetry on the lifting capacity and biodynamics of experienced workers.

Contact Person for Additional Information: Thomas R. Waters, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C-24, Cincinnati, Ohio 45226, telephone 513/533-8291 or FTS 684-8291.

Dated: August 20, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 91-20352 Filed 8-23-91; 8:45 am]

BILLING CODE 4160-19-M

Review of Draft Guidance for Fiscal Year (FY) 1992 HIV Prevention Cooperative Agreement With Representatives From State and Local Health Departments and National Organizations; Meeting

The National Center for Prevention Services (NCPS) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Review of Draft Guidance for FY 1992 HIV Prevention Cooperative Agreement with Representatives from State and Local Health Departments and National Organizations Meeting.

Time and Date: 8:30 a.m.-4 p.m., September 19, 1991.

Place: Terrace Garden Inn Buckhead, 3405 Lenox Road, NE., Atlanta, Georgia 30326.

Status: Open to the public, limited only by space available.

Purpose: Representatives from state and local health departments and national organizations will review a draft of new program guidance developed by CDC, in consultation with state and local health departments and national organizations, for the FY 1992 HIV Prevention Cooperative Agreement. The guidance will be relevant to the changing needs and priorities of public health officials and assist them in planning their FY 1992 prevention programs.

Matters to be Discussed: Representatives from state and local health departments and national organizations will discuss a draft of new program guidance developed by NCPS for the 1992 HIV Prevention Cooperative Agreement. Participants will provide individual recommendations which NCPS will consider as it finalizes the new guidance.

Contact Person for More Information: Stephen Schindler, Senior Public Health Advisor, Office of the Deputy Director (HIV), NCPS, CDC, 1600 Clifton Road, NE., Mailstop E07, Atlanta, Georgia 30333, telephone 404/639-1480 or FTS 236-1480.

Dated: August 20, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 91-20353 Filed 8-23-91; 8:45 am]

BILLING CODE 4160-10-M

Food and Drug Administration

[Docket No. 91P-0267]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Wells' Blue Bunny to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0117.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Wells' Blue Bunny, One Blue Bunny Dr., Le Mars, Iowa 51031.

The permit covers limited interstate marketing tests of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains 0.4 percent milkfat. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) because the milkfat content of cottage cheese is not less than 4.0 percent and the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 493,970 kilograms (1,089,000 pounds) of the product. The product will be manufactured at Wells' Blue Bunny Milk Plant, 12th and Lincoln Sts. SW., Le Mars, Iowa 51031, and distributed in Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 25, 1991.

Dated: August 15, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-20346 Filed 8-23-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of Microbiology and Infectious Diseases Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on October 17-18, 1991, at the Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on October 17, 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 will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10:30 a.m. until recess on October 17, and from 8:30 a.m. until adjournment on October 18. These applications, proposals and the 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. Peter R. Jackson, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, room 3A07, Bethesda, Maryland 20892, telephone (301-496-8426), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: July 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-20340 Filed 8-23-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and Its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 12-13, 1991, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 12, from 8:30 a.m. to 12 noon and again on September 13, from 10:30 a.m. to adjournment to discuss administrative details relating to Council business and special reports. 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 subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 12, from 12 noon to 5 p.m.: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on September 13, from 8:30 a.m. to 10:30 a.m.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials,

and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, room 657, Bethesda, Maryland 20892, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 13.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institute of Health)

Dated: July 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-20341 Filed 8-23-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 16 and 17, 1991, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on September 16, in Building 31, Conference Room 10, from 8:30 to 11 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with 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 will be closed to the public on September 16 from 11 a.m. to 6 p.m., and on September 17 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496-7301 will provide a summary of the meeting, roster of council members.

Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, room 953, Bethesda, Maryland 20892, Telephone: 301, 496-7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13-821, Biophysics and Physiological Sciences; 13-859, Pharmacological Sciences; 13-862, Genetics Research; 13-863, Cellular and Molecular Basis of Disease Research; 13-880, Minority Access Research Careers [MARC]; and 13-375, Minority Biomedical Research Support [MBRS])

Dated: July 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-20342 Filed 8-23-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the Committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below 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, for the review, discussion and evaluation of individual grant applications. These applications and 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.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Acting

Executive Secretary or the Executive Secretary indicated.

Name of Committee: National Advisory Neurological Disorders and Stroke Council and Its Planning Subcommittee.

Date: September 25, 1991 (Planning Subcommittee).

Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: 1 p.m.-3 p.m.

Closed: 3 p.m.-recess.

Dates: September 28 and 27, 1991 (Council).

Place: National Institutes of Health, Shannon Building—Wilson Hall, Bethesda, Maryland 20892.

Open: September 28, 9 a.m.-1 p.m.

Closed: September 28, 1 p.m.-recess.

September 27, 8:30 a.m.-adjournment.

Acting Executive Secretary: Edward M. Donohue, Acting Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: (301) 496-4188.

Name of Committee: Neurological Disorders Program Project Review A Committee.

Dates: October 16, 17 and 18, 1991.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20815.

Open: October 16, 7:30 p.m.-8 p.m.

Closed: October 16, 8 p.m.-recess, October 17, 8:30 a.m.-recess, October 18, 8:30 a.m.-adjournment.

Executive Secretary: Dr. Katherine Woodbury, Federal Building, room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: (301) 496-9223.

Name of Committee: Training Grant and Career Development Review Committee.

Dates: October 21, 22 and 23, 1991.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: October 21, 7 p.m.-7:30 p.m.

Closed: October 21, 7:30 p.m.-recess, October 22, 8:30 a.m.-recess, October 23, 8:30 a.m.-adjournment.

Executive Secretary: Dr. Herbert Yellin, Federal Building, room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: (301) 496-9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: October 24, 25 and 26, 1991.

Place: Hotel Washington, 15th and Pennsylvania Avenue, NW., Washington, DC 20004.

Open: October 24, 8 a.m.-8:30 a.m.

Closed: October 24, 8:30 a.m.-recess, October 25, 8:30 a.m.-recess, October 26, 8:30 a.m.-adjournment.

Executive Secretary: Dr. Paul Sheehy, Federal Building, room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: (301) 496-9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: July 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-20343 Filed 8-23-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of Administration**

[Docket No. N-91-3306]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as

described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 15, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped 24 CFR 942.15 (FP: 1936) *Office:* Public and Indian Housing

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) are required to give written notices to elderly or handicapped applicants that pets are permitted, working animals excluded, from regulation requirements. A copy of pet rules and a written notice must be given to each applicant when offered a unit. Leases that prohibit pets may be amended upon tenants request.

Form Number: None

Respondents: State or Local Governments

Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection.....	3,000		10		.00833		250

Total Estimated Burden Hours: 250
Status: Reinstatement

Contact: Edward C. Whipple, HUD, (202) 708-0744; Wendy Swire, OMB, (202) 395-6880

Dated: August 15, 1991.
[FR Doc. 91-20298 Filed 8-23-91; 8:45 am]
BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. D-91-958; FR-3078-D-01]

Revocation of Delegation of Authority**AGENCY:** Office of the Secretary, HUD.**ACTION:** Notice of revocation of delegation of authority.

SUMMARY: In order to remedy a conflict between two separate designations of agency ethics officials published by the United States Department of Housing and Urban Development in the Federal Register, this notice revokes one of the designations which was specified in a delegation of authority published on January 31, 1989 at 54 FR 4913.

EFFECTIVE DATE: August 19, 1991.**FOR FURTHER INFORMATION CONTACT:**

John B. Shumway, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., room 10254, Washington DC 20410. Telephone (202) 708-1550. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 21, 1990, the Department of Housing and Urban Development published a designation in the Federal Register at 55 FR 6051 (effective on February 6, 1990), which designated the General Counsel as the designated agency ethics official and the Assistant Secretary for Administration as the alternate agency ethics official under the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended). The February 21, 1990 designation stated that it superseded a designation effective August 19, 1981 and published in the Federal Register on August 27, 1981 at 46 FR 43312. However, the same designation failed to supersede or revoke a delegation of authority effective January 19, 1989 and published in the Federal Register on January 31, 1989 at 54 FR 4913, which designated the General Counsel as the designated agency ethics official and the Associate General Counsel for Administrative and General Law as the alternate agency ethics official.

Revocation of Delegation of Authority

To remedy the conflict between the February 21, 1990 designation and the January 31, 1989 designation, section C, item 3, of the delegation of authority effective January 19, 1989 and published on January 31, 1989 at 54 FR 4913 (Docket No. D-89-893; FR-2595), is hereby revoked. Accordingly, pursuant to the February 21, 1990 designation, at 55 FR 6051, the General Counsel is the designated agency ethics official and the Assistant Secretary for Administration is the alternate agency ethics official

under the Ethics in Government Act of 1978.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: August 19, 1991.

Jack Kemp,*Secretary.*

[FR Doc. 91-20299 Filed 8-23-91; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR**White House Conference on Indian Education Advisory Committee****AGENCY:** Office of the Secretary, Interior.**ACTION:** Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule of the forthcoming meeting of the White House Conference on Indian Education Advisory Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The White House Conference on Indian Education Advisory Committee is established by Public Law 100-297, part E. The Committee is established to assist and advise the Task Force in the planning and conducting the conference.

DATES, TIME AND PLACE: September 12, 1991, at 9 a.m. to 5 p.m. and September 13, 1991, at 9 a.m. to 5 p.m. at the Double-Tree at South Center, Seattle, Washington, 98188.

FOR FURTHER INFORMATION CONTACT:

Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C Street NW., MS 7026-MIB, Washington, DC 20240; telephone 202-208-7167; fax 208-4868.

AGENDA: The Advisory Committee for the White House Conference on Indian Education will discuss and advise the Task Force on all aspects of the Conference and actions which are necessary for the conduct of the Conference. Summary minutes of the meeting will be made available upon request. The meeting of the Advisory Committee will be open to the public.

Items to be discussed: Pre-Conference activities; selection process for participants; budget and administrative matters; election of Conference Chairperson; Indian Nations-At-Risk status, Subcommittee activities, report on activities for pre-conference reporting in October 1991, Conference topics and writers and other matters related to the Conference.

Dated: August 20, 1991.

Mark Stephenson,*Assistant to the Secretary and Director of Communication.*

[FR Doc. 91-20372 Filed 8-23-91; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[AK-968-4230-15; AA-6661-A, AA-6661-B, AA-6661-D, AA-6661-G]

Alaska Native Claims Section; Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision approving lands for conveyance to Eklutna, Inc., notice of which was published in the Federal Register on July 25, 1985, in Vol. 50, No. 143, pp. 30306-30307, is modified by adding a powerline right-of-way, AA-56697, to page 11.

Notice of the modified decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the modified decision may be obtained by contacting: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 25, 1991 to file an appeal on the issue in the modified decision. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal.

Appeals must be filed with the Bureau of Land Management at the above address, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given July 25, 1985, is final.

Christy Mitchell,*Lead Land Law Examiner, Branch of Cook Inlet and Ahtna Adjudication.*

[FR Doc. 91-20321 Filed 8-23-91; 8:45 am]

BILLING CODE 4310-JA-M

Montana; Notice of District Grazing Advisory Board meeting

[MT-070-00-4320-02; ADVB]

AGENCY: Bureau of Land Management, Butte District Office, Interior.**ACTION:** Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Board will be held Wednesday, September 11 in the conference room of the Garnet Resource Area office, 3255 Fort Missoula Road, Missoula, Montana. The meeting will begin at 8 a.m. On the agenda will be a general discussion of the district's plans for range projects in FY92 and other program priorities. At about 9 a.m., the board will depart on a field tour in conjunction with the Butte District Advisory Council of points of interest in the Garnet Resource Area.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT:

James R. Owings, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: August 16, 1991.

Michele Good,

Acting District Manager.

[FR Doc. 91-20329 Filed 8-23-91; 8:45 a.m.]

BILLING CODE 4310-DN-M

[MT-070-00-4333-02; ADVB]

Montana; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Wednesday and Thursday, September 11 and 12.

On September 11 the council will go on a field tour in conjunction with the Butte District Grazing Advisory Board of various points of interest in the Garnet Resource Area. The field tour will depart at 9 a.m. from the Garnet Resource Area office, 3255 Fort Missoula Road in Missoula.

A business meeting will begin at 9 a.m. on October 5 in the conference room of the Garnet Resource Area office. The agenda will include: (1) Discussion, recommendations resulting from field tour; and (2) a discussion of

the outlook for the bureau forming future partnerships in resource management with the State of Montana.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT:

James R. Owings, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: August 16, 1991.

Michele Good,

Acting District Manager.

[FR Doc. 91-20323 Filed 8-23-91; 8:45 a.m.]

BILLING CODE 4310-DN-M

[ID-020-01-4212-11; I-27741]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Idaho

The following public lands near the community of Twin Falls, Twin Falls County, Idaho have been examined and found suitable for lease for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Twin Falls County Parks and Recreation Commission proposes to use the lands for the development of a water front park.

Boise Meridian

T. 9 S., R. 17 E.,

Sec. 33; Lot E.

Containing 20.3 acres more or less.

The lands are not needed for Federal purposes. Lease of the lands for recreational or public purpose use is consistent with current BLM land use planning and would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Burley District, 200 South Oakley Highway, Burley, Idaho.

Lease of the lands will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes act and to all applicable

regulations of the Secretary of the Interior.

2. All valid existing rights in effect at the time of lease issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Burley Division, Rt. 3, Box 1, Burley, ID 83318. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: August 16, 1991.

Gerald L. Quinn,

District Manager.

[FR Doc. 91-20322 Filed 8-23-91; 8:45 a.m.]

BILLING CODE 4310-GG-M

National Park Service

Shenandoah National Park; Final Environmental Impact Statement for U.S. Route 340

AGENCY: Shenandoah National Park, National Park Service, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) on the widening of U.S. 340 at Shenandoah National Park entrance, Front Royal, Virginia is available for public review.

ADDRESS: Copies of the FEIS are on file and available for inspection in the office of the Superintendent, Shenandoah National Park, Route 4, Box 348, Luray, Virginia 22835-9051; the office of the Mid-Atlantic Region, National Park Service, 143 S. Third St., Philadelphia, PA 19106; and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, DC 20240. Comments

should be addressed to the superintendent within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT:

J.W. Wade, Superintendent, Shenandoah National Park, telephone 703/999-3300.

SUPPLEMENTARY INFORMATION: This EIS addresses highway improvement to Route 340 to relieve present and future traffic congestion on Route 340 in the area of the Skyline Drive/Shenandoah, National Park entrance south of Front Royal.

Two build alternatives are considered both reconstructing the existing two-laned roadway into a four lane facility. Both alternatives require the relocation of the Shenandoah National Park entrance. The selected alternative will impact 17.6 acres as opposed to 11.7 acres of the park for the other alternative. The preferred alternative provides for a park-like atmosphere and is compatible with the future development of a grade separated interchange.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 91-20307 Filed 8-23-91; 8:45 am]

BILLING CODE 4310-70-M

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

- (1) Introduction of commission members and guests.
- (2) Superintendent's welcome, including review of role and function of SRC.
- (3) Review and approval of minutes.
- (4) Old business.
- (5) Update on ATV agreement.
- (6) Review hunting plan recommendations.
- (7) Public and other agency comments.
- (8) Hunting plan recommendation work session (review comments and prepare hunting plan recommendations for submission to Secretary and Governor).
- (9) New business.

DATES: The meeting will begin at 7 p.m. on Wednesday, September 11, 1991, and

conclude around 9 p.m. The meeting will reconvene at 9 a.m. on Thursday, September 12, 1991, and conclude around 5 p.m.

LOCATION: The meeting will be held at the Anaktuvuk Pass Community Center, Anaktuvuk Pass, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger Siglin, Superintendent, P.O. Box 74680, Fairbanks, Alaska 99707. Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

William F. Locke,

Acting Regional Director.

[FR Doc. 91-20305 Filed 8-23-91; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, September 12, 1991, at 1:30 p.m., at the Commission of Fine Arts, 441 F Street, NW., suite 312, Washington, DC.

The Commission was established by Public Law 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

James Ridenour, Chairman, Director, National Park Service, Washington, DC.

George M. White, Architect of the Capitol, Washington, DC.

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC.

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC.

Honorable Sharon Pratt Dixon, Mayor of the District of Columbia, Washington, DC.

Honorable Richard G. Austin, Administrator, General Services Administration, Washington, DC.

Honorable Richard Cheney, Secretary of Defense, Washington, DC.

The purpose of the meeting will be to review and take action on the following:

I. National Peace Garden (Pub. L. 99-572, October 28, 1986)

—Preliminary Design Review.

II. Review of Legislative Proposals.

(a) S.J. Res. 161, to authorize the Go for Broke National Veterans Association to establish a memorial to Japanese-American Veterans in the District of Columbia or its environs.

III. Other Business.

Dated: August 15, 1991.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 91-20306 Filed 8-23-91; 8:45 am]

BILLING CODE 4310-70-M

Trail of Tears National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held September 17 and 18, 1991, beginning at 8:30 a.m., at the Cherokee Nation's W. W. Keeler Tribal Complex, Highway 62 South in Tahlequah, Oklahoma.

The Trail of Tears National Historic Trail Advisory Council was established pursuant to Public Law 100-192 establishing the Trail of Tears National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed will involve proposed resource protection, interpretation, and public use concepts contained in the Draft Comprehensive Management and Use Plan/Environmental Assessment.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public

may file a written statement concerning the matters to be discussed with David Gaines, Trail Administrator, National Park Service, Southwest Region.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Trail Administrator, National Park Service, Southwest Region, P.O. Box 728, Santa Fe, New Mexico 87504-0728, telephone 505/988-6888. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Trail Administrator, located in room 347, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: August 8, 1991.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 91-20304 Filed 8-23-91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d) and (i) of CERCLA, 42 U.S.C. 9622(d) and (i), notice is hereby given that on August 14, 1991, a consent decree in *United States v. The Dow Chemical Company, et al.*, Civil Action No. 91-CV-1042, was lodged with the United States Court for the District of Wyoming.

The complaint filed by the United States at the time of lodging the consent decree, alleges, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, that the defendants, The Dow Chemical Company, Dowell Schlumberger, Inc., and KNEnergy, Inc. (the "Settlers") are liable for an injunction and response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Mystery Bridge Road/Highway 20 Superfund Site, also known as Brookhurst, in Natrona County, Wyoming (the "Site"). The complaint further states that the defendants are owners and operators of the Site.

In the complaint, the United States, on behalf of the Environmental Protection Agency, requests a judgment against the defendants jointly and severally for implementation of the groundwater remedy selected in EPA's Record of Decision ("ROD") dated September 28, 1990, which provides for two systems for pumping, treating and monitoring contaminated groundwater; reimbursement of over \$5.9 million in past response costs under section 107(a) of CERCLA, 42 U.S.C. 96f07(a); and a determination under section 113(g)(2) of

CERCLA, 42 U.S.C. 9613(g)(2), that any finding of liability would be binding in any subsequent action for further response costs or damages.

In the consent decree, the Settlers have agreed, *inter alia*, to implement the remedy selected in the ROD and to pay \$5.4 million in past costs to the Hazardous Substances Trust Fund; pay costs of oversight and operation and maintenance of the remedy, and to perform additional work, if any. The Settlers have also agreed to review, periodically, the remedial action to assure that human health and the environment are being protected by the remedial action being implemented. The State of Wyoming participated in the negotiations with the Settlers, but is not a party to the consent decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Dow Chemical Company, et al.*, DOJ Ref. No. 90-11-2-304. The proposed consent decree may be examined at the office of the United States Attorney, District of Wyoming, 2120 Capitol Avenue, Cheyenne, Wyoming 82003. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20044 (202-347-7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of \$37.50 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General
Environment and Natural Resources Division.

[FR Doc. 91-20312 Filed 8-23-91; 8:45 am]

BILLING CODE 4410-01-M

Gates Energy Products, Inc; Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on July 31, 1991 in the United States District court for the Western District of Missouri: *United States v. Gates Energy Products, Inc.*, Civil Action No. 91-0675-CV-W-1. On July 31, 1991, a Consent Decree between the United States and Gates Energy

Products, Inc. (hereinafter "GEP") was lodged with the court. This Consent Decree settles the government's claims in the complaint against GEP pursuant to Section 113(b) of the Clean Air Act ("the Act"), 42 U.S.C. 7413(b), as amended, for violations of the Standards of Performance for New Stationary Sources (NSPS), Subpart KK—Standards of Performance for Lead-Acid Battery Manufacturing Plants, 40 CFR part 60, promulgated under sections 111 and 114 of the Act, 42 U.S.C. 7411 and 7414 for (1) injunctive relief to protect public health and the environment in the future, and (2) for payment of twenty-five thousand dollars (\$25,000.00) per day of violation in penalty. The complaint alleged, in part, that GEP owns and operates a manufacturing plant at 617 North Ridgeview Drive, Warrensburg, Missouri (the plant), which manufactures sealed lead-acid batteries. The complaint alleges that GEP failed to (1) perform initial emission tests at five affected facilities at the plant, (2) timely perform such performance tests on eight facilities at the plant, and (3) notify EPA of construction and startup dates for various affected facilities at the plant, all in violation of the NSPS regulations.

Under the terms of the proposed Consent Decree, GEP agrees to (1) perform an environmental and management audit at both the Warrensburg plant and the company's Gainesville, Florida, battery manufacturing plant, (2) perform testing within 120 days of entry all of the required facilities (including three facilities that have not been tested since 1984), (3) institute a waste minimization program at the plant to reduce lead oxide waste by as much as 500,000 pounds per year, and (4) reduce its use of 1,1,1 trichloroethane to minimal levels. The Consent Decree also calls for GEP to pay the United States two hundred thousand dollars in a civil penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Gates Energy Products, Inc.*, D.J. Ref. 90-5-2-1-1629.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the

Environmental Protection Agency ("EPA"):

EPA Region VII

Contact: Becky Ingram Dolph, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7010.

United States Attorney's Office

Assistant United States Attorney, Civil Division, Western District of Missouri, 811 Grand Avenue, Room 589, Kansas City, Missouri 64108, (816) 428-3122.

Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW, Box 1097, Washington, DC 20004, (202) 347-7829. A copy of the proposed Consent Decree may be obtained by mail from the Document Center. When requesting a copy of the Decree, please enclose a check for copying costs in the amount of \$5.00 payable to "Consent Decree Library."

Barry M. Hartman,

*Acting Assistant Attorney General,
Environment and Natural Resources Division.*

[FR Doc. 91-20313 Filed 8-23-91; 8:45 am]

BILLING CODE 4410-01-M

Northwestern State Portland Cement Co. et al.; Lodging of Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7 notice is hereby given that a proposed consent decree in *United States v. Northwestern States Portland Cement Company and Holnam Inc.*, (N.D. Iowa), Civil Action No. C91-3062 was lodged with the United States District Court for the Northern District of Iowa.

On August 9, 1991 a Complaint was filed by The United States of America against Northwestern States Portland Cement Company and Holnam Inc. under sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606, 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat or release of hazardous substance from the Northwestern States Portland Cement Company Site located in Mason City, Iowa.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources

Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States v. Northwestern States Portland Cement Company, et al.*, D.O.J. Ref. No. 90-11-2-618.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, Northern District of Iowa, 327 Federal Building, 620 6th Street, Sioux City, Iowa; at the Region VII office of the Environmental Protection Agency ("EPA"), 726 Minnesota Avenue, Kansas City, Kansas; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, D.C., 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy of the Decree, please enclose a check for copying costs in the amount of \$36.00 (25 cents per page reproduction costs), payable to Consent Decree Library.

Barry M. Hartman,

*Acting Assistant Attorney General,
Environment and Natural Resources Division.*

[FR Doc. 91-20311 Filed 8-23-91; 8:45 am]

BILLING CODE 4410-01-M

Merrill Brown et al.; Lodging of Consent Decrees Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 5, 1991, three proposed Consent Decrees which will bring a close to the litigation in *United States v. Merrill Brown et al.*, Civil Action No. 89-3791, were lodged with the United States District Court for the Northern District of California. All of the parties have also entered into a stipulation of dismissal for the remaining defendant.

This action was filed for 6 violations of work practice standards under section 112 of the Clean Air Act, 42 U.S.C. 7412, and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR part 61, subpart M. These settlements include each penalties of \$35,000 from the defendant Dividend Development Corporation (the "Dividend Settlement"), \$52,500 from the defendant Erickson Air-Crane (the "Erickson Settlement"), and \$27,500 from the defendant Merrill Brown (the "Merrill Brown Settlement") for a total of \$115,000 in penalties. Half of the penalties will be shared with the County of Santa Clara in accordance with EPA policy guidelines for recognition of that local government's assistance and support of this enforcement action. The

settlements also contain injunctive relief, imposing substantial and specific procedures on each settling defendant's business operations intended to ensure proper notice to EPA and local authorities of any future possible renovation or demolition activity in which any of the defendants may be involved.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530. Comments should refer to *United States v. Merrill Brown et al.*, D.O.J. Ref. 90-5-2-1-1400.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, 17th Floor, San Francisco, California 94102 and at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decrees may be obtained in person or by mail from the Document Center. In requesting copies, please enclose a check in the amount of \$7.50 (25 cents per page reproduction costs) for each copy of each individual consent decree ordered. Checks should be made payable to Consent Decree Library.

Barry M. Hartman,

*Acting Assistant Attorney General,
Environment & Natural Resources Division.*

[FR Doc. 91-20320 Filed 8-23-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

U.S. v. Brown University, et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comments it received on the proposed Final Judgment in *United States v. Brown University, et al.*, Civil Action No. 91-CV-3274, United States District Court for the Eastern District of Pennsylvania, together with the response of the United States to those comments.

Copies of the response and the public comments are available on request for inspection and copying in Room 3233 of

the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, United States Courthouse, Independence Mall West, 601 Market Street, room 2609, Philadelphia, Pennsylvania 19106-1797.

Joseph H. Widmar,
Director of Operations Antitrust Division.

United States' Response To Public Comments

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d) (the "APPA"), the United States responds to public comments to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on May 22, 1991, when the United States filed a Complaint alleging that the defendants and co-conspirators conspired unreasonably to restrain price competition among themselves in the sale of undergraduate education to students receiving financial aid. The United States simultaneously filed a proposed Final Judgment, Competitive Impact Statement, and a Stipulation signed by eight of the nine defendants for entry of the proposed Final Judgment. The proposed Final Judgment embodies the relief sought in the Complaint.

The 60-day period provided by 15 U.S.C. 16(d) for submission of public comments expired on August 5, 1991. The United States received five comments. As required by 15 U.S.C. 16(b), these comments are being filed with this response.

The United States has responded individually to each of the five persons who commented on the proposed Final Judgment.¹ The comments of Richard Levy were supportive of the United States' conclusion that entry of the proposed Final Judgment would be in the public interest. Mr. Levy was thanked for his supportive letter.

The comments of three persons—Walter Winget, Randolph P.E. Allgaier and Michael A. Doyle—were critical of the United States' decision to bring a lawsuit against the defendants. These comments contain neither factual nor policy arguments justifying a judicial refusal to enter the proposed Final Judgment. The issue in an APPA proceeding is whether the relief provided by the proposed Final

Judgment is adequate to remedy the antitrust violations alleged in the Complaint.² None of these three persons disputed the United States' conclusion that the relief provided by the proposed Final Judgment effectively will remedy the antitrust violation alleged in the Complaint.³ Rather, they were critical of the United States' decision to bring a case at all. The APPA does not give a court the authority to dismiss a complaint or to order the United States to withdraw a complaint. Consequently, these criticisms do not justify a rejection of the proposed Final Judgment.

In responding to the comments of Mr. Winget, Mr. Allgaier and Mr. Doyle, the United States explained the reasons (set forth in both the Complaint and Competitive Impact Statement) for its lawsuit against the defendants. Particular concerns raised by one or more of these persons were also addressed (see Exhibit 1). For example, both Mr. Winget and Mr. Allgaier were concerned about the possible effect of this section on need-blind student admissions and need-based financial aid. The Department of Justice does not oppose need-blind admissions or need-based aid, but does oppose agreements between universities not to offer aid based on other considerations, such as academic merit. Under the proposed Final Judgment, each university will be free to adopt unilateral policies regarding student admissions and need-based aid.

Finally, the United States responded to the comments of Kenneth P. Thomas. One of Mr. Thomas' concerns was that the defendants are not being forced to admit that their actions violated the antitrust laws and the effect this will have on private plaintiffs suing to recover damages. The proposed Final Judgment provides all of the relief requested in the Complaint without the substantial expense of a full trial against the eight consenting defendants. An admission by the defendants that their actions violated the antitrust laws is unnecessary to obtain the relief sought in this case.

² *United States v. Bechtel Corp.*, 1979-1 trade Case. (CCH) ¶ 62,430 (N.D. Cal. 1979), *aff'd*, 648 F.2d 660, 665 (9th Cir. 1981), *cert. denied*, 454 U.S. 1063 (1982). See also *United States v. National Broadcasting Company*, 449 F. Supp. 1127, 1144 (C.D. Cal. 1978) ("in evaluating a proposed consent decree, one highly significant factor is the degree to which the proposed decree advances and is consistent with the government's original prayer for relief").

³ Indeed, the proposed Final Judgment provides relief broader than the allegations set forth in the Complaint. In addition to relief in the area of financial aid practices, the proposed Final Judgment provides relief in the areas of tuition and faculty salaries.

With respect to private plaintiffs suing for damages, entry of the proposed Final Judgment will not affect their burden of proof. Regardless of whether the proposed Judgment is entered, private parties would need to prove that the defendants violated the antitrust laws to recover damages. Private plaintiffs would have the benefit of *prima facie* evidence of liability only if the proposed Final Judgment is not entered and the United States prevails at a trial. Again, because the proposed settlement provides all of the relief requested in the Complaint without the substantial expense of a trial, the proposed Final Judgment serves the broad public interest.

Dated: August 9, 1991.

Respectfully submitted,

D. Bruce Pearson, Jon B. Jacobs, Jessica N. Cohen,

Attorneys, United States Department of Justice, Antitrust Division, Washington, DC 20530, 202/307-1028.

Thursday, May 30, 1991

The Honorable Dick Thornburgh,
Attorney General of the United States,
United States Department of Justice, 10th and Constitution Avenue, NW., Room 4400, Washington, DC 20530

Dear Attorney General Thornburgh: Let me congratulate you on your investigation into price fixing by colleges and universities, with regard to both tuition and financial aid. The effect of the admitted agreement among some colleges and universities on deciding how much financial aid to give has probably deprived needy students of the chance for more help than they received, and if tuition were found to be fixed, besides the felonious violation of law, there is the serious damage done to youth from middle and lower class families who were deprived of a good education and greater opportunities because they could not afford the arbitrarily high tuition.

Keep up the good work and satisfy yourself and the country either that no law was violated or that those who violated the law are justly punished and our colleges and universities are open to all according to freely set tuitions and financial aid.

Yours truly,

Richard Levy.

Richard Levy, Esquire,
Potomac Town Square, 2208 Mount Vernon Avenue, P.O. Box 2747, Alexandria, VA 22301-0747.

Dear Mr. Levy: Thank you for your recent letter to Attorney General Thornburgh regarding the Department's antitrust case against the eight Ivy League universities and the Massachusetts Institute of Technology. The Department believes, as you do, that this enforcement initiative will make a major step toward ensuring that students and their parents will get the full benefits of price competition when they select a college. As Attorney General Thornburgh stated in announcing the settlement, the well-deserved

¹ The comments and the individual responses are attached as Exhibit 1.

reputation of these universities does not insulate them from the requirements of the antitrust laws.

It is very gratifying to receive kind letters of support like yours. Again, thank you for your letter and for your interest in the enforcement of the antitrust laws.

Sincerely, yours,

Charles A. James,

Acting Assistant Attorney General.

May 29, 1991.

Honorable Richard Thornburgh,
Attorney General of the United States,
U.S. Department of Justice, Tenth &
Constitution Avenue, N.W., Room 4400,
Washington, D.C. 20530.

Dear Mr. Thornburgh: It is truly inconceivable to me that anyone who graduated from Yale could have been a participant in, and indeed was the announcer of, the action against the eight Ivy League institutions about which I read in *The Wall Street Journal* of May 23. Let me tell you precisely what the net effect of this unbelievable foolishness on the part of the Justice Department will be. Since they will not be able to exchange the information about which you so self-righteously complained, the institutions in question will have to operate and award student financial aid without adequate financial information. Your investigation cost all of them hundreds of thousands of dollars, but since you are with the government, that, of course, is of little concern to you since the economics of actually operating a business is never considered by governmental employees. The net effect of this will be that ultimately, schools like Princeton (of which I am a graduate and to which I am presently sending a daughter and am paying the full tuition about which you purport to complain) will probably need to stop their present practice of admitting students in a totally need blind basis and assuring any student admitted that he or she will be able to attend college.

Undoubtedly, one of the major reasons that college costs have risen so much in the past few years is because of the expense caused by the governmental bureaucracy with which they have to contend in order to continue to educate students.

I am truly reminded of the questions, "Did all the criminals suddenly go out of business?" By wasting government time and money on investigations and actions such as this one, you once again fritter away tax dollars and harass institutions of absolutely unquestioned quality. I am sure you geniuses in the Justice Department are sitting looking smug and patting yourselves on the back because you have "brought these great institutions to their knees." Those of us who love these institutions have a slightly different view from yours.

Very truly yours,

Walter W. Winget.

July 9, 1991.

Walter W. Winget, Esquire,
Winget & Kane,

807 First Notional Bank Building, Peoria,
Illinois 61602.

Dear Mr. Winget: This letter responds to your recent letter to Attorney General Thornburgh in which you strongly criticize the

Department's antitrust case against the eight Ivy League Universities and the Massachusetts Institute of Technology.

The Department's Antitrust Division is responsible for enforcing the federal antitrust laws, which prohibit unreasonable restraints of trade. As more fully described in the enclosed press release, the action that is the subject of your letter charged the defendants with unlawfully restraining price competition on financial aid to prospective students. More specifically, the Department's complaint charged that the defendants set the amount of money applicants paid ("family contribution") to attend those schools, agreed on individual family contributions on a case-by-case basis, and agreed to ban merit aid. The defendants thereby deprived prospective students of the benefits of competition in choosing a college, and may have caused some students to pay more than they would have absent the conspiracy. The proposed settlement of the case prohibits all of the above-mentioned agreements, and further prohibits agreements among the colleges regarding tuition or faculty salaries. We believe that this action will be a major step toward ensuring that students and their parents have the full benefits of price competition when they select a college.

Your letter mentions need as a basis for admission policy. The Department does not oppose the granting of aid based on need, but does oppose the agreement among the defendant colleges not to offer aid based on other considerations such as academic merit. Under the proposed settlement, each Ivy university is free to adopt independently policies regarding the offering of need-based aid, but may not agree with other universities on uniform policies or uniform payments by families.

I trust this information will help you to understand the basis for the Department's action and the proposed settlement in this matter. Thank you for sharing your views with us.

Sincerely,

James F. Fill,

Assistant Attorney General.

24 May 1991.

Randolph P.E. Allgaier,
354 Douglas Street, San Francisco, CA
94114.

The Honorable Dick Thornburgh,
Attorney General of The United States,
United States Department of Justice, 10th and
Constitution Avenue N.W., Room 4400,
Washington, DC 20053.

Dear Mr. Attorney General: I am writing to express my dismay with the recent decision to "break up the academic cartel" which includes Ivy League institutions and other prominent Northeastern colleges and universities.

I believe that Overlap institutions initiated and carried out the information sharing for the benefit of the applicants rather than to their detriment. I believe that I speak from experience. I attended Cornell University (A.B. '79) and Harvard University (M.A. '81) two of the universities in question. In 1975, as a high school senior, I applied to a number of institutions—Cornell, Harvard, Princeton, Yale, Dartmouth, Amherst, Trinity and

Williams (all Overlap institutions) were among them. It was clearly stated in the literature that I received from these institutions before I applied that they were all members of Overlap. The policy of information sharing was explained in detail.

My feeling about Overlap is that it was set up to give the applicant a real option of higher education based on personal and intellectual choice rather than based on financial consideration. For example—If an applicant applies to Harvard and Williams and is accepted by both with the same financial package available from both, the applicant can make a sound choice based on what he/she really wants from a collegiate experience. With the new parameters that you have proposed, a school like Harvard, which has enormous wealth, has an unfair advantage over a school such as Williams, which being much smaller does not have the vast economic resources of Harvard. Therefore, a student who might want the curriculum of Williams College might now choose Harvard College based solely on economic factors rather than on academic intent. Students with the academic prowess to be considered by these fine institutions should be given a choice based on their intellectual pursuits; it should not become a "bargain basement" of higher education.

My fear is that Ivy League Universities that have long prided themselves on aiding those with need might now change this policy. I believe that this policy boasted an unequivocal commitment to equal rights and thus gave all people access to a quality education. Financial aid based on merit, alumni affiliation or even sports has never been a consideration. Your decision seems to give an eager green light to these new criteria. I believe that this is unfair to minorities and to people of less privileged economic background.

Finally, I believe that you have created a tempest in a teapot. With a society rampant with crime, police brutality, organized crime and drug cartels, I am sure that the Attorney General's office has more important things to do than to break down the guidelines set up by prominent universities to allow equality and academic choice.

Sincerely,

Randy Allgaier.

June 21, 1991.

Mr. Randolph P.E. Allgaier,
3354 Douglas Street, San Francisco, CA
94114.

Dear Mr. Allgaier: This letter responds to your recent letter to Attorney General Thornburgh critical of the Department's antitrust case against the eight Ivy League Universities and the Massachusetts Institute of Technology.

The Department's Antitrust Division is responsible for enforcing the federal antitrust laws which, among other things, prohibit unreasonable restraints of trade. As more fully described in the enclosed press release, this action charged that the defendants have unlawfully restrained price competition on financial aid to prospective students. More specifically, the defendants explicitly set the amount of financial aid applicants paid

("family contribution") to attend those schools. As the Attorney General stated in announcing the proposed settlement, the reputation of these universities does not insulate them from the requirements of the antitrust laws. The proposed settlement prohibits agreements among the colleges to fix tuition or faculty salaries, and prohibits certain agreements on financial aid that the Department believes violated the antitrust laws. We believe that this action will make a major step toward ensuring that students and their parents will get the full benefits of price competition when they select a college.

Even if, as asserted in your letter, the challenged agreements were publicized, they nevertheless deprived students of the benefits of free competition in that families made higher payments to the colleges and received less aid than they would have absent the agreements. While students may wish to choose between colleges based on personal and intellectual choices, the antitrust laws preserve the right of consumers to decide whether they want to consider price in choosing a college. The proposed settlement restores that right to students and their families.

You also expressed concern that the proposed settlement would cause the Ivy universities to abandon need-based aid policies. The Department does not oppose the granting of aid based on need, but does oppose the agreement among the defendant colleges not to offer aid based on other considerations such as academic merit. Hundreds of other schools now decide for themselves whether or not to offer merit aid and how much to offer. Under the proposed settlement, each Ivy university is free to adopt independently policies of offering only need-based aid, but may not agree with other universities on uniform policies or uniform payments by families.

In conclusion, under the proposed settlement, each Ivy school will have to decide unilaterally its policies with respect to tuition, salaries, and financial aid. This result, we believe, is in the public interest, and if the court concurs, it should enter the proposed settlement. The Department intends to pursue the case against MIT.

I trust this information will help you to understand the basis for the Department's action and proposed settlement in this matter. On behalf of the Attorney General, thank you for sharing your views with us.

Sincerely,

James F. Rill,
Assistant Attorney General.

August 5, 1991.

Robert E. Bloch,
Chief,
Professions and Intellectual Property Section,
U.S. Department of Justice, Antitrust
Division, 555 Fourth Street, NW, Room
8903, Judiciary Center Building,
Washington, DC 20001.

RE: United States v. Brown University, et al.
Civil #91-CV-3274; United States
District Court for the Eastern District of
Pennsylvania.

Objection to Proposed Final Judgment

Dear Mr. Bloch: I submit this objection to the proposed final judgment in the referenced

matter. I do so solely in my individual capacity, and not on behalf, or at the behest of, any defendant or any client of my law firm.

1. The Government's Complaint and the Competitive Impact Statement (hereafter jointly referred to as the "Government") wrongly assumes that the defendants do, and should, "compete" in their offer of financial aid to college applicants who are academically qualified but financially unable to pay the entire cost of their education at a private college. The concept that competition policy should govern charitable giving is not required by the law, is offensive to public policy, and is antagonistic to noble traditions of generous charitable giving.

2. The Government wrongly states, with no empirical support, that the challenged overlap process caused "some of these students and their families to pay more for an undergraduate education than they would have otherwise."

This "but for" analysis is only theory—it is speculative, likely wrong, and surely harmful.

It is conceivable that some applicants who receive multiple acceptances might, in the absence of overlap, receive a higher financial need award. However, the pool of scholarship funds is limited. Therefore, a necessary corollary to the Government's theory is that, if hypothetical candidates with multiple acceptances are awarded higher grants than they otherwise would receive, as a result of this Government action, then other scholarship applicants who apply only to one college or whose applications may be judged less strongly, would receive less aid or no aid. Such a result serves no purpose of competition policy.

3. Applicants to college should choose their school based on which institution will provide them with the best education for their unique combinations of background, interests, talents, ambitions, hopes and dreams.

The gift of assistance based on financial need should not be required by government action to convert this lofty and principled objective into a bidding market. Teenagers' decisions as to which institution will provide them the best education for their lifetime ought not be perverted by a short-term monetary difference in the amount of gift from different schools.

4. The Consent Judgment is internally contradictory. It acknowledges [in paragraph IX A] the benefit of eliminating scholarship competition for student athletes. As a result, the Government asks the Court to impose, as an order of a United States court, a 10-year injunction that requires differential treatment of scholarship students, depending on whether they are athletes.¹ No policy objective supports that distinction. Moreover, it is likely that the universities could protect overlap from this ravage of unrestrained antitrust enforcement, if overlap were to be established as a joint venture, a distinction of absolutely no fundamental difference.

At bottom, charitable giving and the rich mosaic of social, moral and educational values served by that giving should not, as a

matter of principled public policy, be truncated by the narrow focus of competition policy, constrained as it is by the narrow and limited concepts of economic theory.

Should the Government's myopic focus in this case become law, charitable foundations, and corporate and individual donors, among others, will be hampered in other contexts in coordinating their gifts for the greater good, if instead they are required to "compete" in their charity, a requirement that disservices the public interest.

5. Neither the Executive nor the Judicial branch of the Government should be overly influenced by the decision by all but one defendant to settle rather than to litigate. One suspects that decision was reached, in spite of objections in principle, simply to eliminate the expense of defense.

In this instance, the wisest administration of public policy can be demonstrated by staying the enforcer's hand.

Sincerely,

Michael A. Doyle.

August 8, 1991.

Michael A. Doyle, Esquire,
Alston & Bird, One Atlantic Center, 1201
West Peachtree Street, Atlanta, Georgia
30309-3424.

Re: U.S. v. Brown University, et al., Civil
Action 91-CV-3274 (E.D. Pa.).

Dear Mr. Doyle: Thank you for your letter of August 5, 1991 regarding the proposed consent judgment in the antitrust case against the eight Ivy League universities.¹ In your letter, you set forth several objections to the proposed Final Judgment.

First, you state that the defendants should not be forced to compete in their financial aid offers because antitrust legal principles do not apply to "charitable giving," as it would offend public policy.

The proposed Final Judgment prohibits agreements among the defendants, members of the Overlap group, restricting the amount of financial aid they award students. The Overlap schools agreed not to offer financial aid based on merit (rather than financial need), they agreed to use a common formula (the Ivy Needs Analysis) to determine the payment, called family contribution, by financial aid applicants, and they agreed on the family contribution for each financial aid applicant admitted to two or more Overlap schools.

The proposed Final Judgment does not force the defendants to "compete" by granting merit aid or by instituting any particular financial aid policy. The proposed settlement merely requires the defendants to adopt financial aid policies and calculate family contributions independently. Hundreds of other private colleges, nearly all with fewer resources than the defendants, now decide for themselves whether or not to offer merit aid and how much to offer. The proposed settlement requires nothing more from the defendants.

¹ We appreciate your statement that the views expressed in your letter are yours personally, and not at the behest of any client of your law firm, which represents a college currently under investigation by the Antitrust Division.

¹ One suspects that this dichotomy results from the Government's elevation of form over substance.

The Overlap process is price fixing in that the Overlap members fixed the discounted price paid by financial aid applicants and agreed that a class of applicants, merit students, would be given no discount. Financial aid may or may not be charitable giving; nonetheless, we do not believe the process should be determined through collusion among competing institutions.²

Second, you believe that the assertion that the Overlap agreements caused some students and their families to pay more for college is "likely wrong," "surely harmful," and lacks "empirical support."

The Overlap agreements deprived students receiving financial aid and their families of the benefits of free and open price competition. This is sufficient to prohibit these agreements under the antitrust laws. In addition, we concluded during our investigation that the Overlap agreement did cause some families to pay more. The agreement to ban merit aid deprived some students of being considered for merit awards. In addition, the Ivy Needs Analysis agreement deviates from the Congressional Methodology used to determine the family contribution in awarding federally funded financial aid and the deviation generally raises family payments.

Indeed, you acknowledge that it is "conceivable" that some students would have received more financial aid in the absence of these agreements. Your argument that this increased aid would mean less aid for others, however, wrongly assumes that a school's financial aid budget is fixed. Though aid budgets may be limited at some point, they are not fixed at current levels. Universities, and other institutions, often choose to change their budget allocations among competing priorities, and the defendants may do so under the proposed settlements.

Third, you assert that "teenagers' decisions" as to where to attend college should be based on educational criteria, and not "perverted" by "short term" differences in financial aid awards. Whether college applicants and their families should consider price in choosing between colleges is not for the defendants to decide. Antitrust law preserves the right of consumers to decide for themselves whether they wish to consider price. Regrettably, cost is a critical consideration for most low- and middle-income Americans.³ The proposed settlement

² Additionally, we disagree that "public policy" forbids applying the antitrust laws to the defendants' financial aid practices. To the extent that social or policy considerations conflict with competitive concerns, such "policy" concerns are properly addressed to Congress, not the Executive or Judicial Branches. *FTC v. Superior Court Trial Lawyers Ass'n*, 110 S.Ct. 768, 775 (1990); *National Society of Professional Engineers v. United States*, 435 U.S. 679, 689-90 (1978); *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 462-64 (1986).

³ In this connection, we note that the fees charged by the defendants are among the highest in the country, averaging about \$22,000 for the coming school year.

does not prevent students from choosing a college based on non-financial criteria. It merely restores the right of students and their families to decide for themselves whether they wish to consider price in making this decision.

Fourth, you contend that the proposed consent judgment is contradictory because it acknowledges the benefit of eliminating scholarship competition for student athletes. No "policy objective," you assert, supports a distinction between scholarship competition for athletes and non-athletes.

The proposed Final Judgment does not, however, acknowledge the benefit of eliminating scholarship competition for student athletes. It merely exempts, without sanctioning, certain Ivy League agreements concerning financial aid to athletes. Section IX(A)(1) expressly states that this exemption applies "provided that each school shall apply its own standard of economic need." This is exactly the same standard that the proposed Final Judgment applies to scholarships for non-athletes as well (*see* Section IV (B) and (C)). While the proposed Final Judgment neither sanctions nor prohibits athletic scholarships, there is case law suggesting agreements regarding athletic scholarships should be afforded distinctive treatment.⁴

Fifth, you assert that the defendants could achieve the same results as the Overlap agreements by establishing Overlap as a "joint venture." This is incorrect. Overlap was not a joint venture, as the term is understood at law, and the proposed Final Judgment would prohibit the defendants from attempting to continue their Overlap agreements by merely labeling it a joint venture.

Finally, you assert that neither the Antitrust Division nor the District Court, which will decide whether to enter the proposed Final Judgment, should be "overly influenced" by the decision of eight of the nine defendants to settle the case. This decision, you assume, was made simply to avoid litigation expense.

I cannot, of course, speak for the District Court. Nor can I comment about why the eight consenting defendants each decided to settle this case. The Complaint clearly sets forth the defendants' alleged violation, and the proposed Final Judgment clearly sets forth prohibitions in the areas of financial aid, tuition, and faculty salaries. I can assure you, however, that the Antitrust Division was committed to litigating this case, irrespective of any defendant's decision to settle, in order to obtain the comprehensive relief found in the proposed Final Judgment.

Sincerely yours,

Robert E. Bloch,
Chief, Professions and Intellectual Property
Section.

June 17, 1991.

990 Pepperhill Rd., Pasadena, CA 91107.

Robert E. Bloch,
Chief, Professions and Intellectual Property
Section.

⁴ *See, e.g., NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 65, 102 (1984).

U.S. Department of Justice, Antitrust
Division, 555 4th St. NW., room 9903,
Judiciary Center Building, Washington,
DC 20001.

Dear Mr. Bloch: I would like to register my comments regarding the proposed consent judgment in *United States v. Brown University et al.*, Civil Action 91-CV-3724.

I was a student and financial aid recipient at Princeton University from September 1973 to June 1978, and chair of the student government's Committee on Financial Aid and Admission Policy (which met with the parallel faculty committee, privy to the same confidential documents) in the fall of 1975. Even at that time the Ivy League universities plus M.I.T. exchanged the same information as alleged in the government's complaint. It appears to me that the complaint and the consent judgment should be modified to specify the date from which Overlap meetings first took place, rather than saying "at least as early as 1980." It is quite clear that they began earlier, before I matriculated to Princeton. I do not know when, of course, but determining such basic facts is one of the purposes of investigating in the first place.

Why are the universities being let off so lightly? Hundreds of thousands of students were harmed by the conspiracy, to the tune of millions of dollars, yet the conspirators are not being required to admit guilt, let alone set aside funds to compensate the people they harmed through their conspiracy. Moreover, by not forcing the conspirators to admit guilt, it is made more difficult for those harmed by the conspiracy to prove that the Overlap process violated the law, and thus more difficult for them to obtain compensation through independent legal actions. Allowing Brown et al. to get off without admitting guilt is a completely inadequate remedy given the magnitude of the damage inflicted.

Sincerely yours,

Kenneth P. Thomas.

August 1, 1991.

Mr. Kenneth P. Thomas,

990 Pepperhill Rd., Pasadena, CA 91107.

Re: *United States v. Brown Univ., et al.*, C.A. 91-3274.

Dear Mr. Thomas: Thank you for your letter regarding the proposed consent judgment in the antitrust case against the eight Ivy League universities. In your letter, you make two comments about the proposed settlement.

First, you state that the defendants exchanged financial aid data as alleged in the government's complaint prior to 1980. Therefore, you recommend that the complaint and the proposed consent judgment be amended to specify the date on which Overlap meetings began, rather than saying "at least as early as 1980." The complaint's language is related to the scope of our investigation and is legally sufficient for obtaining the broad injunctive relief that was requested. The proposed consent judgment prohibits the defendants from continuing their Overlap meetings and agreements. This relief focuses on the future, not the past. Amending the complaint as you suggest would not have any substantive effect on the scope or nature of this relief.

Your concern about the length of time the defendants have engaged in Overlap seems related to your second point, that the defendants should be required to admit that their actions violated the antitrust laws. Without such an admission, you state, individuals who were harmed will face greater obstacles in proving that Overlap violated the antitrust laws. The proposed consent judgment provides all of the relief requested in the complaint without the substantial expense of a full trial against the eight consenting defendants. Thus, an admission by the defendants that their actions violated the antitrust laws is unnecessary. Moreover, the fact that the consenting defendants have not admitted wrongdoing is not unusual. Under 15 U.S.C. § 10(a), consent judgments in antitrust suits brought by the United States never constitute *prima facie* evidence of liability.

With respect to private plaintiffs suing these universities for damages, entry of the proposed judgment will not affect their burden of proof. Regardless of whether the proposed judgment is entered, private parties will need to prove that the defendants violated the antitrust laws to recover damages. Private plaintiffs would have the benefit of *prima facie* evidence of liability only if the proposed judgment is not entered and the United States prevails at a trial. Again, because the proposed settlement provides all of the relief we could possibly have expected to obtain without the litigation risk and substantial expense of a trial, the Department of Justice believes that the proposed consent judgment serves the broad public interest.

Thank you for sharing your viewpoint with us and for your interest in antitrust enforcement.

Sincerely yours,

Robert E. Bloch,
Chief, Professions and Intellectual Property
Section.

[FR Doc. 91-20314 Filed 8-23-91; 8:45 am]

BILLING CODE 4410-01-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 91-6]

Notice of Public Hearing: Reconsideration of 1988 Policy Decision on Copyrightability of Digitized Typefaces

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearing.

SUMMARY: The Copyright Office will reconsider its September 29, 1988 Policy Decision regarding registration of claims in digitized typefaces and computer programs used to create or control the generation of digitized typefaces. Under the 1988 Policy Decision, the master computer program used to control the generic digitization process may be

registered, if original, but the registration does not extend to the data fixing or depicting a particular typeface or to any algorithms created as an alternative means of fixing the data. If the computer program includes data that fixes or depicts a particular typeface, typefont, or letterform, the Office requires an appropriate disclaimer to exclude the uncopyrightable data.

The Office invites comment or participation in the public hearing from individuals and groups in the fields of publishing, computer software, printing, and typography, as well as the general public.

DATES: The public hearing will be held on October 4, 1991 in the East Dining Room (LM-629; red core) of the James Madison Memorial Building, 101 Independence Ave., SE., Washington, DC from 9:30 a.m. to 6 p.m., depending on the requests for participation. Anyone desiring to testify should contact the Office of General Counsel, Copyright Office, by telephone (202) 707-8380 or fax transmission (202) 707-8366 no later than September 27, 1991. Ten copies of written statements should be submitted to the Copyright Office, Madison Building, room 407 by September 30, 1991. Written comments are also invited from persons who do not wish to testify, and should be submitted by September 30, 1991.

ADDRESSES: The public hearing will be held in the East Dining Room (LM-629; red core) of the James Madison Building, 8th floor, Library of Congress, 101 Independence Ave., SE., Washington, DC beginning at 9:30 a.m. Ten copies of written statements or comments should be submitted as follows: If sent by mail, the address is Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, the address is Office of the General Counsel, Copyright Office, Madison Building, room 407, 101 Independence Ave., SE., Washington, DC 20559. All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: On September 29, 1988, the Copyright Office published a Policy Decision regarding registration of claims in digitized typefaces and computer programs used in conjunction with digitized typeface, typefont, and letterforms. 53 FR 38110. That decision was the result of a Notice of Inquiry published on October 10, 1986. 51 FR 36410.

The Policy Decision, based on the 1986 Notice of Inquiry, reiterated a number of previous registration decisions made by the Office. First, under existing law, typeface designs are not registrable. Second, original computer programs are registrable, regardless of whether or not the functional result achieved is the generation of unregistrable typeface, typefonts, or letterforms.

The Policy Decision then went on to state the Office's position that neither "data that merely represents an electronic depiction of a particular typeface or individual letterform" nor "any algorithms created as an alternative means of fixing the data" are registrable. Based on this rationale, and based furthermore on then-existing technology, the Policy Decision concluded that, where a "master computer program includes data that fixes or depicts a particular typeface, typefont, or letterform, the registration application must disclaim copyright in that uncopyrightable data."

Recently, the Copyright Office has received a considerable number of applications for computer programs used in conjunction with typeface, typefonts, or letterforms. After reviewing these claims, the Office became concerned that these claims represented a significant technological advance from the record before the Copyright Office in reaching the 1988 Policy Decision. Several Copyright Office staff also visited the facilities of a company involved in computer-aided typeface design.

In light of the possible technological advances of the last five years, the Copyright Office will reconsider its earlier Policy Decision. The Copyright Office will hold a public hearing and also receive written comment on the general policies expressed in the 1988 Policy Decision and seeks information about new technological developments in order to determine whether or not these developments mandate an alteration of the Policy Decision. Specifically, we seek comment and information relating to the following questions or points.

Questions: 1. The Policy Decision made a distinction between a "master computer program used to control the generic digitization process" and the portion of a "computer program . . . that includes data that fixes or depicts a particular typeface, typefont, or letterform." In light of the current practices of either purchasing or licensing already digitized typeface, or having different teams within one company develop typeface designs as

well as the computer program that digitizes them, is this distinction still viable? If not, how does this affect the use of a disclaimer?

2. For registration purposes, is there a practical way to separate out the data or code used for generating a typeface design from the set of statements or instructions that constitutes an otherwise original computer program? If not, how does this affect the use of a disclaimer?

3. Explain your understanding of the terms "data" and "code," as they are used in connection with digitized typefaces. Do these terms have distinct meanings or are they sometimes used interchangeably?

4. Describe the process used in creating computer program instructions or statements as part of the digitization of typefaces, either from pre-existing analog or digitized typefaces or in the creation of original typefaces.

5. Explain the possible range of creative expression in writing two computer programs using the same computer language (for example, PostScript) to define a typeface from the same start-point on the typeface character of the letter "S" in Times Roman (or discuss the range of creative expression for another specified letter and typeface).

6. Describe or explain the general process of digitizing typefaces and note, especially, any changes in technology in the last five years. Discuss the significance, if any, of these changes regarding the creation of original computer programs used in the digitization of typefaces.

7. Is there a difference between a computer program that generates a particular typeface and one that generates other uncopyrightable subject matter, e.g., a program that merely generates the Copyright Office application forms? For registration purposes, should a program for a typeface be treated differently than a program that generates other uncopyrightable material? Explain your responses.

8. Is there a difference between the digitized fixation of a particular typeface or font design and the computer program which generates such a typeface or font design? Explain your response.

Dated: August 12, 1991.

Ralph Oman,

Register of Copyrights.

Approved:

Rhoda W. Canter,

Acting Librarian of Congress.

[FR Doc. 91-20390 Filed 8-23-91; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-75]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Commercial Satellite Communications Technology Task Force.

DATES: September 17, 1991, 8:30 a.m. to 5 p.m.; and September 18, 1991, 8:30 a.m. to 5 p.m.

ADDRESSES: W.J. Schafer Associates, Suite 800, 1901 North Fort Myer Drive, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Holcomb, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2747.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special task forces are formed to address specific topics. The Task Force on Commercial Satellite Communications Technology, chaired by Mr. Steven D. Dorfman, is composed of 11 members.

The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the task force members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of meeting: Open.

Agenda:

September 17, 1991

8:30 a.m.—Advanced Studies on Commercial Satellite Communications.

1 p.m.—Review Findings of the OAET Integrated Technology Plan.

4 p.m.—Group Discussion.

5 p.m.—Adjourn.

September 18, 1991

8:30 a.m.—Task Force Discussions/ Deliberations.

5 p.m.—Adjourn.

Dated: August 20, 1991.

John W. Gaff,

Advisory Committee Management Officer,
National Aeronautics and Space Administration.

[FR Doc. 91-20381 Filed 8-23-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Division of Polar Programs; Meeting

The National Science Foundation announces the following meeting:

Name: Antarctic Pollution Control Task Group.

Date and Time: September 11, 1991; 10 a.m.—5 p.m.

Place: National Science Foundation, 1800 G St. NW., Washington, DC 20550, room 540B.

Type of Meeting: Open.

Contact Person: Lawrence Rudolph, Deputy General Counsel, Office of the General Counsel, room 501, National Science Foundation, Washington, DC 20550 (202) 357-9435.

Purpose of Meeting: The Committee will advise the Foundation on the designation of pollutants and their disposal or discharge from any source within the Antarctica.

Agenda:

*10 a.m. to 12 p.m.—Review of materials.

*2 p.m. to 5 p.m.—Discussion.

Summary of Agenda: Discharge standards and regulatory and policy considerations will be among the topics discussed.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-20439 Filed 8-23-91; 8:45 am]

BILLING CODE 7055-01-M

Division of Networking and Communications Research and Infrastructure Special Emphasis Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Networking and Communications.
 Dates: September 19, 1991.
 Time: 8:30 a.m.-5 p.m.
 Place: Room 416, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.
 Agenda: Review and evaluate Small Business Innovation Research proposals.
 Contact: Mr. David Staudt, Networking and Communications Research, National Science Foundation, room 416, Washington, DC 20550 (202 357-9717)

M. Rebecca Winkler,
 Committee Management Officer.

[FR Doc. 91-20440 Filed 8-23-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346]

Toledo Edison Co., Centerior Service Co., and the Cleveland Electric Illuminating Co., Davis-Besse Nuclear Power Station, Unit No. 1; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix A to 10 CFR part 20 in response to a request filed by the Toledo Edison Company, Centerior Service Company and the Cleveland Electric Illuminating Company (the licensee), for the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from a requirement in footnote d-2(c) in appendix A to 10 CFR part 20 related to protection factors for respiratory protective devices. The footnote requires that no allowance is to be made for the use of sorbents against radioactive gases or vapors. The exemption would allow the use of a radioiodine protection factor of 50 for certain respiratory protection canisters used by workers at the licensee's facility.

The proposed action is in accordance with the licensee's request for exemption dated December 5, 1989, supplemented July 12 and 29, 1991.

The Need for the Proposed Action

The proposed exemption is needed because the use of the sorbent canisters described in the licensee's request can potentially reduce the time required to

complete those tasks that require the use of respiratory protection devices, thereby minimizing the amount of radiation exposure to plant operating personnel.

Environmental Impacts of the Proposed Action

The proposed exemption will most likely reduce the work effort and occupational exposure for some tasks at DBNPS. The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatuses, where possible, can result in person-rem reductions estimated overall at 25% for tasks requiring radioiodine protection. The light weight, less cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases, and result in increased worker efficiency and decreased time on-the-job.

With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect the potential for, or consequences of, radiological accidents and does not affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because the Commission's staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Davis-Besse Nuclear Power Station, Unit 1, dated March 1973 and its supplement dated October 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and 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 exemption.

Based upon the foregoing environmental assessment, we conclude 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 request for amendment dated December 5, 1989, supplemented July 12 and 29, 1991, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 5th day of August 1991.

For the Nuclear Regulatory Commission,
 John N. Hannon,
 Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-20410 Filed 8-23-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528, 50-529, and 50-530]

Arizona Public Service Co., et al., Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter of June 6, 1991 (Petition), Messrs. David K. Colapinto, Esquire, and Stephen M. Kohn presented 10 allegations on behalf of the National Whistleblower Center and unidentified employee allegers regarding operations at the Palo Verde Nuclear Generating Station operated by the Arizona Public Service Company (the licensee) and requested that the three units at Palo Verde be immediately shut down until the matters raised in the letter have been resolved. In addition, the letter requested that the U.S. Nuclear Regulatory Commission (NRC) appoint a special investigative team to monitor and inspect conditions at the plant.

Petitioners assert as bases for these requests the following concerns. A hydrogen leak in the main generator of Unit 1 could pose a fire hazard. Fire pumps at the plant have malfunctioned and cannot pump water in the event of a fire. The cooling towers are crumbling

and are unsafe. The plants have been operating outside of safety regulations under "justifications for continued operation." The licensee has not identified the electrical circuit breakers for fire protection such that, in the event of a fire, it would not know what equipment could be damaged. It is rumored that Unit 2 has a primary-to-secondary leak of 2-gallons-per-minute. The licensee has willfully operated Palo Verde in violation of unspecified licensing requirements and willfully failed to report unspecified safety violations to the NRC through licensee event reports, as required. The licensee has never moved the portable hydrogen recombiner from one unit to another, has no procedure to do so, and has no back-up recombiner. The licensee failed to implement correctly a design change for the reactor control element drive mechanisms on Unit 3. The licensee has engaged in widespread harassment and retaliation against employees who raise safety concerns.

The letter is being treated as a request for action under the NRC's regulations contained in § 2.206 of title 10 of the Code of Federal Regulations (10 CFR 2.206). As provided by that regulation, appropriate action will be taken with regard to the specific issues raised in the Petition within a reasonable time. Responding to Petitioners' request for an immediate shutdown of the Palo Verde units, the NRC notified the Petitioners by letter of August 15, 1991, that, based on a prompt inspection of the matters raised in the Petition, there is no need to take such action.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the Palo Verde facility located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 15th day of August, 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-20411 Filed 8-23-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 5-7, 1991, in room P-110, 7920

Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the *Federal Register* on July 25, 1991.

Thursday, September 5, 1991

8:30 a.m.-8:45 a.m.: *Opening Remarks by ACRS Chairmen (Open)*—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.-11 a.m.: *Inspections, Tests, Analyses, and Acceptance Criteria for Design Certifications (ITAAC) (Open)*—The Committee will hear a briefing and hold a discussion regarding the NRC staff proposal for the form and content of ITAAC for design certifications and combined licenses (SECY-91-178, *Inspections, Tests, Analyses, and Acceptance Criteria for Design Certifications and Combined Licenses and SECY-91-210, Inspections, Tests, Analyses, and Acceptance Criteria Requirements for Design Review and Issuance of a Final Design Approval*) as required by 10 CFR part 52.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11 a.m.-12 Noon and 1 p.m.-2 p.m.: *Level of Design Detail Required for Design Certification Under 10 CFR part 52 (Open)*—The Committee will hear a briefing and hold a discussion regarding the status of the NRC staff effort to develop requirements for the level of design detail to support applications for standardized nuclear power plants.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

2:15 p.m.-3:45 p.m.: *NRC Regulatory Impact Survey (Open)*—The Committee will discuss proposed changes in the regulatory process resulting from the regulatory impact survey of nuclear facility owners and operators (SECY-91-172, *Regulatory Impact Survey Report—Final dated June 7, 1991*).

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:45 p.m.-5:45 p.m.: *Key Technical Issues for Evolutionary and Advanced Reactors (Open)*—The Committee will discuss key technical issues related to future ALWRs and advanced reactors in need of early resolution.

Friday, September 6, 1991

8:30 a.m.-10 a.m.: *Site Characteristics to be Used in part 100 Revision and Large Release Determination (Open)*—The Committee will review and comment on proposed site characteristics to be used as the basis for revision of 10 CFR Part 100, *Reactor Site Criteria*, and the definition of a large release of radioactivity used in the NRC quantitative safety goals. Representatives of the NRC staff will participate, as appropriate.

10:15 a.m.-11:15 a.m.: *Reactor Operating Experience (Open)*—The Committee will hear a briefing and hold a discussion of recent operating incidents and events at nuclear power plants, including the effects of a lightning strike at the Yankee Rowe nuclear power plant. Representatives of the NRC staff and licensees will participate, as appropriate.

11:15 a.m.-12:15 p.m.: *Conduct of Employees of the Executive Branch (Open)*

Closed)—The Committee will hear a briefing and hold a discussion with representatives of the NRC Office of the General Counsel regarding the proposed rule by the U.S. Office of Government Ethics regarding Standards of Ethical conduct for Employees of the Executive Branch.

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

1:15 p.m.-2:15 p.m.: *Safety Implications of Solenoid Operated Valve Performance (Open)*—The Committee will hear a briefing and hold a discussion regarding a proposed NRC staff generic letter regarding the findings and conclusions of an AEOD evaluation of solenoid operated valve problems in nuclear power plants. Representatives of the NRC staff and industry will participate, as appropriate.

2:30 p.m.-3:30 p.m.: *NRC Regulatory Impact Survey (Open)*—The Committee will discuss a proposed ACRS report to NRC regarding the changes proposed in the regulatory process as a result of the NRC regulatory impact survey.

3:30 p.m.-5 p.m.: *Key Technical Issues (Open)*—The Committee will discuss key technical issues related to future ALWRs and advanced reactors.

5 p.m.-5:20 p.m.: *Meeting with NRC Chairmen (Open)*—The Committee will meet with the NRC Chairmen to discuss ACRS activities and items of mutual interest.

5:30 p.m.-6:15 p.m.: *Future ACRS Activities (Open)*—The Committee will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

Saturday, September 7, 1991

8:30 a.m.-12 Noon: *Preparation of ACRS Reports (Open)*—The Committee will discuss proposed ACRS reports regarding items considered during this meeting and items which were not completed at previous meetings as time and availability of information permit.

1 p.m.-2 p.m.: *ACRS Subcommittee Activities (Open)*—The Committee will hear and discuss reports regarding the status of assigned subcommittee activities, including a report of the subcommittee on Planning and Procedures regarding the conduct of Committee activities.

2 p.m.-2:30 p.m.: *Miscellaneous (Open)*—The Committee will complete discussion of items considered during this meeting as well as administrative issues regarding ACRS and related activities.

Procedures for the conduct of an participation in ACRS meetings were published in the *Federal Register* on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral

statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy consistent with 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8 a.m. and 4:30 p.m.

Dated: August 19, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-20406 Filed 8-23-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on September 16 and 17, 1991, in the San Luis Obispo Ballroom South Section at the Embassy Suites, 333 Madonna Road, San Luis Obispo, CA.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Monday, September 16, 1991—8:30 a.m. until the conclusion of business.

Tuesday, September 17, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review the results of the long-term seismic reevaluation program for the Diablo Canyon Nuclear Power Plant.

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 sessions 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 meeting, the Subcommittee, 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 Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, 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 therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Elpidio G. 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., that may have occurred.

Dated: August 19, 1991.

Gary R. Quittschreiber,
Chief, Nuclear Reactors Branch.

[FR Doc. 91-20407 Filed 8-23-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light & Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative (Duane Arnold Energy Center); Exemption

I

The Iowa Electric Light and Power Company, et al., (the licensee), is the holder of Facility Operating License No. DPR-49 which authorizes operation of the Duane Arnold Energy Center at power levels not in excess of 1658 megawatts thermal. The license provides, among other things, that it is

subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility consists of a boiling water reactor located at the licensee's site in Linn County, Iowa.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and appendix R became effective on February 17, 1981. Section III of appendix R contains 15 subsections lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant.

One of the subsections, III.G, is the subject of the licensee's exemption request. Specifically, subsection III.G, part 2 requires a 3-hour fire barrier or other equivalent means of separating redundant trains of safe shutdown equipment to ensure that one train is free of fire damage.

By letter dated August 25, 1987, the Iowa Electric Light and Power Company (the licensee) responded to an unresolved item (50-331/86005-01) from an NRC fire protection program inspection conducted at the Duane Arnold Energy Center (DAEC) on February 24-28, March 12, April 22-23, and May 15, 1986. The unresolved item was concerned with the potential for fire damage to redundant safe shutdown cables in penetrations passing through the expansion gap due to burning combustible foam material located in the expansion gap.

Boiling Water Reactor (BWR) Containments expand and contract with both the thermal and pressure changes which occur over the course of a normal operating cycle. In order to accommodate these dimensional changes, an "Expansion Gap" of about 2½ to 3 inches is provided between the steel containment vessel (the drywell) and the reinforced concrete biological shield that surrounds the drywell. This Expansion Gap is built in by means of installing compressible plastic foam sheets around the outside of the steel drywell before pouring the concrete.

At Dresden Units 2 and 3, the plastic foam was covered with a glass-fiber mat which in turn was sealed with an epoxy resin and left permanently in place after the concrete pours.

During flame cutting operations on January 20, 1986, and again on June 4, 1988, on certain mechanical penetrations at Dresden Unit 3, maintenance

personnel allowed hot slag to drop down the annulus around the penetration. The hot slag ignited the expansion gap material which smoldered for several hours and was difficult to extinguish. Licensees with designs similar to Dresden have evaluated their particular construction designs and requested exemptions, as appropriate, from the requirements of section III.G.2 of appendix R to 10 CFR part 50 as they apply to the expansion gap.

In its letter dated August 25, 1987, the licensee requested an exemption from the Commission's regulations in 10 CFR part 50, appendix R, section III.G.2 requiring a 3-hour barrier or other equivalent means of separating redundant trains of safe shutdown equipment to ensure that one train is free of fire damage.

Section III.G of appendix R to 10 CFR part 50 provides different acceptable methods of protecting safe shutdown capability from the effects of fire. These different methods utilize various combinations of 3-hour and 1-hour fire-related barriers, automatic fire detection and fixed fire suppression capability, and spatial separation between redundant safe shutdown components. The licensee has requested an exemption from the specific requirements for 3-hour fire rated barrier separation for the redundant safe shutdown train instrumentation and power and control cables located in containment penetrations where they pass through the expansion gap between the steel drywell and the concrete biological shield.

The technical information furnished by the licensee to support this requested exemption included the following:

A. Unlike the Dresden construction, most of the foam material was removed from the expansion gap at DAEC following each concrete pour. The only combustible material remaining in the expansion gap at DAEC is elastic polyurethane circumferential strips 3 inches thick x 5 inches wide on 2-foot centers below elevation 748 feet 9 inches and 3-foot centers above that elevation. (The equator of the spherical portion of the drywell is at elevation 766 feet.)

B. The strips are manufactured of plastic material that is classed as "self-extinguishing" in accordance with ASTM D 1692.

C. Because of the geometry (long narrow circumferential strips separated by 3 feet on centers from below the equator of the bulb) and the self-extinguishing characteristics of the plastic material, any fire that might occur is expected to be limited to the area of ignition and would not spread to other strips.

D. The steel drywell itself will serve as a large heat sink to further assist in cooling and aiding the self-extinguishing characteristics of this material should it become ignited.

E. Maintenance work on containment penetrations is administratively controlled. In addition to fire watches, precautions include filling the annulus space with noncombustible material prior to any operations which might produce hot slag or sparks.

The staff has evaluated the technical information furnished by the licensee to support its requested exemption. On the basis of that evaluation, the staff concludes that the likelihood of fire occurring in the expansion gap foam material is slight. Further, if the material should become ignited, the staff concludes that the fire would be localized and would not endanger components of redundant safe shutdown trains passing through the drywell.

On this basis, the staff finds that the licensee has demonstrated, as required by 10 CFR 50.12(a)(2)(ii), that the subject redundant safe shutdown train instrumentation and power and control cables located in containment penetrations where they pass through the expansion gap between the steel drywell and the concrete biological shield need not have a 3-hour fire barrier to achieve the underlying purpose of the rule (i.e., achieve and maintain safe shutdown) in that the geometry, construction techniques, and self-extinguishing characteristic of the foam material in the expansion gap will maintain the temperature increase in the cables below the damage threshold.

III.

In summary, the NRC staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that, for this exemption request, the fire protection provided by the licensee will not present an undue risk to the public health and safety.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption as described in section II is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the exemption to the requirements of 10 CFR part 50, appendix R, section III.G.2.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact has been prepared and published in the *Federal Register* (56 FR 32229, July 15, 1991).

Accordingly, based upon the environmental assessment, the Commission has determined that the granting of the exemption will not have a significant effect on the quality of the human environment.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 16th day of August 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-20409 Filed 8-23-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting of Panel on Structural Geology and Geoenvironment

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203, the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board's Panel on Structural Geology & Geoenvironment will hold a meeting with the Department of Energy (DOE) on September 18 and 19, 1991. The purpose of this meeting will be to review the revisions being made to the preliminary design of the exploratory studies facility (ESF) and potential modifications to the baseline conceptual repository design. Sessions will run from 8:30 a.m. to 5 p.m. on September 18, 1991, and from 8:30 a.m. to 12 Noon on September 19, 1991. The meetings will be held at the St. Tropez Hotel, 455 E. Harmon Avenue, Las Vegas, Nevada 89109; (702) 369-5400. Both sessions will be open to the public.

On Wednesday, September 18, 1991, the meeting will review revisions that are being made to the ESF preliminary design as a result of task force studies conducted by the DOE over the past 18 months. The Board is particularly interested in hearing the results of the technical and tradeoff studies, which will provide the basis for the revised preliminary design, and the rationale for establishing a phased approach to the final design, development, and construction of the ESF. Specific topics will include: (1) Plan and rationale for the phased approach to the ESF design, development, and construction; (2) ramp location, sizing, and grade; (3) ventilation; (4) excavation plan; (5) transportation methods; and (6) waste isolation constraints.

On Thursday, September 19, 1991, the DOE will review the alternative configurations to the conceptual design of the repository that were developed during the task force studies, as well as the potential impact of the planned repository on the ESF design.

Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning November 4, 1991. For further information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: August 20, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-20345 Filed 8-23-91; 8:45 am]

BILLING CODE 6820-AM-M

Meeting of Panel on Transportation and Systems

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203, the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board's Panel on Transportation & Systems will hold a two-day meeting with representatives of the Department of Energy's Office of Civilian Radioactive Waste management (OCRWM) on Wednesday, September 25, and Thursday, September 26, 1991. The sessions, which will begin at 9 a.m., will be held at the Board's offices at 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209 (703) 235-4473. Both sessions will be open to the public.

Presentations and discussions on September 25, will focus on transportation issues, including:

- An overview of the DOE OCRWM transportation program including priorities, rationale, and resources;
- Recent results of major DOE-sponsored transportation and transportation-related studies;
- Updates on DOE efforts to incorporate system safety and human factors engineering into its transportation program;
- Update on transportation operational planning efforts; and
- DOE activities on cask seal testing.

Discussions on September 26 will be devoted to systems engineering aspects of the OCRWM program. How DOE manages the waste program using systems engineering principals was presented at a Board panel meeting on July 15, 1991, in Arlington, Virginia. Some specific system engineering issues will be further pursued at the September 26 meeting, including questions of problem scope and those issues that affect both transportation and other components of the waste management system (e.g., interim storage of spent fuel).

Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning November 4, 1991. For further information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: August 20, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-20380 Filed 8-23-91; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Cost Accounting Standard 404, Capitalization of Tangible Capital Assets, and Cost Accounting Standard 409, Cost Accounting Standard—Depreciation of Tangible Capital Assets

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments concerning a Staff Discussion Paper on the topic of the recognition and pricing of changing capital asset values resulting from mergers and business combinations.

DATES: Requests for copies of the Staff Discussion Paper, and any comments upon its contents, should be received by October 25, 1991.

ADDRESSES: Requests for a copy of the Staff Discussion Paper or comments upon its contents should be addressed to Dr. Rein Abel, Director of Research, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-06.

FOR FURTHER INFORMATION CONTACT: Rein Abel, Director of Research, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is releasing a Staff Discussion Paper which outlines various considerations respecting the measurement and assignment of the costs resulting from the recognition of changing capital asset values established subsequent to mergers and business combinations by Government contractors.

Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard (CAS), consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard. The CASB's solicitation of recommendations for agenda items, 55 FR 48714 (11/21/90), revealed considerable sentiment for clarifying the nature of acceptable contract costing practices applicable to asset valuations and to gain or loss recognition subsequent to a merger or business combination. To the extent that the issue has been addressed in existing CAS, the primary focus has been on the acquisition and disposal of individual assets, and not on asset values resulting from mergers or business combinations. In addition, a Federal Acquisition Regulation (FAR) cost principle has been promulgated relatively recently, see FAR 31.205-52, 48 CFR 31.205-52, 55 FR 25530 (8/21/90, effective 7/23/90) that attempts to specify the bases for allowable amortization calculations applicable to capitalized costs of assets recognized as a result of a business combination. The compatibility of the CAS and this cost principle (allowability rule) as well as the basic issue of establishing a proper and clearly defined base for asset values established subsequent to mergers and business combinations are the topics addressed in the Staff Discussion Paper. The Staff Discussion Paper is meant to give effect to the concerns of both industry and the Government.

The purpose of the Staff Discussion Paper is to solicit public views with respect to the Board's consideration of the topic of the recognition and pricing of changing capital asset values of Government contractors resulting from mergers and business combinations. It reflects research accomplished to date by the staff in the respective subject areas, and as such has not been formally approved by the Board.

Dated: August 16, 1991.

Allan V. Burman,
Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 91-20134 Filed 8-23-91; 8:45 am]

BILLING CODE 3110-01-M

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

**Generalized System of Preferences
(GSP); Review of Product and Country
Practices Petitions, Public Hearings,
and List of Articles to be Sent to the
U.S. International Trade Commission
(USITC) for Review**

SUMMARY: The purpose of this notice on the 1991 GSP Annual Review is (1) to announce the acceptance for review of petitions to modify the list of articles eligible for duty-free treatment under the GSP and to modify the status of countries as GSP beneficiary countries in regard to their practices as specified in 15 CFR 2007.0 (a) and (b); (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein will be sent by the United States Trade Representative to the USITC to seek advice with respect to modification of the list of eligible articles for GSP.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395-6971. Public versions of all documents are available for review by appointment with the USTR public reading room. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395-6186.

SUPPLEMENTARY INFORMATION:

I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in title V of the Trade Act of 1974 (the Act) (19 U.S.C. 2461-2465). These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR part 2007.

**1. Requests to Modify Product and
Country Eligibility**

Petitions have been submitted by interested parties or foreign governments (1) to designate additional articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; or (3) to waive competitive need limits; or (4) to otherwise modify GSP coverage. In addition, petitions have been received requesting that the GSP status of certain beneficiary developing countries be reviewed with respect to

the relevant criteria listed in subsection 502(b) or 502(c) of the Act.

As in previous reviews, petitions to add or remove products from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: the development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment and worker rights; and the overall economic interests of the United States.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(c)(1) of the Act. It is also possible to withdraw GSP treatment on a product from certain beneficiary developing countries, or to reduce the competitive need limit applicable to the countries and product in question, rather than remove the product entirely from GSP coverage.

As required under section 504(a) of the Act, the eligibility factors set forth in sections 501 and 502(c) will be considered with respect to decisions to withdraw, suspend or limit duty-free treatment with respect to any article or with respect to any country.

**2. Information Subject to Public
Inspection**

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. Briefs or statements must be submitted in fourteen (14) copies in English. If the document contains business confidential information, fourteen (14) copies of a nonconfidential version of the submission along with fourteen (14) copies of the confidential version must be submitted. In addition, the document containing confidential information

should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

3. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395-6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the Trade Policy Staff Committee (TPSC), and that such review will take place.

**II. Deadline for Receipt of Requests To
Participate in the Public Hearings**

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (HTS) nomenclature.

Hearings will be held on October 1-4 beginning at 10 a.m. at a location in Washington, DC to be announced. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization to the Chairman of the GSP Subcommittee by 5 p.m. Wednesday, September 18. Requests to present oral testimony in connection with public hearings should be accompanied by fourteen (14) copies, in English, of all written briefs or statements and should also be received by 5 p.m. Wednesday, September 18. Oral testimony before the GSP Subcommittee will be limited to five

minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted in fourteen (14) copies, in English, no later than 5 p.m. Wednesday, October 23. Parties not wishing to appear at the public hearings may submit post-hearing written briefs or statements also by October 23. Rebuttal briefs should be submitted in fourteen copies (14), in English, by 5 p.m. Wednesday, November 20.

During 1991 and/or January 1992, an opportunity will be provided for the public to comment on nonconfidential USITC analysis. Notice of the availability of this analysis and the timetable for comment will be published in the Federal Register.

II. List of Articles Which May be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and on Which the USITC Will be Asked To Provide Advice

In conformity with sections 503(a) and 131(a) of the Act (19 U.S.C. 2463(a) and 2151(a)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP, or for modification of their current GSP status.

An article which is determined to be import sensitive in the context of the

GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the USITC on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

On behalf of the President and in accordance with sections 503(a) and 131(a) of the Act, the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probably economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the Act, the USITC is being asked to furnish economic advice on the probably economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of competitive need limits for the products identified in section C of the lists which follow.

IV. Cases Accepted for Review Regarding Country Practices, Pursuant to 15 CFR 2007.0(b)

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review petitions to review the status of Mauritania, Panama, Sri Lanka, and Thailand as

GSP beneficiary countries in relation to their practices regarding worker rights. Interested parties can participate in the review process as described in section II.

Because review of the 1990 worker rights cases of Bangladesh, El Salvador, and Syria has been extended, comments on the worker rights practices of these three countries will also be welcomed during the public hearing and comment process described in section II.

Also continued from the 1990 GSP Annual Review is the case requesting the review of the GSP status for Peru on account of Peru's alleged expropriation of certain U.S. owned property without compensation. Comments on this review will also be welcomed during the public hearing and comment process described in section II.

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review a request filed by the Motion Picture Export Association of America (MPEAA) to review the GSP status of Guatemala and Malta concerning Guatemala and Malta's alleged failure to provide adequate protection for intellectual property rights.

David Weiss,

Chairman, Trade Policy Staff Committee.

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ANNEX I:

U.S. GENERALIZED SYSTEM OF PREFERENCES (GSP)
PRODUCT PETITIONS ACCEPTED FOR REVIEW
1991 ANNUAL REVIEW

Annex

Case No.	HTS Subheading	Article	Petitioner
[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]			
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.			
91-1	0409.00.00	Natural honey	Government of Mexico; Cooperative Society "Apiario el Borullo" S.C.L., Mexico
		Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled: Onions and shallots: [Onion sets] Other:	
91-2	0703.10.40(pt.)	Green (spring) onions	Government of Mexico; Sociedad de Produccion Rural de R.I. "Hortalizas del Valle del Sol", Mexico
		Other vegetables, fresh or chilled: Other:	
91-3	0709.90.40(pt.)	Cilantro (leaves of the coriander plant)	Asociacion Agricola Local de Productores de Hortalizas de Tijuana, "La Jaleta", Mexico
		Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:	
91-4	0712.10.00	Potatoes whether or not cut or sliced but not further prepared	Government of Argentina; Federacion Argentina de Vegetales Industrializados, Argentina
		Onions: Powder or flour	
91-5	0712.20.20		Government of Mexico; Deshidratadora GAB, S.A. de C.V., Mexico
91-6	0712.20.40	Other	Government of Argentina; Government of Mexico; Deshidratadora GAB, S.A. de C.V., Mexico; Federacion Argentina de Vegetales Industrializados, Argentina
		Other vegetables; mixture of vegetables:	
91-7	0712.90.40	Garlic	do.
91-8	0712.90.75	Tomatoes	Government of Argentina; Federacion Argentina de Vegetales Industrializados, Argentina
		Dates, figs, pineapples, avocados, guavas, mangoes and mangoes, fresh or dried: Figs: Whole: In immediate containers weighing with their contents over 0.5 kg each	
91-9	0804.20.40		Government of Mexico; Comercializadora Internacional Santa Anita, Mexico
91-10	0804.20.80	Other	do.
		Grapes, fresh or dried: Fresh: [If entered during the period from February 15 to March 31, inclusive, in any year; if entered during the period from April 1 to June 30, inclusive, in any year]	
91-11	0806.10.60	If entered at any other time	Government of Peru
		Dried: Raisins: [Made from seedless grapes] Other raisins	
91-12	0806.20.20		Government of Mexico; Comercializadora Internacional Santa Anita, Mexico
		Peel of citrus fruit or melons (including watermelons), fresh, frozen, dried or provisionally preserved in brine, in sulfur water or in other preservative solutions: Lime	
91-13	0814.00.90(pt.)		Government of Peru
		Hop cones, fresh or dried, whether or not ground, powdered or in the form of pellets; lupulin: Hop cones, ground, powdered or in the form of pellets; lupulin	
91-14	1210.20.00		Enezad Export-Import p.o. Zalec, Yugoslavia

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Case No.	HTS Subheading	Article	Petitioner
A. <u>Petitions to add products to the list of eligible articles for the Generalized System of Preferences.</u> (con.)			
91-15	1604.13.30	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Sardines, sardinella and brisling or sprats: In oil, in airtight containers: [Articles provided for in subheading 1604.13.10] Other: Skimmed or boned Other (including yellowtail): In airtight containers:	Government of Peru
91-16	1604.19.25	In oil: Bonito, yellowtail and pollock	do.
91-17	1901.90.30(pt.)	Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa powder or containing cocoa powder in a proportion by weight of less than 50 percent, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa powder or containing cocoa powder in a proportion by weight of less than 10 percent, not elsewhere specified or included: Other: Malted milk; articles of milk or cream not specially provided for: Cajeta	Government of Mexico; Lacteos Cedral, S.A. de C.V., Mexico
91-18	2005.70.11	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen: Olives: In a saline solution: Green in color: Not pitted: Ripe, in containers each holding less than 13 kg, drained weight, in an aggregate quantity not to exceed 730 metric tons entered in any calendar year	Government of Argentina; Government of Turkey; Federacion Argentina de Vegetales Industrializados, Argentina
91-19	2005.70.13	Other: Described in additional U.S. note 4 to chapter 20	do.
91-20	2005.70.15	Other	do.
91-21	2005.70.21	Pitted or stuffed: Place packed: Stuffed, in containers each holding not more than 1 kg, drained weight, in an aggregate quantity not to exceed 2,700 metric tons in any calendar year	Government of Argentina; Consorcio Olivarero Argentino, S.A., Argentina
91-22	2005.70.22	Other	do.
91-23	2005.70.25	Other	Government of Argentina; Government of Turkey; Consorcio Olivarero Argentino, S.A., Argentina
91-24	2005.70.50	Not green in color: Canned: Not pitted Other than canned:	Government of Turkey
91-25	2005.70.75	[In airtight containers of glass or metal] Other	do.
91-26	2005.70.83	Otherwise prepared or preserved: [Articles provided for in subheading 2005.70.81] Other	do.
91-27	2008.40.00	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Pears	Government of Argentina; Federacion Argentina de Vegetales Industrializados, Argentina
91-28	2008.50.20	Apricots: Pulp Other, including mixtures other than those of subheading 2008.19:	do.
91-29	2008.92.10 1/	Mixtures: In airtight containers and not containing apricots, citrus fruits, peaches or pears	Dole Packaged Foods Company, San Francisco, CA

1/ The TPSC requests advice on a waiver of competitive need for Thailand on the articles provided for in HTS subheading 2008.92.10.

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Case No.	HTS Subheading	Article	Petitioner
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)			
		Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009: (Sparkling wine; Other wine; grape must with fermentation prevented or arrested by the addition of alcohol)	
91-30	2204.30.00	Other grape must	Government of Argentina
		Unmanufactured tobacco (whether or not threshed or similarly processed); tobacco refuse: Tobacco, not stemmed/stripped: Not containing wrapper tobacco, or not containing over 35 percent wrapper tobacco: Cigarette leaf: Oriental or Turkish type not over 21.6 cm in length	
91-31	2401.10.40 <u>1/</u>		Tekel Tobacco, Turkey; Tobacco Products, Salt and Alcohol Enterprises General Directorate, Turkey; Directorate of Leaf and Tobacco Enterprises and Trade, Turkey
		Cyclic hydrocarbons: [Cyclohexene, cyclohexadiene and cyclohexatriene; Benzene; Toluene; Xylenes; Styrene; Ethylbenzene; Cumene] Other: [Articles provided for in subheadings 2902.90.10 through 2902.90.30, inclusive]	
91-32	2902.90.50	Other	Government of Argentina; PASA Petroquímica Argentina S.A., Argentina
		Cyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic: Benzyl alcohol	
91-33	2906.21.00		Government of Mexico; Quest Internacional de Mexico, S.A. de C.V., Mexico
		Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Terephthalic acid and its salts	
91-34	2917.36.00 <u>2/</u>		Petrocel, S.A., Mexico; Tereftalatos Mexicanos, S.A., Mexico
		Oxygen-function amino-compounds: Amino-acids and their esters, other than those containing more than one kind of oxygen function; salts thereof: [Lysine and its esters; salts thereof; Glutamic acid and its salts] Other: Aromatic: [Articles provided for in subheading 2922.49.10]	
91-35	2922.49.20	Other: Drugs	Haarmann & Reimer, S.A., Mexico
		Essential oils (terpeneless or not), including concretes and absolutes; resinoids; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils: Essential oils of citrus fruit: Of lemon	
91-36	3301.13.00 <u>3/</u>		S.A. San Miguel, Argentina
		Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories (including gloves): [Gloves] Other	
91-37	3826.20.50		Government of Turkey

1/ The TFSC requests advice on a waiver of competitive need for Turkey on the articles provided for in HTS subheading 2401.10.40.

2/ The petitioner also requests advice on a waiver of competitive need for Mexico on the articles provided for in HTS subheading 2917.36.00.

3/ The TFSC requests advice on a waiver of competitive need for Argentina on the articles provided for in HTS subheading 3301.13.00.

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Case No.	HTS Subheading	Article	Petitioner
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)			
91-38	3926.30.50	Other articles of plastics and articles, etc., (con.): Fittings for furniture, coachwork or the like: [Handles and knobs] Other	Government of Mexico; Distribuidora Kober, S.A. de C.V., Mexico
91-39	5608.11.0010	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials: Of man-made textile materials: Made up fishing nets: Hand-cest string-drawn	Government of Mexico; Grupo Omni, Mexico
91-40	7202.41.00	Ferroalloys: Ferrochromium: Containing by weight more than 4 percent of carbon Other:	Etibank Genel Management, Turkey
91-41	7202.49.50	[Containing by weight more than 3 percent of carbon] Other	do.
91-42	7318.15.20	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: [Coach screws; Other wood screws; Screw hooks and screw rings; Self-tapping screws] Other screws and bolts, whether or not with their nuts or washers:	American Screw de Chile, S.A., Chile
91-43	7318.15.40	Bolts and bolts and their nuts or washers entered in the same shipment Machine screws 9.5 mm or more in length and 3.2 mm or more in diameter (not including cep screws)	do.
91-44	7318.15.60	[Studs] Other:	do.
91-45	7318.16.00	Having shanks or threads with a diameter of less than 6 mm Nuts	do.
91-46	8483.50.80	Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: Flywheels and pulleys, including pulley blocks: [Gray-iron casting or tackle pulleys, not over 6.4 cm in wheel diameter] Other	Doktas Dokumculuk Ve Sanayi A.S., Turkey
91-47	8527.29.0040	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy: [Combined with sound recording or reproducing apparatus] Other: FM only or AM/FM only	Ford Motor Company, Dearborn, MI
B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.			
91-48	4007.00.00	Vulcanized rubber thread and cord	North American Rubber Thread Company, Inc., Fall River, MA
91-49	7314.20.00	Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel: Grill, netting and fencing, welded at the intersection, of wire with a maximum cross-sectional dimension of 3 mm or more and having a mesh size of 100 cm ² or more	Oklahoma Steel & Wire Co., Inc., Madill, OK

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Case No.	HTS Subheading	Article	Petitioner
B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. (con.)			
91-50	7320.10.00	Springs and leaves for springs, of iron or steel: Leaf springs and leaves therefor	Detroit Steel Products Co., Inc., Morristown, IN; Spring Research Institute, Chicago, IL; Winamac Spring Co., Inc., Winamac, IN
91-51	7321.11.30	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: [Portable] Other: Stoves or ranges	Magic Chef Company, Cleveland, TN
C. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.			
91-52	0705.11.40 (Mexico)	Lettuce (<i>Lactuca setiva</i>) and chicory (<i>Cichorium</i> spp.), fresh or chilled: Lettuce: Head lettuce (cabbage lettuce): [If entered in the period from June 1 to October 31, inclusive, in any year] Other	Government of Mexico; Procesadora de Uvas S.P.R. de R.L., Mexico
91-53	0807.10.20 (Mexico)	Melons (including watermelons) and papayas (papaws), fresh: Melons (including watermelons): Canteloupes: [If entered during the period from August 1 to September 15, inclusive, in any year] If entered at any other time	Government of Mexico; Asociacion Agricola Local de Productores de Huez Durazno Y Manzana de Sonora, Mexico
91-54	0807.10.70 (Mexico)	[Watermelons; Ogen and Galie melons] Other: If entered during the period from December 1, in any year, to the following May 31, inclusive	do.
91-55	0810.90.40(pt.) (Mexico)	Other fruit, fresh: Other: Prickly pears (cactus fig)	Government of Mexico; Asociacion Rural de Interes Colectivo "El Gran Tusal" de R.L., Mexico; Union de Ejidos de Axapusco, Mexico; Union de Ejidos de Temascalapa, Mexico
91-56	1905.90.90(pt.) (Mexico)	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoe; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other: Other: Corn chips; taco shells	Taco Bell Corporation, Irvine, CA
91-57	2001.90.39(pt.) (Mexico)	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or ecetic acid: Other: Other: Vegetables: Jalapeno and serrano peppers	Camare Nacional de la Industrie de Conservas Alimenticias, Mexico; Empacadore del Noroeste, S.A., Mexico

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Case No.	HTS Subheading	Article	Petitioner
C. <u>Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.</u> (con.)			
91-58	2603.00.00 (Mexico)	Copper ores and concentrates	Industrial Minera Mexico, S.A. de C.V., Mexico; Mexicana de Cobre, S.A. de C.V., Mexico Mexicana de Cananea, S.A. de C.V., Mexico
91-59	2836.91.00 (Chile)	Carbonates; peroxocarbonates (percarbonates); commercial ammonium carbonate containing ammonium carbonate: Other: Lithium carbonates	Cyprus Foote Mineral Company, Malvern, PA
91-60	3402.90.10 (Mexico)	Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401: [Organic surface-active agents, whether or not put up for retail sale; Preparations put up for retail sale] Other: Synthetic detergents	Government of Mexico; Camara Nacional de la Industria de Aceites, Grasas Y Jabones, Mexico
91-61	3902.10.00 (Mexico)	Polymers of propylene or of other olefins, in primary forms: Polypropylene	Indelpro, S.A., Mexico
91-62	3902.30.00 (Mexico)	Propylene copolymers	do.
91-63	3920.71.00 (Mexico)	Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: Of cellulose or its chemical derivatives: Of regenerated cellulose	Intermex, Inc., Dallas, TX; Masterpak, S.A. de C.V., Mexico
91-64	3926.90.87 ^{1/} (Mexico)	Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Flexible plastic document binders with tabs, rolled or flat	IBICO, Inc., Elk Grove, IL; Spiral Binding Co., Totowa, NJ
91-65	6910.10.0030 (Mexico)	Ceramic sinks, washbasins, washbasin pedestals, baths, bidets, water closet bowls, flush tanks, urinals and similar sanitary fixtures: Of porcelain or china: Sinks and lavatories	Government of Mexico; Ceramica Diamante, Mexico
91-66	6912.00.44 (Brazil)	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: [Articles provided for in subheading 6912.00.10] Other: [Hotel or restaurant ware and other ware not household ware] Other: [Available in specified sets] Other: [Articles provided for in subheading 6912.00.41]	Anheuser-Busch, Inc., St. Louis, MO

^{1/} The petitioner also requests advice on section 504(d) waiver (whether for the articles provided in HTS subheading 3926.90.87 were like or directly competitive articles produced in the United States on January 3, 1985).

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Case No.	HTS Subheading	Article	Petitioner
C. <u>Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.</u> (con.)			
		Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal: Of precious metal whether or not plated or clad with precious metal: [Of silver, whether or not plated or clad with other precious metal] Of other precious metal, whether or not plated or clad with precious metal:	
91-67	7113.19.10 (Peru)	Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in heading 7113	Oroamerica, Inc., Burbank, CA
		Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: [Portable] Other:	
91-68	7321.11.30 (Mexico)	Stoves or ranges	Controladora Maba, Mexico; General Electric Company, Fairfield, CT
91-69	7401.10.00 (Mexico)	Copper mattes; cement copper (precipitated copper): Copper mattas	Industrial Minera Mexico, S.A. de C.V., Mexico; Mexicana de Cobra, S.A. de C.V., Mexico Mexicana da Cananea, S.A. de C.V., Mexico
91-70	7402.00.00 (Mexico)	Unrefined copper; copper anodes for electrolytic refining	do.
		Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: [Padlocks; Locks of a kind used for motor vehicles; Locks of a kind used for furniture] Other locks: [Luggage locks] Other	
91-71	8301.40.60 (Mexico)		Schlage Lock Company, San Francisco, CA
		Spark-ignition reciprocating or rotary internal combustion piston engines: Reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87: Of a cylinder capacity exceeding 1,000 cc: To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704: [Used or rebuilt] Other	
91-72	8407.34.2060 (Brazil)		General Motors Corporation, Detroit, MI
		Parts suitable for use solely or principally with the engines of heading 8407 or 8408: [For aircraft engines] Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): [Articles provided for in subheading 8409.91.10] Other:	
91-73	8409.91.91 (Mexico)	For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704	Government of Mexico; Autoprecisa, S.A. de C.V., Mexico; Moresa Industrial, S.A. de C.V., Mexico; Transmisiones Y Equipos Mecanicos, S.A. de C.V., Mexico

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Case No.	BTS Subheading	Article	Petitioner
C. <u>Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.</u> (con.)			
91-74	8415.82.00 (Mexico)	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof: [Window or wall types, self-contained] Other, except parts: [Incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle] Other, incorporating a refrigerating unit	Carrier Corporation, Syracusa, NY do.
91-75	8415.90.00 (Mexico)	Parts	
91-76	8428.90.00(pt.) (Mexico)	Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): [Articles provided for in subheadings 8428.10.00 through 8428.60.00, inclusive] Other machinery: Garage door openers	The Chamberlain Group, Inc., Nogales, AZ
91-77	8527.21.1010 (Brazil)	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Radio-tape player combinations: Cassette type: Stereo	Ford Motor Company, Dearborn, MI
91-78	8539.90.00 (Mexico)	Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof: Parts	Government of Mexico; Lamparas General Electric, S.A. de C.V., Mexico
91-79	8544.51.80 (Mexico)	Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors: [Articles provided for in subheadings 8544.11.00 through 8544.49.00, inclusive] Other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V: Fitted with connectors: [Fitted with modular telephone connectors] Other	Government of Mexico; Multilec S.A. de C.V, Mexico; Productos de Control, S.A. de C.V., Mexico
91-80	8544.59.20 (Mexico)	Other: Of copper	Government of Mexico; Cordaflex, S.A. de C.V, Mexico
91-81	9025.11.20 (Brazil)	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof: Thermometers, not combined with other instruments: Liquid-filled, for direct reading: Clinical	Becton Dickinson and Company, Franklin Lakes, NJ; Becton Dickinson Industries Circugices, Ltda., Brazil
91-82	9502.10.40 (Malaysia)	Dolls representing only human beings and parts and accessories thereof: Dolls, whether or not dressed: [Stuffed] Other: Not over 33 cm in height	Mattel, Inc., El Segundo, CA

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Case No.	HTS Subheading	Article	Petitioner
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C. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)

Dolls representing only human beings and parts and accessories thereof (con.):

Dolls, whether or not dressed (con.):

Other (con.):

Other:

[Capable of electromechanical movement of body parts activated by, and synchronized with, an integral or accompanying cassette tape player or microprocessor]

91-83 9502.10.80
(Malaysia)

Other

Mattel, Inc.,
El Segundo, CA

ANNEX II

**U.S. GENERALIZED SYSTEM OF PREFERENCES
LISTING OF COUNTRY PRACTICE PETITIONS
1991 ANNUAL REVIEW**

DOCUMENT NUMBER	PETITIONER	COUNTRY	ACTION	DECISION
001-CP-91	William McGaughey, Thomas J. Laney, & Jose L. Quintana	Mexico	WR	REJECT
002-CP-91	Americas Watch	Dominican Republic	WR	REJECT
003-CP-91	New York Labor Comm.	Guatemala	WR	REJECT
004-CP-91	Int'l Labor Rights Education & Research Fund; U.S./Guatemala Labor Education Project; United Electrical, Radio & Machine Workers of America; Amalgamated Clothing & Textile Workers Union; United Food & Commercial Workers Int'l Union; Int'l Union of Food & Allied Workers' Assoc., North America	Guatemala	WR	REJECT
005-CP-91	New York Labor Comm.	Honduras	WR	REJECT
006-CP-91	Int'l Labor Rights Education & Research Fund	Malaysia	WR	REJECT
007-CP-91	Int'l Labor Rights Education & Research Fund	Sri Lanka	WR	ACCEPT
008-CP-91	AFL-CIO	Bangladesh	WR	*
		El Salvador	WR	*
		Guatemala	WR	REJECT
		Indonesia	WR	REJECT
		Panama	WR	ACCEPT
		Syria	WR	*
		Thailand	WR	ACCEPT

009-CP-91	National Federation of Salvadoran Workers (FENASTRAS); & Labor Coalition on Central America	El Salvador	WR	*
010-CP-91	Int'l Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL-CIO; & United Food & Commercial Workers, AFL-CIO	El Salvador	WR	*
011-CP-91	Massachusetts Labor Committee, et al.	El Salvador	WR	*
012-CP-91	New York Labor Comm.	El Salvador	WR	*
013-CP-91	Americas Watch	El Salvador	WR	*
014-CP-91	Motion Picture Export Assoc. of America	Cyprus	IPR	WITHDRAW
015-CP-91	Motion Picture Export Assoc. of America	Malta	IPR	ACCEPT
016-CP-91	Motion Picture Export Assoc. of America	Guatemala	IPR	ACCEPT
017-CP-91	Corporacion de Exportaciones Mexicanas, S.A. (CEMSA)	Mexico	EXP	REJECT
*018-CP-91	American Int'l Group, Inc. (AIG)	Peru	EXP	*
019-CP-91	Africa Watch	Mauritania	WR	ACCEPT

* Review extended from 1990 Annual Review.

WR = Worker Rights
EXP = Expropriation without Compensation
IPR = Intellectual Property Rights

[FR Doc. 91-20482 Filed 8-23-91; 8:45 am]

BILLING CODE 3190-01-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29586; File No. SR-BSE-91-2]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Minor Rule Violation Enforcement and Reporting Plan

August 20, 1991.

I. Introduction

On April 23, 1991, the Boston Stock Exchange, Inc. ("BSE" 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 amend the BSE's minor rule violation enforcement and reporting plan. On July 2, 1991, the BSE submitted an amendment to the proposed rule change that removed one substantive violation, the failure to clear the specialist post, from the original proposal.³

The proposed rule change was noticed in Securities Exchange Act Release No. 29191 (May 14, 1991), 56 FR 23096 (May 20, 1991). No comments were received on the proposal.

II. Background

In 1984, the Commission adopted amendments to paragraph (c) of Securities Exchange Act Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.⁴ Subsequently, in Securities Exchange Act Release No. 26737 (April 17, 1989), 54 FR 16438-1 (April 24, 1989) (File No. SR-BSE-88-2), the Commission

approved a BSE proposal for a minor rule violation disciplinary system and for the abbreviated reporting of minor rule violations pursuant to rule 19d-1(c) under the Act.

The BSE's Minor Rule Violation Plan ("Plan"), as embodied in chapter XVIII, section 4 of the BSE's Rules of the Board of Governors, provides that the Exchange may impose a fine, not to exceed \$2500, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.⁵ Alternatively, the Plan permits any person to contest the Exchange's imposition of the fine through submission of a written answer, at which time the matter will become a disciplinary proceeding subject to chapter XXX of the BSE's Rules of the Board of Governors and, where applicable, the reporting provisions of paragraph (c)(1) of Commission Rule 19d-1. Furthermore, the Exchange retains the option of bringing violations of rules included under chapter XVIII, section 4 of full disciplinary proceedings.

III. The Proposal

In the Exchange's original proposal to adopt chapter XVIII, section 4, the BSE indicated that it periodically would amend the List of rules subject to the Plan. The Exchange currently proposes to amend chapter XVIII, section 4 to provide for the imposition of summary fines for violations of certain specified floor policies and to add certain policy and rule violations to the List. The Exchange proposes to incorporate the following violations of existing Exchange rules and policies into the Plan: (1) Failure to display quotes/specialist quote maintenance; (2) unauthorized disclosure of give-ups; (3) failure to adhere to floor security; (4) damage or abuse of floor facilities and equipment; (5) floor conduct; (6) violation of the visitors policy; (7) possession of an alcoholic beverage on the trading floor during trading hours; (8) inappropriate attire; and (9) trading floor appearance.

The proposed fine schedules under chapter XVIII, section 4 are as follows:

SRO to report violations on a periodic, as opposed to immediate basis.

⁵ The "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to section 4 of chapter XVIII" ("List") is contained in chapter XVIII, section 4 of the BSE's Rules of the Board of Governors.

(1) First offense (depending upon the substantive violation), either a written warning, a \$100 fine, \$250 fine or a \$1000 fine; (2) second offense (depending upon the substantive violation), a \$50 fine, a \$250 fine, or \$500 fine or a \$2,500 fine and (3) subsequent offenses (depending upon the substantive violation), either a \$100 fine, a \$250 fine, a \$500 fine or a \$2,500 fine.

The Exchange states that the proposed rule change will advance the objectives of section 6(b)(6) of the Act in that its members and persons associated with its members will be disciplined appropriately for violation of rules where the Exchange has determined that such violation is minor in nature. The Exchange believes that, in accordance with sections 6(b)(7) and 6(d)(1) of the Act, the Plan provides for a fair disciplinary procedure for the imposition of sanctions.

IV. Commission Findings

In adopting rule 19d-1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.⁶ In promulgating paragraph (c) of the rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to rules which relate to areas, such as record keeping or record retention, that can be adjudicated quickly and objectively.

The Commission believes that the rule and policy violations that the BSE proposes to include in its Plan meet this criterion and should be added to the List. For example, compliance with chapter II, section 7's specialist quote maintenance requirement is monitored through BEACON, the BSE's system. As a result, the specialist quote maintenance requirement is amenable to quick, objective determinations of compliance. As a second example, compliance with chapter XV(g)'s prohibition against the unauthorized disclosure of give-ups is determined by the failure of a specialist to ensure the confidentiality of information contained in his or her reports. Efficient and equitable enforcement of these two provisions should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary

⁶ See Securities Exchange Act Release No. 13720 (July 8, 1977), 42 FR 36411 (July 14, 1977).

¹ 15 U.S.C. 78e(b)(1) (1988).

² 17 CFR 240.19b-4 (1990).

³ See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Mary Revell, Branch Chief, Commission, dated June 28, 1991.

⁴ See Securities Exchange Act Release No. 21103 (June 1, 1984), 49 FR 23838 (June 8, 1984). Pursuant to paragraph (c)(1) of rule 19d-1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d-1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated, minor violations as not final, the Commission permits the

actions. The other violations proposed by the BSE to be included in chapter XVIII, section 4 and the minor rule violation reporting Plan are essentially administrative in nature.

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, with the requirements of sections 6(b)(1), (6) and (7), 6(d)(1) and 19(d).⁷ The proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with members shall be appropriately disciplined for violations of the rules of the exchange. In this regard, the proposal will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule or policy violation is either technical and objective or minor in nature in a more efficient manner than resorting to formal disciplinary proceedings. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full disciplinary hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of the BSE rules and policies included in the Plan, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan not only may reduce reporting burdens of an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

In addition, because the BSE retains the discretion to bring a full disciplinary proceeding for any violations on the List, the Commission believes that adding the rules and policies subject to this proposal will enhance, rather than reduce, the BSE's enforcement

capabilities regarding these rules and policies.

Finally, the Commission believes that the inclusion of the rules and policies subject to this proposal on the List will prove to be an effective alternative response to a violation when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation.

It Is Therefore Ordered. Pursuant to section 19(b)(2) and rule 19d-1(c)(2) under the Act,⁸ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-20395 Filed 8-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29582; File No. SR-NASD-91-24]

**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Granting Approval
of Proposed Rule Change Relating to
Compensation in Connection With the
Solicitation of Roll-Ups of Direct
Participation Programs**

August 19, 1991.

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on May 20, 1991, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ to amend appendix F to Article III, section 34 of the NASD Rules of Fair Practice ("Appendix F").

Notice of the proposed rule change, as amended by Amendment No. 1, together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29228, May 23, 1991) and by Publication in the Federal Register (56 FR 24436, May 30, 1991). The Commission received 17 comment letters on the proposed rule change.² In response to these comments

the NASD amended the filing.³ This order approves the proposed rule change.

The proposed changes to appendix F would prohibit NASD members from receiving compensation for soliciting votes or tenders from participants in connection with a roll-up of a direct participation program ("DPP")⁴ unless

Graham, dated June 13, 1991; Pete G. Theo, President, Graham Securities Corporation, dated June 13, 1991; Wm. Polk Carey, Chairman, W.P. Carey, dated June 13, 1991; Paritosh K. Choksi, Senior Vice President, Phoenix Leasing Incorporated, dated June 13, 1991; Michael B. Pollack, Chairman Securities Laws and Regulatory Affairs Committee, Investment Program Association, June 13, 1991; Douglas J. Workman, Thelen, Marrin, Johnson & Bridges, dated June 13, 1991; Maurice E. Cox, Jr., Executive Vice President, America First, dated June 14, 1991; Cheryl A. Publicover, Senior Vice President and Associate General Counsel, American Finance Group, dated June 14, 1991; Joseph B. Hershenson, Resch, Polster, Alpert & Berger, dated June 14, 1991; Robert A. Stanger, Chairman of the Board, Robert A. Stanger & Co., dated June 14, 1991; Craig B. Smith, Lassen, Smith, Katzenstein & Furlow, dated June 17, 1991; Christine A. Edwards, Executive Vice President, General Counsel and Secretary, Dean Witter Reynolds, Inc., dated June 18, 1991; and Richard A. Hanson, President, Real Estate Investment Association, dated June 28, 1991.

³ See Amendment No. 2 filed by the NASD on July 29, 1991, amending the filing and addressing the comments received in response to the notice on SR-NASD-91-24 published in the Federal Register. The NASD amended the filing by inserting the word "participant" to replace the word "limited partner" in section 34(a) to indicate that this provision applies to the solicitation of participants in a roll-up of non-traded direct participation programs of any form, not just limited partnerships. The NASD also amended the filing by moving the definition of "Roll-up" or "Roll-up of a Direct Participation Program" from section 6 to section 2 of appendix F, which contains the definitions for the rest of the appendix.

⁴ The NASD Rules of Fair Practice, Article III, section 34(d)(2) defines a direct participation program as "a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used herein and in any rules or regulations adopted pursuant hereto the term shall mean each of the separate entities or programs making up the overall program and/or the overall program itself. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to section 401 and 403(a) of the Internal Revenue Code and individual retirement plans under section 408 of that Code, tax sheltered annuities pursuant to the provisions of section 403(b) of the Internal Revenue Code, and any company, including separate accounts, registered pursuant to the Investment Company Act of 1940." NASD Securities Dealers Manual, CCH ¶ 2191.

⁷ 15 U.S.C. 78f(b)(1), (6) and (7), 78f(d)(1) and 78a(d) (1988).

⁸ 15 U.S.C. 78a(b)(2) (1988) and 17 CFR 240.19d-1(c)(2) (1990).

⁹ 17 CFR 200.30-3(a)(12) (1990).

¹ 15 U.S.C. 78a(b)(1) (1988).

² See letters to Jonathan G. Katz, Secretary, SEC, from: Paul E. Balitz, Kotak, Rock & Campbell, dated June 10, 1991; Victor K. Atkins, Jr., President, EIP Capital Corporation, dated June 11, 1991; William B. Dockser, Chairman of the Board, CRI, dated June 12, 1991; David Goldberg, Public Storage, Inc., dated June 12, 1991; Harold A. Aucoin, General Council,

such compensation: (1) is payable and equal in amount regardless of whether the limited partner votes affirmatively or negatively on the proposed roll-up (so-called "differential compensation"); (2) in the aggregate, does not exceed 2% of the exchange value of the newly created securities; and (3) is paid regardless of whether the limited partners reject the proposed roll-up. In addition, the proposal would prohibit members or persons associated with a member from participating in the solicitation of votes or tenders in connection with the roll-up of a DPP unless the general partner or sponsor proposing the roll-up agrees to pay all soliciting expenses related to the roll-up, including all preparatory work related thereto, in the event the roll-up is not approved.⁵ The proposed rule change defines "roll-up" or "roll-up of a direct participation program" as a transaction involving an acquisition, merger or consolidation of at least one DPP, not currently listed on a registered national securities exchange or the NASDAQ System, into another public direct participation program or a public corporation or public trust.

The Commission received 17 comment letters which expressed concerns regarding the NASD's proposed change to appendix F. The commenters set forth a variety of comments but the commentators generally focused on the same central issues. Some commentators stated they did not think the proposed amendments were necessary, arguing the market place already has responded to and corrected most of the abuses that have been identified.

The majority of the commentators favored the provision in the proposal which eliminated differential compensation and limited member solicitation compensation to 2% of the exchange value of the new securities. Several commentators, however, cautioned that this provision will increase the cost of a transaction if there is equal payment for yes and no votes and may cause brokers to recommend that investors vote against the proposed transaction, thereby allowing brokers to avoid potential liability while still receiving a fee.⁶

Almost all the commentators opposed requiring the general partner or the sponsor proposing the roll-up to pay all soliciting expenses related to the roll-up if the roll-up fails. The commentators asserted that a transaction could be fairly structured and fail for reasons not attributable to the general partner or

sponsor and that they should not be penalized for acting in good faith. These commentators argued that roll-ups can be beneficial to limited partners but if the general partner or sponsor must accept this added risk of liability they will be unlikely to use this form of restructuring even if contra to their fiduciary obligation.⁷ Others commented that the provision regarding what expenses the general partner or sponsor would be required to pay is unclear. Several commentators asserted that the NASD did not provide notice of proposed section 6(b) in Notice to Members 90-79.⁸ One of these commentators also requested additional notice and time to comment with regard to this provision.⁹

Many commentators stated that the definition of "roll-up" is too broad because it captures the conversion of a partnership into another legal form, such as a Real Estate Investment Trust ("REIT"), even if the general partner is not proposing any significant changes.¹⁰ Commentators asserted this type of restructuring can save limited partners from substantial adverse tax consequences and could be beneficial to limited partners. Commentators noted that the definition in The Limited Partnership Rollup Reform Act of 1991 as reported by the House Committee on Energy and Commerce on July 22, 1991,¹¹ would exempt this type of transaction. Other commentators stated the definition of "roll-up" is too narrow because it excludes certain transactions, such as those including public programs.

The NASD submitted a response to these comment letters. With respect to whether the market has or will self-correct roll-up abuses and commentators representations that recent transactions have been fair to investors, the NASD replied that the number of roll-ups has substantially declined and this is likely due to legislative and regulatory initiatives rather than a market reaction to abuses of earlier roll-up transactions.

⁷ Many commentators argued this would have a chilling effect on restructuring, unduly restricting and limiting flexibility and effectively eliminating NASD members from the solicitation process. Some commentators also argued NASD members will lose financial structuring and fairness opinion business.

⁸ Some commentators objected to the adoption of this provision on procedural grounds, arguing that the NASD did not request comments from their members on this provision. The NASD is not required to request comment from their members and under Art. III section 34(c) of the Rules of Fair Practice the NASD Board of Governors may amend Appendix F without seeking membership vote.

⁹ The filing was published for comment in the Federal Register and all comments received were given due consideration.

¹⁰ See *infra* footnote 28.

¹¹ H.R. Rep. No. _____, 102d Cong., 1st Sess. (1991).

In response to several commentators' assertions that proposed section 6(a)¹² will increase the costs of a roll-up which a limited partner must bear and will drive NASD members out of the solicitation business, the NASD responded that it did not find these assertions to be credible. The NASD stated that there is a strong favorable consensus that this provision would be helpful in assuring that investors received objective advice from NASD members. In addition, if the provisions in this proposal are adopted, a portion of the costs which limited partners are currently bearing could be shifted to the sponsor or general partner. Furthermore, the NASD asserted that the proposed rule change should act to lower costs of a roll-up because general partners or sponsors presumably will bargain harder to reduce solicitation fees if they perceive that they ultimately might have to bear that expense.¹³

In response to the commenter's assertions that the language of section 6(a) appears to apply only to limited partnerships, the NASD amended this provision by replacing the term "limited partners" with the term "participant" to clarify that Section 6 will apply to any solicitation of participants of non-traded DPPs of any form.¹⁴

The majority of the comments received in connection with section 6(b)¹⁵ opposed adoption of this provision.¹⁶ In response to

¹² In general, section 6(a) prohibits NASD members from receiving compensation for soliciting votes or tenders in connection with a roll-up unless the compensation is equal in amount and payable regardless of whether the vote favors or opposes the roll-up, limits solicitation compensation to 2% of the exchange value of the new security and requires that compensation be payable regardless of whether the limited partners reject the roll-up.

¹³ Some commentators also expressed concerns that under section 6(a) broker-dealers will have an incentive to urge investors to vote "no" thus avoiding potential liability while still receiving a fee, thereby increasing the number of failed transactions. The NASD explained that the purpose of the provision is to permit a member to bargain on behalf of limited partners for the best possible roll-up terms.

¹⁴ Stated in another manner, the proposed rule change applies to solicitation fees paid or payable in connection with the roll-up of at least one DPP, but does not apply to a transaction which involves only corporations or publicly traded DPP's.

¹⁵ In general, section 6(b) would prohibit NASD members from participating in the solicitation of votes or tenders in connection with a roll-up of a DPP unless the general partner or sponsor agrees to pay all soliciting expenses related to the roll-up in the event the roll-up is not approved.

¹⁶ It should be noted that in response to the NASD's Notice to Members 90-79 (December 1990), sixteen commentators indicated that general partners should pay all or a portion of the costs of a failed roll-up transaction. The NASD stated that this was the most significant general comment made, and thus prompted the NASD to amend the original proposal in response to these comments.

⁵ See *infra* footnote 25.

⁶ See *infra* footnote 13.

commentators' concerns that the term solicitation expenses was unclear, the NASD stated that Amendment No. 1 clarifies that solicitation expenses include only direct marketing expenses such as telephone calls, broker-dealer fact sheets, and legal as well as other fees related to the solicitation. In addition, solicitation expenses do not include other expenses normally paid by the registrant such as their counsel fees, accounting fees, printing costs and financial advisory fees related to the roll-up transaction.

The NASD addressed commentators' concerns that proposed section 6(b) could restrict general partners' fiduciary duty to propose transactions they believe to be in the best interest of the subject partnerships and that it could unfairly make the general partner or sponsor responsible for solicitation expenses even if the roll-up is fairly structured. The NASD also addressed commentators' concerns that section 6(b) could have the effect of eliminating NASD members from participation in roll-ups because a general partner may use in-house solicitation efforts or unregulated proxy solicitation firms to accomplish roll-ups.¹⁷ The NASD asserted that it believes a roll-up transaction that is fair to all parties does not have a high risk of being rejected by limited partners.¹⁸ The NASD stated it has considered the risk that NASD members will be eliminated from participation in roll-ups in favor of in-house solicitation efforts or unregulated proxy solicitation firms but has determined it can not avoid regulating members participating in potentially

abusive transactions because an issuer may choose to employ non-members.¹⁹

The NASD responded to commentators' concerns that the definition of roll-up is too broad, too narrow or is different from the definition of roll-up found in the legislation pending before the House of Representatives entitled The Limited Partnership Rollup Reform Act of 1991.²⁰ The NASD stated that it will continue its consideration of appropriate regulation in the area of roll-ups and will address the proposal to determine their necessity in the future.²¹

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder. Specifically, the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that the rules of the NASD are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission is of the opinion that the implementation of this proposal will protect investors and the public interest by alleviating certain perceived conflicts of interest in the solicitation arena and by providing an impetus for general partners to structure roll-ups fairly.

The Commission believes the NASD has addressed sufficiently the commentators' concerns. Roll-ups have created considerable controversy and have generated a variety of criticisms, many of which were highlighted in a series of Congressional hearings on limited partnership roll-ups.²² Criticisms

have focused primarily on issues relating to the fairness of the transactions and the general partners' conflicts of interest.²³ The NASD's proposed rule change addresses some of these concerns and attempts to eliminate a perceived conflict of interest in roll-up compensation arrangements.²⁴ Indeed, the majority of commentators supported this provision of the proposed rule change. The Commission also believes the NASD is reasonable in its approach to resolve perceived conflicts of interest in roll-ups by requiring general partners to pay solicitation expenses for a roll-up that has not been approved.²⁵ This proposal will provide an impetus for general partners to structure roll-ups fairly. In addition, the Commission finds that the NASD's definition is sufficient for the purposes of this proposal.²⁶

Reorganizations, or "Roll-ups", 1991: Hearing Before the Subcomm. on Securities, 102d Cong., 1st Sess. (1991) (statement of Richard C. Breeden, Chairman, U.S. Securities Exchange Commission), Legislative Hearing on H.R. 1885, the Limited Partnership Roll-ups Reform Act of 1991, 1991: Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 102d Cong., 1st Sess. (1991) (statement of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission), and the Hearing Concerning Limited Partnership Roll-ups, 1991: Hearing Before the Subcomm. on Energy and Agricultural Taxation of the Comm. on Finance, 102d Cong., 1st Sess. (1991) (statement of James R. Doly, General Counsel, U.S. Securities and Exchange Commission).

²² See *id.* See also comment letters received in response to NASD Notice to Members 90-79 (December 1990).

²³ While paying NASD members for both "yes" and "no" votes could raise the costs of the solicitation process, under this proposed rule change these solicitation fees will be limited in the aggregate to 2% of the exchange value of the new security and will be shifted to the general partner or sponsor if the roll-up is not approved.

²⁴ The NASD stated that, in the aggregate, typical roll-up transaction costs are approximately 6% to 8% of exchange value. In addition, the NASD estimated, sections 6(a) and 6(b) would require general partners or sponsors to pay solicitation costs of approximately 3%. The NASD asserted total transaction costs are typically composed of: a 2% solicitation fee and approximately 1% of other "direct marketing" or solicitation expenses. Consequently, limited partners still would be required to pay between 3% and 5% of the total cost of the transaction if it failed. In applying this rule, costs would be apportioned among the limited partnerships. For example, if a sponsor was attempting to roll-up ten limited partnerships and only one limited partnership did not approve the roll-up transaction, the sponsor would be responsible for paying the portion of the solicitation fees apportioned to that limited partnership.

²⁵ A number of commentators asserted that the NASD definition was too broad because it captures the conversion of a limited partnership into a REIT. These commentators argued this is in conflict with The Limited Partnership Rollup Reform Act of 1991 as reported by the House Committee on Energy and Commerce on July 22, 1991, which exempts this type of transaction. The Commission does not believe it is necessary for the NASD to conform its definition

Continued

¹⁷ Some commentators questioned whether the proposed change to section 1 of appendix F could be used to prevent members from providing fairness opinions and other related financial advice in "non-complying" roll-ups. The same commentators also requested clarification on whether the NASD intends to restrict the role officers of an in-house NASD member can perform in connection with the roll-up where registered persons of that member are also officers of the sponsor. The NASD stated that the provisions in section 6 only apply to solicitation compensation and should not restrict the general language proposed in section 1. The NASD also stated that the provisions of the proposed rule change have never been intended to preclude NASD member firms from acting as financial advisors or providing fairness opinions to sponsors or general partners considering the roll-up transaction, however, the NASD may seek to adopt regulations bearing on such activities in the future. In addition, the NASD stated that persons associated with a broker-dealer affiliated with a roll-up or sponsor or general partner could participate in the solicitation of a roll-up transaction so long as they did not receive transaction based compensation.

¹⁸ Some commentators suggested that general partners may attempt to cover the potential risk of a failed transaction by structuring the roll-up in their favor. The NASD believes the possibility of rejection of such a proposal would be high and thus the suggested scenario is improbable.

¹⁹ The NASD in its response to comment letters also noted it is unclear how unregulated proxy solicitation firms can be engaged to distribute new securities issued in connection with a roll-up transaction because that activity would appear to be included in the definition of the term "broker-dealer" and would subject the proxy solicitation firms to the registration provisions of the Act. The Commission does not take a position with respect to this issue.

²⁰ H.R. Rep. No. _____, 102d Cong., 1st Sess. (1991). The NASD amended this proposed rule change by moving the definition of "Roll-up or Roll-up of a District Participation Program" from section 6(c) to section 2 of appendix F, which contains the definitions for the rest of the Appendix. In general, section 2 defines a roll-up transaction as a transaction involving an acquisition, merger or consolidation of at least one DPP, not currently listed on a registered national securities exchange or the NASDAQ System, into another public DPP, public corporation or public trust.

²¹ The NASD also stated that it does not believe these proposals should effect the approval of the proposed rule at this time.

²² See, e.g., written testimony given at the Oversight Hearing on Limited Partnership

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR-NASD-91-24, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-20331 Filed 8-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18282; 812-7618]

Financial Square Trust, et al.; Notice of Application

August 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Financial Square Trust (the "Trust") and Goldman, Sachs & Co. ("Goldman Sachs").

RELEVANT 1940 ACT SECTIONS:

Exemption requested under Section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order that would permit existing and future portfolios of the Trust to issue and sell separate classes of shares representing interests in the same portfolio. These classes would be identical in all respects, except that (a) certain classes would bear expenses attributable to a rule 12b-1 plan or a shareholder services plan, (b) the classes would have different voting rights, exchange privileges and class designations, and (c) a class may bear the cost of preparing, printing and mailing proxy materials relating specifically to such class.

FILING DATES: The application was filed on November 2, 1990 and amended on March 21, 1991 and May 14, 1991.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 18, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

to draft legislation. Of course, if roll-up legislation is passed by Congress the NASD could reconsider this issue.

of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 4900 Sears Tower, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT:

C. Christopher Sprague, Senior Staff Attorney, at (202) 272-3035, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company, and has an effective registration statement under the Securities Act of 1933. Currently, the Trust offers shares in six money market portfolios: Financial Square Prime Obligations Fund, Financial Square Government Fund, Financial Square Federal Fund, Financial Square Treasury Obligations Fund, Financial Square Money Market Fund, and Financial Square Tax-Free Money Market Fund (such funds, together with all money market and non-money market series that the Trust may create in the future, are referred to hereafter as the "Funds"). The Trust imposes no sales or redemption charge with respect to shares of any Fund.

2. The Funds are sold primarily to institutional investors such as bank trust departments that act on behalf of their respective customers. Applicants plan to offer shares of the Funds to customers of other financial institutions and securities professionals, as well as to the general public.

3. Goldman Sachs acts as the Trust's investment adviser, administrator, distributor, and transfer agent. State Street Bank and Trust Company ("State Street") serves as the Trust's Custodian.

4. Under Applicants' proposal, the Trust would issue and sell three classes of shares with respect to each Fund. The Trust's existing class of shares (the "Existing Shares") is not subject to a rule 12b-1 plan or a shareholder services plan. The Trust may offer Existing Shares in connection with future Funds. The second class of shares ("Administration Shares") would be offered in connection with a shareholder

services plan adopted and operated in accordance with paragraphs (b) through (f) of rule 12b-1 (except for that rule's shareholder approval requirement) (the "Administration Plan"). The third class of shares ("Service Shares") would be charged a fee pursuant to a rule 12b-1 Plan (the "Service Plan"). The Administration Plan and Service Plan are referred to collectively as the "Plans," and the Administration Shares and Service Shares are referred to collectively as the "New Shares."

5. Applicants believe that creating the New Shares would enhance their marketing efforts, in that the unique services associated with each class of New Shares would appeal to a wide variety of investors. Thus, Applicants submit that an investor will be more likely to find a class of shares the attributes of which suit the investor's specific needs.

6. Under each type of Plan, the Trust would enter into servicing agreements ("Service Agreements") with banks or other institutions ("Service Organizations"), under which the Service Organization would provide certain account administration services to its customers ("Customers") who from time to time beneficially own shares offered in connection with a Plan.

7. The services to be provided by Service Organizations to their Customers under an Administration Plan would include: (a) Acting as the sole shareholder of record and nominee for all Customers; (b) maintaining account records for each Customer; (c) answering questions and handling correspondence from Customers; (d) processing Customer orders to purchase, redeem or exchange Administration Shares; (e) transferring funds used to purchase or sell Administration Shares; (f) issuing transaction confirmations; and (g) providing other account administration services (collectively, the "Account Administration Services").

8. The services to be provided by Service Organizations to their Customers under a Service Plan would include: (a) Account Administration Services; (b) answering questions posed by prospective investors about the Trust; (c) providing prospectuses and statements of additional information on request; (d) assisting prospective Customers in completing application forms, selecting dividend and other options, and opening custody accounts with the Service Organization; and (e) generally acting as liaison between investors and the Trust (collectively, the "Shareholder Liaison Services").

9. The provision of Account Administration Services and

Shareholder Liaison Services under the Plans would augment (and not be duplicative of) the services to be provided to the Trust by Goldman Sachs and State Street.

10. Under each type of Plan, the Trust would make "Service Payments" to a Service Organization for Account Administration or Shareholder Liaison Services. Service Payments would not exceed .75% per annum of the average daily net asset value of those Service Shares beneficially owned by Customers of the Service Organization, and Service Payments made under an Administration Plan would not exceed .50% per annum of the average daily net asset value of those Administration Shares beneficially owned by Customers of the Service Organization.

11. In addition to expenses incurred under a Service Plan or an Administration Plan, each class of shares would bear the cost of preparing, printing, and mailing proxy materials relating to a particular Plan ("Class Expenses"). The determination of the Class Expenses that would be allocated to a particular class would be made by the Board of Trustees of the Trust in the manner described in condition 3 below.

12. Each Existing Share or New Share in a particular Fund, regardless of class, would represent an equal *pro rata* interest in the Fund, and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (a) Each class of shares would have a different class designation; (b) each class of New Shares offered in connection with a Plan would bear its particular Service Payments; (c) each class of New Shares would bear certain Class Expenses; (d) holders of New Shares of a particular class would have exclusive voting rights with respect to matters pertaining to their Plan; and (e) each class of shares would have different exchange privileges.

13. The net asset value of all outstanding shares representing interests in the same Fund would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to the Fund, subtracting the liabilities charged to such Fund, and dividing the result by the number of that Fund's outstanding shares. The gross income of a Fund and Fund expenses not attributable to a particular class would be allocated on a *pro rata* basis to each outstanding share in the Fund regardless of class. Each Fund would pay Goldman Sachs an account

administration fee equal to .13% of the Fund's average daily net assets.

14. Because the Service Payments and Class Expenses borne by each class of shares may differ, the net income of (and dividends payable to) each class may be different from those of the other classes of shares in the same Fund. However, dividends paid by a Fund with respect to each class of its shares would be calculated in the same manner, and would be in the same amount, except that Service Payments made by a class under its Plan and any Class Expenses would be borne exclusively by that class.

15. The representations in the application and the conditions imposed by any order will apply to both existing and future Funds relying on the order.

Applicants' Legal Analysis

1. Applicants request an exemptive order because the different expenses and dividends of the Trust's Existing Shares, Administration Shares and Service Shares might be regarded as creating a class of stock with "priority over any other class as to distribution of assets or payment of dividends" within the meaning of section 18(g) of the 1940 Act. Section 18(f)(1) of the 1940 Act generally prohibits a registered open-end company, such as the Trust, from issuing or selling any class of senior security. Moreover, the fact that shareholders would enjoy exclusive voting rights with respect to matters affecting their class is not consistent with the requirement of section 18(i) that shares of a registered management company have equal voting rights. Applicants assert that the proposed allocation of expenses and voting rights is equitable, and would not unfairly discriminate against any group of shareholders. Shareholders receiving the services provided under a Plan would bear the costs of such services, but also would enjoy exclusive voting rights with respect to matters affecting the Plan. Conversely, investors purchasing Existing Shares would not bear those expenses, receive the service benefits of such Plans, or enjoy those voting rights.

2. Applicants believe that it would not be efficient or economically feasible to organize a separate investment portfolio for each class of shares created. Not only might the Trust incur duplicative costs in organizing and operating such portfolios, but the Trust's management of its portfolios might be hampered. For those reasons, Applicants seek to create new classes of shares, rather than new portfolios.

3. Applicants maintain that the proposed arrangement does not involve borrowing, and does not affect the

Trust's existing assets or reserves. Nor would the proposed arrangement increase the speculative character of the shares in a Fund, since all shares—Existing, Administration or Service—would participate *pro rata* in all of the Fund's income and all of the Fund's expenses (with the exception of the Service Payments and Class Expenses). Accordingly, Applicants submit that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Fund will relate solely to: (a) The impact of the disproportionate Service Payments made under an Administration Plan or a Service Plan and the cost of preparing, printing and mailing proxy materials relating to only a particular class, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to the Trust's Administration Plan and Service Plan; (c) the different exchange privileges of the classes of shares; and (d) the designation of each class of shares of the Trust.

2. The Trustees of the Trust, including a majority of the independent Trustees, will approve the offering of different classes of shares (the "Multi-Class System"). The minutes of the meetings of the Trustees of the Trust regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of both the Trust and its shareholders.

3. The Class Expenses to be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees of the Trust including a majority of the Trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class

Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor the Trust for the existence of any material conflicts among the interests of the classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Goldman Sachs will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Goldman Sachs, at its own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. Any Service Plan adopted or amended to permit the assessment of rule 12b-1 fee on any class of shares which has not had its rule 12b-1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the shares of such class. Such meeting is to be held within 18 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

6. The Administration Plans will be adopted and operated in accordance with the procedures set forth in rule 12b-1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1. In evaluating the Administration Plans, the Trustees will specifically consider whether (a) such Plans are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Administration Plans are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Trust, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

7. Each Service Agreement entered into pursuant to an Administration Plan will contain a representation by the

Service Organization that any compensation payable to the Service Organization that any compensation payable to the Service Organization in connection with the investment of its customers' assets in the Trust (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Service Organization.

8. Each Service Agreement entered into pursuant to an Administration Plan will provide that, in the event an issue pertaining to such a Plan is submitted for shareholder approval, the Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its customer's accounts.

9. The Trustees of the Trust will receive quarterly and annual statements concerning the amounts expended under the Administration Plans and Service Plans complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

10. Dividends paid by the Trust with respect to a class of shares of a Fund, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Service Payments made by a class under its Plan and any Class Expenses will be borne exclusively by that class.

11. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and

allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the SEC staff upon the written request to the Trust for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

12. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 11 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 11 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

13. The prospectuses of each class of shares of a Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares of a Fund may receive different compensation with respect to one particular class of shares over another in the Fund.

14. Goldman Sachs will adopt compliance standards, as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Trust to agree to conform to such standards.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the

Multi-Class System will be set forth in guidelines which will be furnished to the Trustees.

16. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Trust will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

17. The Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Trust may make to Service Organizations pursuant to any Service Plan or Administration Plan in reliance on the exemptive order.

18. A Fund will have more than one class of shares outstanding only when and for so long as it (a) declares its dividends on a daily basis, (b) accrues its Service Payments and Class Expenses daily, (c) has received undertakings from the persons that are entitled to receive Service Payments waiving such portion of any such payments to the extent necessary to assure that payments (if any) required to be accrued by any class of shares on any day do not exceed the income to be accrued to such class on that day, and (d) has received an undertaking from Goldman Sachs that Goldman Sachs will assume Class Expenses to the extent necessary to assure that the Class Expenses (if any) required to be accrued by any class of shares on any day do not exceed, after waiver of Service Payments, income to be accrued with respect to such class of shares on that day. Goldman Sachs will pay any Class Expense it has assumed to the Fund within five (5) business days of the date that such assumption occurred. In this manner, the net asset value per share for all shares in a Fund will remain the same. Once a Service Payment is waived or a Class Expense is assumed for the purpose described

above, such Service Payment or Class Expense will never be charged to the Trust or any Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-20391 Filed 8-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18279; 811-4435]

Navigator Income Shares, Inc.; Notice of Application

August 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Navigator Income Shares, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed June 28, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 18, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o ABD Securities Corporation, One Battery Park Plaza, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, at (202) 272-7324, or Jeremy N. Rubenstein, Assistant Director, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. On October 15, 1985, Applicant filed a registration statement on Form N-8A to register as a diversified, open-end management investment company under section 8(a) of the 1940 Act. On March 3, 1988, Applicant filed a registration statement on Form N-1A pursuant to section 8(b) of the 1940 Act. Applicant has not filed a registration statement under the Securities Act of 1933.

2. On May 14, 1991, Applicant's Board of Directors approved a plan of Liquidation and Dissolution (the "Plan") and called a meeting of Applicant's stockholders to consider the Plan. On June 24, 1991, the Applicant's stockholders approved the Plan.

3. As of June 26, 1991, Applicant had 1,351,425,117 shares of common stock outstanding. Applicant's per share net asset value on that date was \$10.10, and its total net assets amounted to \$13,652,240.62. On June 27, 1991, pursuant to the Plan, Applicant distributed all its remaining net assets to its stockholders. Approximately \$10.10 per share was distributed to each stockholder, by check or wire transfer, at the address of record on applicant's books.

4. In connection with the liquidation, \$20,563 in expenses were incurred, all of which were borne by the applicant. These expenses were for legal, accounting, and tax advice, including the costs of preparing, printing and mailing proxy materials and filings with federal and state regulatory agencies.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. Articles of Dissolution were filed with the Maryland Department of Assessments and Taxation on June 28, 1991. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-20394 Filed 8-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18283; 811-5353]

**Priamos Institutional Investments, Inc.;
Notice of Application**

August 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Priamos Institutional Investments, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 22, 1991. By letter dated August 20, 1991, counsel for the applicant provided the staff with additional information clarifying certain share price calculations.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 Adelaide Road, Dublin 2, Ireland.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, registered under the 1940 Act on October 7, 1987, as an open-end investment company. Applicant never made a public offering of its securities in the United States but sold its securities

in a private placement to foreign purchasers seeking favorable tax treatment under a tax treaty between the United States and the Federal Republic of Germany.

2. On December 7, 1990, applicant's primary shareholder redeemed its holdings of 344,914 shares, representing approximately 99% of applicant's net assets, and received a total of \$34,801,822 or \$100.90 per share. In anticipation of the redemption, applicant's board of directors had established a reserve account of \$65,000 to cover the anticipated expenses of a liquidation. The remaining shareholders redeemed their shares on or about December 28, 1990, at a price of \$263.35 per share. On February 20, 1991, the board of directors authorized the liquidation of applicant pursuant to Maryland corporate law, the reduction of the reserve account to \$20,000, and the distribution to all shareholders of any cash remaining after payment of all fees. Such payments were made on April 16, 1991 and April 18, 1991 totalling approximately \$49,118.

3. Liquidation expenses, including accounting, legal, and administrative fees, so far have totalled \$29,986. The reserve account will cover any further expenses.

4. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders and is not now engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-20392 Filed 8-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25364]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 20, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 13, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70-7903)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807-0020, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(d) of the Act and rule 44 thereunder.

Columbia, a debtor in possession under chapter 11 of the Bankruptcy Code, 11 U.S.C., proposes to borrow up to \$275 million or such lesser amount as may be approved by the Bankruptcy Court from time to time through September 30, 1993. Borrowings will be evidenced by a grid note which will not exceed two years in length. Interest on all outstanding balances will be charged at a rate of no more than 1½% over the lender's alternate reference rate (the higher of the lender's announced prime rate or the federal funds rate plus 50 basis points), or 2¼% over the LIBOR rate or such interest rates as may be approved by the Bankruptcy Court. It is anticipated that initial fees will not exceed 2½% of the commitment and that the commitment fee on the unused portions of the facility will not exceed ½% per annum. Amounts outstanding under this facility may be prepaid in whole or in part without penalty or premium. The commitment can be reduced at the option of Columbia, with resultant reduced commitment fees.

As security for the borrowings, it is anticipated that the lender will receive a superpriority claim in the chapter 11 proceedings, as well as a lien on all property of Columbia except the voting securities of subsidiaries which are gas public-utility companies as defined under section 2(a)(4) of the Act, and the voting securities of Columbia's

nonutility subsidiary, Columbia LNG Corporation.

Columbia will use the proceeds of the loans to repay any outstanding balances under the proposed interim debtor-in-possession facility, authorized by the Commission,¹ and to fund the operating needs of its subsidiaries in accordance with the terms and conditions of a previous order of the Commission dated December 18, 1989 ("1989 Order").² The 1989 Order authorized Columbia to acquire installment promissory notes or common stock issued by its subsidiaries and Columbia's issuance of short-term advances to its subsidiaries through December 31, 1991.³

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-20393 Filed 8-23-91; 8:45 am]
BILLING CODE 9010-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, will hold a public meeting from 9:30 a.m. to 3 p.m. on Friday, September 13, 1991, at the Alabama Resource Center, Meadowbrook Corporate Park, 1500 Resource Drive, Birmingham, Alabama, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, suite 200,

¹ *Columbia Gas System, Inc., Holding Co. Act Release No. 25363 (Aug. 20, 1991).*

² *Columbia Gas System, Inc., Holding Co. Act Release No. 25001 (Dec. 18, 1989).* Columbia and its nonutility subsidiary, Columbia Gas Transmission Corporation ("Transmission"), filed for protection with the Bankruptcy Court for the District Court of Delaware on July 31, 1991, in response to recent financial difficulties related to Transmission's obligations under above-market gas purchase contracts. *In re The Columbia Gas System, Inc.*, Case No. 91-803 and *In re Columbia Gas Transmission Corp.*, Case No. 91-804. Columbia will file with the Bankruptcy Court a petition for approval of the subject financing. Transmission, has arranged separate financing with the approval of the Bankruptcy Court and will not receive any of the \$275 million borrowing proposed herein. TriStar Ventures Corporation and Columbia Atlantic Trading Corporation were not authorized to receive financing from Columbia in the 1989 Order.

³ The Commission may authorize the financing of the subsidiaries beyond December 31, 1991 in the context of future filings.

Birmingham, Alabama 35203, telephone (205) 731-1341.

Dated: August 19, 1991.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 91-20383 Filed 8-23-91; 8:45 am]
BILLING CODE 9025-01-M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Des Moines and Cedar Rapids, will hold a public meeting at 10 a.m. on Thursday, September 19, 1991, at the Strawtown Inn, 1111 West Washington, Pella, Iowa, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Conrad Lawlor, Director, Des Moines District Office, Federal Building, room 749, 210 Walnut Street, Des Moines, Iowa 50309, telephone (515) 284-4567 or James Thomson, Director, Cedar Rapids District Office, 373 Collins Road, NE., Cedar Rapids, Iowa 52402 or telephone (319) 393-8630.

Dated: August 19, 1991.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 91-20384 Filed 8-23-91; 8:45 am]
BILLING CODE 9025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis, will hold a public meeting at 12 noon on Friday, September 27, 1991, at the U.S. Small Business Administration District Office, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, telephone (612) 370-2306.

Dated: August 19, 1991.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 91-20385 Filed 8-23-91; 8:45 am]
BILLING CODE 9025-01-M

Region III Advisory Council/Banker's Quality Circle; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Pittsburgh, will hold a public meeting at 10:30 a.m. on Thursday and Friday, September 19-20, 1991, at the Edinboro, Holiday Inn, U.S. Route 6N, Edinboro, Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph M. Kopp, District Director, U.S. Small Business Administration, 960 Penn Avenue, 5th Floor, Pittsburgh, Pennsylvania, telephone (412) 644-4306.

Dated: August 19, 1991.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 91-20386 Filed 8-23-91; 8:45 am]
BILLING CODE 9025-01-M

DEPARTMENT OF STATE

[Public Notice 1462]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 2 p.m., September 19, 1991, in room 1408, Department of State, 22nd and C Streets, NW., Washington, DC.

At this meeting, officers responsible for Antarctic affairs in the Department of State will report on the first and second resumed sessions of the Eleventh Antarctic Treaty Special Consultative Meeting in Madrid, Spain and preparations for the final session of that meeting, which is scheduled to take place October 3-4, 1991. The Section will also discuss issues related to the Sixteenth Antarctic Treaty Consultative Meeting, which will be held in Bonn, October 7-18, 1991 and the next meeting of the Convention on the Conservation of Marine Living Resources, which will be held in Hobart, Australia, October 21-November 1, 1991. Department officials will be prepared to discuss other key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the

Chairman. As access to the Department of State is controlled, persons wishing to attend the meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on September 20, in room 1205, Department of State, 22nd and C Streets, NW. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding current Antarctic issues, and will concentrate on the results of the first and second resumed sessions of the Eleventh Antarctic Treaty Special Consultative Meeting in Madrid, Spain and preparations for the final session of that meeting, which is scheduled to take place October 3-4, 1991, also in Madrid. The Section will cover the development of U.S. policy regarding the Sixteenth Antarctic Treaty Consultative Meeting, which will be held in Bonn, October 7-18, 1991 and the next meeting of the Convention on the Conservation of Marine Living Resources in Hobart, Australia, October 21-November 1, 1991. The meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356. The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future meetings and negotiations. Therefore, the meeting will not be open to the public, pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and 5 U.S.C. 552b (c)(9)(B).

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OA, room 5801, Department of State. He may be reached by telephone on (202) 647-3262.

Dated: August 14, 1991.

Curtis Bohlen,
Chairman.

[FR Doc. 91-20317 Filed 8-23-91; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96-192, requires that the Department, as successor to the Civil Aeronautics

Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available sent-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 91-8-17 established the currently effective two-month SFFL applicable through July 31, 1991.

In establishing the SFFL for the two-month period beginning August 1, 1991, we have projected non-fuel costs based on the year ended March 31, 1991 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect continued decreases in fuel prices.

By Order 91-8-39 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic.....	1.4407
Latin America	1.3395
Pacific	1.8158
Canada	1.3709

For further information contact: Keith A. Shangraw, (202) 366-2439.

By the Department of Transportation:
August 19, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-20302 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-82-M

Coast Guard

[CGO 91-044]

Exemption From International Convention on Load Lines, (ICLL) 1966

AGENCY: Coast Guard, DOT.

ACTION: Notice of exemption.

SUMMARY: In November 1985 the Coast Guard made the determination that five 730-foot triple deck trailer barges owned by Crowley Towing and Transportation Corporation embodied features of a novel kind. These barges are engaged in unmanned operation between Philadelphia, PA and Puerto Rico, including Jacksonville, FL and between Lake Charles, LA and Puerto Rico, including Mobile, AL and are exempt from geometric load line and freeing port requirements contained in 46 CFR part 42. The basis for granting this load line exemption was a determination that the particular vessels involved in this trade are novel, under Article 6 of International Convention on Load Lines, 1966, and under 46 CFR 42.03-30, and are exempt from specific load line

regulations. The Coast Guard has renewed and modified this exemption to include stops in all ports of call along the routes.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. William M. Hayden, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard (G-MTH-3), room 1308, 2100 Second Street, SW., Washington, DC 20593-0001. Telephone (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Based on the recommendation of the vessels' classification society and approval by Commandant (G-MTH) these vessels have been assigned a freeboard that is less than that which would normally be required by Regulation 27(9) of the Convention and 46 CFR 42.20-5(e) and have freeing port areas that are less than the requirements contained in Regulation 24 of the Convention and 46 CFR 42.15-70. Seakeeping analyses and model tests have been performed to demonstrate that for weather along the specified routes, seakeeping characteristics of these barges are adequate for the intended service at the assigned freeboard with the installed (reduced) freeing port areas. Crowley Towing and Transportation has now requested that the specific wording of the voyage restrictions be modified so that they include an allowance for stops in ports of call along the established routes specified. Based on recommendation by the barges' load line assigning authority, the Coast Guard has determined that Crowley Towing and Transportation's request does not place the barges in an environment that is more hazardous than the environment for which the barges are presently approved. In addition, the five barges have made a total of over 1,000 voyages on these routes since initiation of the service in 1985. The assignment of load lines was based on the novel features of the barges described in Volume 50, No. 28 of the *Federal Register*, dated February 11, 1985, Page 5722. The Coast Guard, as the U.S. Administration's representative to the International Maritime Organization, will request the Organization in accordance with Article 6(3) of the International Convention on Load Lines, to issue a load line advisory circular describing the research, (including model testing and analyses) the successful operation of the five barges, and decision of the Coast Guard to permit the barges to call at ports other than those of the United States.

Specific information on the vessels and load line assignment are as follows:

(1) Owner/Operator: Crowley Towing and Transportation Corporation, San Francisco, CA.

(2) Vessel's Names and Official Numbers: "JACKSONVILLE" O.N. 524658; "FORTALEZA" O.N. 526147; "PONCE" O.N. 566952; "MIAMI" O.N. 574568; and "SAN JUAN" O.N. 577473

(3) Vessel Types: Unmanned, triple deck trailer barges approximately 730 feet X 99 feet—6 inches X 20 feet, and assigned freeboard 7 feet—11 inches.

(4) Date Keels Where Laid: "JACKSONVILLE"—March 1970; "FORTALEZA"—May 1970; "PONCE"—July 1975; "MIAMI"—July 1976; and "SAN JUAN"—October 1976

(5) Normal speed of Vessels (By Tow): 10 to 11 knots.

(6) Geographical and Environmental Limits: Vessel operation is limited to voyages between Philadelphia, PA and Puerto Rico, and between Lake Charles, LA and Puerto Rico. The vessels may make stops in ports of call along the established routes. Environmental limits are not imposed on the vessels as a condition for exemptions to Convention and Load Line Regulation requirements.

(7) Normal maximum distance offshore in Course of Voyage: Distance offshore does not have any bearing on assignment of conditions for exemptions to Convention and Load Line Regulation requirements.

(8) Length of Voyage: The maximum distance between ports along approved routes is approximately 1400 nautical miles under normal voyage conditions, the duration of the voyages is five to seven days.

(9) Weather and Sea Conditions: Weather and sea conditions are those prevailing conditions for the geographic limits of the routes specified in item (6) above. Sea conditions upon which the exemption approval has been based are characterized by a maximum significant wave height of 39 feet. Extreme hurricane conditions were not considered. Determination of the 39 foot limiting wave condition was based on information contained in U.S. Department of Transportation Report No. CG-D-11-83, "Wind and Wave Summaries for Selected U.S. Coast Guard Operating Areas." This report contains buoy data and approximately 20 years of hindcast data for selected operating areas, including those transited by the barges. The maximum significant wave height documented in this report for areas transited by the barges is 33 feet. Seakeeping analyses and model tests were performed for 18-39 foot significant wave height random seas and 6-10 foot significant wave height regular seas. The tests were performed in head, beam, and following

random sea conditions, and head and following regular sea conditions.

(10) Cargo to be Carried: Trailers and containers.

(11) Vessels are to be operated unmanned.

(12) Variance to Conditions of Assignment: The freeing port area on freeboard deck (main deck) and upper deck are less than that required by Regulation 24. The approved freeing port areas are 168.8 square feet less per side for the freeboard deck, and 5.2 square feet less per side for the upper deck. Assignment is based on satisfactory demonstration that through seakeeping analyses and model testing, the vessels possess adequate seakeeping characteristics for the service and that they get much less water on deck than conventional vessels.

(13) Variance to Freeboard: The freeboard is less than that required in Regulation 27. The assigned freeboard is 7'-11", which corresponds to a draft of 12'-1½". Assignment is based on satisfactory demonstration, through seakeeping analyses and model testing, that the barges possess adequate strength and stability characteristics for the specified service. Analyses has been performed to demonstrate that the vessels possess adequate stability and strength with the quantities of water on deck that were observed during model tests. In addition, the vessels are required to comply with the Flooding Standard of Regulation 27(9) for Type "B-100" freeboards.

(14) Other Proposed Variances: None.

(15) Type of Load Line and Form of Certificate: The vessels will be issued a full term International Load Line Certificate for voyages restricted to: Philadelphia, PA and Puerto Rico, and between Lake Charles, LA and Puerto Rico. The vessel may make stops at ports of call along the established routes. In conjunction with the International Load Line Certificate, an International Exemption Certificate is to be issued. On the face of the Exemption Certificate the following information is to be provided:

1. "The provisions of the Convention from which the barge is exempted under Article 6(2) are:

(a) The freeing port area on main deck and upper deck are less than that required by Regulation 24. (Specifically 168.8 sq. ft. and 5.2 sq. ft. less per side, respectively).

(b) The freeboard is less than that required by Regulation 27(9). (Specifically 7'-11" which corresponds to a draft of 12'-1½".)

2. "Conditions, if any, on which the exemption is granted under either Article 6(2) or Article 6(4).

(a) The vessel is limited to unmanned voyages between Philadelphia, PA and Puerto Rico and between Lake Charles, LA and Puerto Rico. The vessels may make stops in ports of call along the established routes.

(b) The barge must meet the flooding standard of Regulation 27(9) for a Type "B-100" freeboard."

Dated: July 25, 1991.

A.E. Henn,

Rear Admirol, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-20389 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-14-M

[CG 91-037]

Omega Validation of the Mediterranean Sea

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: Notice is hereby given that the U.S. Coast Guard has completed a validation study of the Omega Radionavigation System coverage in the Mediterranean Sea. The study measures the Omega system performance and provides information about anomalies and signal interference patterns in the region.

DATES: The report is available after August 26, 1991.

ADDRESSES: The report of the study's findings is available from the National Technical Information Service, Springfield, Virginia 22161. The report is identified by Government Accession number AD-A236887. The address of the Coast Guard command responsible for the report and the Omega validation effort is: Commanding Officer, Omega Navigation System Center, 7323 Telegraph Road, Alexandria, Virginia 22310-3998.

FOR FURTHER INFORMATION CONTACT: Verbal inquiries may be made to LT Clement D. Ketchum, Signal Analysis and Control Division, Omega Navigation System Center; telephone (703) 866-3822, FTS 398-3822.

SUPPLEMENTARY INFORMATION: Omega validations are intensive studies of radionavigation propagation in specified geographical regions. Actual signal data is collected, analyzed and compared to the theoretical coverage model for a respective region. The result of the comparison provides information as to the signal coverage and accuracy of the Omega system in the region.

Findings

The study shows that the measured Omega system performance generally conforms to theoretical expectations and that the system provides continuous, all weather navigation coverage, with typical position fixing accuracy of 2 to 4 nautical miles, 95% of the time. In addition, the study provides information about anomalies and signal interference patterns in the region.

Dated: August 13, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 91-20388 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Approval of Noise Compatibility Program, Greater Cincinnati International Airport, Covington, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Kenton County Airport Board 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. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On January 8, 1991, the FAA determined that the noise exposure maps submitted by Kenton County Airport Board under part 150 were in compliance with applicable requirements. On August 6, 1991, the Administrator approved the Greater Cincinnati International Airport noise compatibility program. Most of the recommendations of the program were approved. One program element relating to new or revised flight procedures for noise abatement was proposed by the airport operator but action was deferred on this procedure.

EFFECTIVE DATE: The effective date of the FAA's approval of the Greater Cincinnati International Airport noise compatibility program is August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131-0301; 901-544-3495. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Greater

Cincinnati International Airport, effective August 6, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

- a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;
- b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;
- c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements; or intrude into areas preempted by the Federal Government; and
- d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not

by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Memphis, Tennessee.

Kenton County Airport Board submitted to the FAA on May 4, 1990, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from December 1988 through July 1990. The Greater Cincinnati Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 8, 1991. Notice of this determination was published in the *Federal Register* on January 17, 1991.

The Greater Cincinnati International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 8, 1991, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would be deemed to be an approval of such program.

The submitted program contained seventeen proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 were satisfied. The overall program, therefore, was approved by the Administrator effective August 6, 1991.

Outright approval was granted for fourteen of the seventeen specific program elements, and action on revision to the departure track off Runway 18L was deferred. Two additional operational measures (designation of a maintenance runup area and unrestricted use of existing

runway 18R at night for Stage 3 operations), which were identified by the sponsor for further study, were disapproved pending submission of additional information to make an informed analysis. Measures approved include an extension to Runway 18R which would remove a total of 73 homes from the 65 DNL and 54 homes from the 70 to 75 DNL contour. Other measures include acquisition within the 75 DNL contour; purchase of Immaculate Heart of Mary Church and School; purchase assurance for areas identified in the NCP; sound insulation for residences in areas identified and eligible schools; update of the "Airport Environs Overlay District"; establishment of an implementation committee; noise monitoring; preparation of annual noise contour maps until 1995; and a 24 hour system to record public comments.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 6, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Kenton County Airport Board.

Issued in Memphis, Tennessee, August 8, 1991.

Billy J. Langley,

Manager, Airports District Office.

[FR Doc. 91-20379 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-31]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulations activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the

legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 16, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, attn: Rule Docket (AGC-10), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 15, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 19651.

Petitioner: Learjet.

Sections of the FAR Affected: 14 CFR 21.197.

Description of Relief Sought: To extend Exemption No. 4953C which allows the issuance of special flight permit to Learjet, Inc. for ferrying aircraft between Wichita, Kansas, and Tucson, Arizona facilities.

Docket No.: 26547.

Petitioner: Florida West Airlines, Inc.

Sections of the FAR Affected: 14 CFR 145.35(a) and 145.37(b).

Description of Relief Sought: To permit Florida West Airlines, Inc. to perform overhaul, modification, and repair of aircraft without total and complete housing for the work.

Docket No.: 26579.

Petitioner: Mr. William H. Becker.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To exempt Mr. Becker from § 121.383(c) of the Federal Aviation Regulations, so Mr. Becker could serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 26593.

Petitioner: Mr. Robert M. Orr.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To exempt Mr. Robert M. Orr from § 121.383(c) of the Federal Aviation Regulations, so Mr. Orr could serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 26601.

Petitioner: Mr. Murray Q. Smith.

Sections of the FAR Affected: 14 CFR 45.21.

Description of Relief Sought: To allow Mr. Murray Q. Smith to retain the registration marks presently on his aircraft until such time as the aircraft is repainted.

Docket No.: 26610

Petitioner: American Warbirds.

Sections of the FAR Affected: 14 CFR 21.25 and 91.133.

Description of Relief Sought: To allow American Warbirds to conduct training for the flight crewmembers employed by American Warbirds in their Grumman HU-16 B, serial number 1311, N114FB, which is currently a special purpose aircraft.

[FR Doc. 91-20131 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-13-M

Training and Qualifications Subcommittee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Training and Qualifications Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 17, 1991, at 9 a.m.

ADDRESSES: The meeting will be held in the MacCraken Room, 10th Floor, 800 Independence SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Etta Schelm, Flight Standards Service (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Training and Qualifications Subcommittee to be held on September 17, 1991, at the FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for

this meeting will include progress reports from the Pilot Training Working Group, Air Carrier Working Group, and Cabin Safety and Operations Working Group. In addition, discussions will take place concerning the merger of the General Aviation Working Group with the Ab Initio Working Group. Also, the focus of each of the working groups will be discussed, with an emphasis on identifying specifically the tasks of each of the groups.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading. **"FOR FURTHER INFORMATION CONTACT."**

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on August 19, 1991.

David R. Harrington,

Executive Director, Training and Qualifications Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-20378 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Middlesex County, CT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Middlesex County, Connecticut.

FOR FURTHER INFORMATION CONTACT:

James J. Barakos, Division Administrator, 450 Main Street, Hartford, Connecticut 06103 Telephone: (203) 240-3705; or Edgar T. Hurle, Director of Environmental Planning, Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, Connecticut 06109-1100. Telephone: (203) 566-5704.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Connecticut Department of Transportation (ConnDOT), will prepare an environmental impact statement (EIS) on a proposal to improve a section of Connecticut route 9 in Middletown adjacent to the Connecticut River in

Middlesex County, Connecticut. Traffic in this area is subject to delays and safety hazards at two signalized intersections, one at Washington Street and the other at Hartford Avenue. It is proposed that these intersections be replaced with grade-separated interchanges.

Alternatives under consideration include: (1) No Build, (2) Transportation Systems Management, (3) Up to three Build Alternatives involving the construction of grade-separated interchanges.

The U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Department of the Interior (Fish and Wildlife Service), U.S. Coast Guard, Connecticut State Historic Preservation Officer, and Connecticut Department of Environmental Protection will be asked to be Cooperating Agencies. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to provide organizations and citizens who have previously expressed or are known to have an interest in this proposal.

Two scoping meetings, one for the public and one for interested agencies, will be held during the summer of 1991 to solicit comments. The draft EIS will be available for public and agency review. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. Any reviewer interested in submitting comments or questions should contact the FHWA or ConnDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 16, 1991.

Albon L. Cook,

Field Operations Engineer, Hartford, Connecticut.

[FR Doc. 91-20319 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-22-M

Office of Hearings

[Docket 47676]

U.S.-Brazil Combination Service Case; Prehearing Conference Report of Administrative Law Judge Robert L. Barton, Jr.

Served August 21, 1991.

A prehearing conference in this proceeding was held on August 15, 1991.

The issues in the proceeding are those set forth in Paragraph 2 of page 8 of Order 91-8-25, August 14, 1991.

United Air Lines' proposal for an exchange rate, as contained in its August 7, 1991 letter, was adopted. Tr. 10-11. Specifically, the dollar/cruzeiro currency exchange rate for the mid-point of the cost year (i.e. December 31, 1990), which was 161.2 cruzeiros per U.S. dollar according to the January 2, 1991 Wall Street Journal, will be used.

I also granted Northwest Airlines' motion to modify the Evidence Request to require Pan American World Airways to provide to Northwest all Pan Am proprietary data related to Pan Am's U.S.-Brazil operations, such as the historic traffic and operating data, fare and yield information, forecasts of future operations, commission data and station costs, that is not already publicly available to the public at the Department of Transportation. See Tr. 20-21.

Further, I also granted Northwest's request that the incumbent carriers be required to provide weighted average fares and yields for all single-plane and single-flight number routings between the U.S. and Brazil (with and without frequent flyer passenger revenues) using the format on page 6 of appendix B of Order 91-8-4. See Tr. 23. However, the supplemental response is limited to data for the Los Angeles-Brazil market, not other single flight number markets in the U.S.-Brazil market. See Tr. 27-29. Further, because American does not have any on-board average fares for the Los Angeles-Brazil market, it is not required to show dilution. See Tr. 24.

Service proposals and forecast market shares must be provided to Public Counsel by September 20, 1991. Tr. 76-77. Applicants who have not already done so are required to provide a description of their 1993 service proposal in their motions to consolidate. Tr. 93.

After considerable discussion, I ruled that the traffic forecasts in this proceeding would be based on two calendar years (1992 and 1993) as specified in the transcript. See Tr. 58-59.

A civic party is required to state in its direct exhibits whether or not it supports a particular applicant. Tr. 88.

The following is the procedural schedule for the U.S.-Brazil proceeding:

Supplemental Information Responses.	August 23, 1991.
Petitions for Leave to Intervene.	August 29, 1991.

Service Proposals and Forecast Market Shares (provided by applicants to Public Counsel).	September 20, 1991.
Direct Exhibits	September 30, 1991.
Rebuttal Exhibits and Final Witness List.	November 1, 1991.
List of Witnesses to be Cross-examined.	November 3, 1991.
List of Persons Attending Hearing ¹ .	November 5, 1991.
Hearing	November 7, 1991.
Briefs	December 12, 1991.
Recommended Decision.	January 16, 1992.

¹ This is necessitated by government security requirements; the list should be sent to my Secretary Janis Deahl and does not need to be filed with Docket.

All other rulings made at the conference not specifically addressed in this Report nevertheless remain in effect.

Objections, if any, to matters contained in this Prehearing Conference Report shall be filed and served on all parties on the Service List within seven (7) days of the date of service of the report.

Robert L. Barton, Jr.,
Administrative Law Judge

Attachment A—Ground Rules for U.S.C.-Brazil Service Proceeding

1. Evidence

All evidence, including the direct and rebuttal testimony of witnesses, shall be prepared in written exhibit form and shall be served in advance of the hearings on the dates designated. Witnesses shall not be permitted to read prepared testimony into the record.

All witnesses designated in advance of the hearing, as provided for in the procedural schedule, shall be made available for cross examination at the hearing. If any party wishes to examine the work papers used by a witness in preparing their exhibits, the party shall notify the party on whose behalf the witness is testifying at least three days before the commencement of the hearing.

The evidentiary record shall be limited to factual material. Argument shall not be received in evidence, but shall be presented in posthearing briefs. Reply briefs shall not be permitted.

Since the burden of showing the relevance and the probative value of evidence is on the proponent, any parties presenting econometric analyses will bear the burden of showing the relevance and value of such evidence in this proceeding. See *U.S.C.-Japan Service Case*, Docket 46438,

Recommended Decision of Judge Ronnie A. Yoder, p. 71, n.74, February 8, 1990.

The parties are strongly encouraged to submit evidence relating to the comparative performance of the applicants. This would include specific information as to the on-time performance of, and consumer satisfaction with, each applicant.

2. Format of Exhibits

The direct exhibits and rebuttal exhibits each shall contain a table of contents at the beginning.

The index or table of contents shall include a list of the exhibits which shall (a) identify each exhibit by number; (b) give the title of the exhibit; (c) specify the number of pages in the exhibit; and (d) set out the name of the exhibit's sponsoring witness. When the exhibits are served, parties shall also submit a list of the witnesses they intend to present at the hearing. The witness list shall identify the exhibits each witness is sponsoring.

The applicant's direct exhibits shall describe its service proposal in detail, including the proposed routing, frequency, type of aircraft, and startup date.

Direct and rebuttal testimony and documentary exhibits shall be marked according to the uniform numbering system set out in Section 3, *infra*. The exhibits shall be on 8½ × 11 inch paper.

Three (3) tabbed copies of exhibits shall be served on the Presiding Judge at the same time copies are served on the parties in accordance with the Exhibit Exchange List attached to this Prehearing Conference Report. The exhibits shall not be filed with the Docket Section.

Parties shall submit, at the hearing, three (3) copies of exhibits. One (1) copy shall be given to the court reporter and shall be sent directly to the Docket Section at the close of the hearing for the original volume of the proceeding's docket. One (1) copy shall be given to the Office of Hearings staff at the hearing and shall ultimately be sent to the Docket Section for the duplicate volume of the proceeding's docket. One (1) copy shall go to the Presiding Judge. The exhibit copy for the Presiding Judge shall be tabbed.

The exhibits shall include appropriate footnotes or narratives explaining the source of the information used and the methods employed in statistical compilations and estimates. The rebuttal exhibits shall specifically refer to the direct exhibits being rebutted.

Where one part of a multi-page exhibit is based on another part, appropriate cross-reference shall be made. For example, a profit-and-loss

forecast based on detailed estimates appearing on other pages should contain specific references showing which pages support the different individual items of the forecast.

3. Title and Numbering of Exhibits

The principal title of each exhibit shall state briefly what the exhibit contains and should also state the purpose for which the exhibit is offered. However, the titles will not be considered part of the evidentiary record.

Exhibits containing direct and rebuttal testimony shall be identified by party and marked as "DT" and "RT", respectively. Exhibits containing direct and rebuttal documentary evidence shall be identified by party and shall adhere to the uniform numbering system set out below, with rebuttal exhibits marked as "R-100", etc. In marking exhibits, abbreviations or initials shall be used for party names.

Uniform Exhibit Numbering System

Exhibits 100-199	Introductory, Summary, Schedule, and Equipment Exhibits
Exhibits 200-299	Fare Exhibits
Exhibits 300-399	Traffic Exhibits
Exhibits 400-499	Financial Exhibits (Balance Sheet, Profit and Loss Statement, Revenues and Expenses, Financial Forecasts and Plans, etc.)
Exhibits 500-599	Diversion Exhibits
Exhibits 600-699	Miscellaneous Exhibits (Proposed Certificate, Maps, etc.)
Exhibits 700-799	Sales and Promotion Exhibits
Exhibits 800-899	General Public Convenience and Necessity Exhibits
Exhibits 900-999	Carrier Selection Exhibits

Exhibits shall show, in the upper right-hand corner of each exhibit page, the proceeding's docket number, the exhibit number, and the exhibit page number.

4. Authenticity of Documents

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed authentic unless written objection is filed prior to the hearing, except that a party will be permitted to challenge authenticity at a later time by showing good cause for having failed to file a written objection (e.g., absent objection, if an exhibit purporting to be a copy of a letter mailed on a certain date were submitted, it would not be necessary to prove such mailing or the accuracy of the copy).

5. Revised Exhibits

Revisions to exhibits generally will be allowed only for the purpose of correcting errors, or for the meeting of new evidence or data which could not have been considered at the time of the preparation of the exhibit in question.

Revised exhibits shall be labeled in sequence as "First Revised", "Second Revised", etc., and revised exhibits shall be dated.

Three (3) copies of revised exhibits submitted prior to the hearing shall be served on the Presiding Judge and copies shall be served on the parties in accordance with the Exhibit Exchange List attached to this Prehearing Conference Report. The revised exhibits shall *not* be filed with the Docket Section.

6. Hearing Procedures

A. Order of Case Presentation and Cross Examination at the Hearing

The order of case presentation and of cross examination shall be alphabetically in each of the following categories: (1) Civic Parties, (2) Applicant Carriers, (3) Public Counsel.

Parties shall develop the hearing record in their direct case in logical order and their rebuttal case shall be presented at the same time as their direct case.

B. Direct Examination

Direct examination of witnesses for the purpose of responding to rebuttal exhibits shall be strictly limited. Such examination shall be specific in nature and not lengthy. General questions shall not be permitted. Witnesses shall state in precise terms their disagreement with the rebuttal exhibit and they shall not read from prepared statements or restate information contained in other exhibits.

C. Cross Examination

A witness does not need to appear at the hearing unless a party states that it wishes to cross-examine the witness. The parties must indicate witnesses they wish to cross-examine no later than November 3, 1991.

Cross-examination shall be limited to the scope of the direct examination and to witnesses whose testimony is adverse to the party desiring to cross-examine. Thus, "friendly cross-examination" will not be permitted. Civic parties having a common interest with a carrier will be aligned with the carrier for purposes of the hearing. See 14 CFR 399.61. If the parties do not voluntarily align, I may consider them aligned in any event to the extent they have common interests. Where carriers and civic parties are

aligned or have common interests, I expect that only one party shall conduct the cross-examination of that witness.

Even to the extent that parties do not have common interests, they still will not be allowed to engage in duplicative cross-examination. I will prohibit, either on objection of a party or on my own, cross-examination of areas which have already been adequately covered by another party.

Cross-examination generally will be limited to fifteen minutes per party. I may allow additional time if a party advises me prior to the beginning of the cross of the need for extra time, demonstrates good cause for a longer examination, and states how much time is needed. Recross normally will not be permitted.

D. Motions and Objections

Oral argument on any motion or objection may be limited to the party or parties making the motion or objection and to the party or parties against which the motion or objection is directed. Such presentations shall be limited to one attorney for each party.

E. Corrections to Exhibits Made at the Hearing

During the hearing, three (3) copies of revised exhibits shall be served on the Presiding Judge and, in addition, the party offering a revised exhibit shall ensure that the three (3) copies of the exhibits being submitted at the hearing include all revisions.

Parties making corrections to exhibits through oral testimony at the hearing (a) shall ensure that the three (3) copies of the exhibits being submitted at the hearing include the corrections; and (b) shall provide the Presiding Judge with a list of the corrections by the time the hearing closes.

7. Rule 14 Statements

Written rule 14 statements must be submitted prior to the close of the first day of the hearing. Three (3) copies of rule 14 statements shall be served on the Presiding Judge and copies shall be served on the parties in accordance with the Service List attached to this Prehearing Conference Report. The rule 14 statements shall not be filed with the Docket Section. Failure to serve rule 14 statements on the parties to the proceeding shall render the statements *ex parte* communications for purposes of the proceeding, and they will not be made part of the record. Further, any statements submitted late will be rejected.

8. Withdrawal of an Applicant

If a party decides at some point in the proceeding not to prosecute its application, I expect it promptly to notify me and to withdraw its application. If it fails to do so, I may dismiss the application on my own initiative.

9. Procedural Questions

Procedural questions or other problems regarding the conduct of the proceeding, not the substance, should be directed to Ms. Karen Dow of the Office of Hearings, telephone (202) 368-6942.

10. Exceptions to the Rules

These rules are deemed consistent with the orderly conduct of this proceeding but exceptions may be made by the judge, either in response to a party's motion or on his own initiative.

Attachment B—Exhibit Exchange List for U.S.-Brazil Combination Service Case

	No. of copies
American Airlines, Inc.: Barry Clark, Manager, Route Strategy, American Airlines, Inc., 4333 Amon Carter Blvd. (MD 5635), Fort Worth, Texas 76155, Tel (817) 967-2502, Fax (817) 967-3179.....	4
Carl B. Nelson, Jr., Associate General Counsel, American Airlines, Inc., suite 600, 1101 Seventeenth Street, NW., Washington, DC 20036, Tel (202) 857-4228, Fax (202) 857-4246.....	2
Delta Air Lines, Inc.: Robert E. Cohn, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, Tel (202) 663-8060, Fax (202) 663-8007.....	1
Sheryl R. Israel, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, Tel (202) 663-8312, Fax (202) 663-8007.....	1
Dean Hill, System Manager, Int'l Route Development, Delta Air Lines, Inc., Department 662, 1030 Delta Blvd., At- lanta, Georgia 30320, Tel (404) 765- 2339, Fax (404) 765-4237.....	3
Don M. Adams, Assistant Vice Presi- dent-Associate General Counsel, Delta Air Lines, Inc., Department 971, 1030 Delta Blvd., Atlanta, Georgia 30320, Tel (404) 765-2444, Fax (404) 765-2233.....	2
Northwest Airlines, Inc.: Michael F. Goldman, Esq., Lepon, McCarthy, Jutkowitz & Holzworth, 1146 19th Street, NW., Third Floor, Washington, DC 20036, TEL: (202) 857-0242, FAX: (202) 857-0733.....	1
David Mishkin, Esq., Vice President, Law and Gov. Affairs, Northwest Airlines, Inc., 901 15th Street, NW., suite 500, Washington, DC 20005, TEL: (202) 842-3193, FAX: (202) 289-6834.....	2
Marjorie Chen, President, Chen & Asso- ciates, 640 N. June Street, Los Ange- les, California 90004.....	1
Bill Carson, Consultant, Roberts and As- sociates, 22330 Fosthill Boulevard, suite 510, Hayward, California 94541.....	1

	No. of copies		
		<i>Delta Air Lines, Inc.</i>	Francisco, California 94104, TEL: (415) 392-4511, FAX: (415) 392-0485.
Pan American World Airway, Inc.:		Robert E. Cohn, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Fifth Floor, Washington, DC 20037, TEL: (202) 663-8060, FAX: (202) 663-8007.	<i>Georgia & Atlanta Parties</i>
Frank J. Costello, Zuckert, Scoutt & Rasbenberger, 888 17th Street, NW., Washington, DC 20006, TEL: (202) 298-8660.....	1	Dean B. Hill, System Manager International Route Development, Delta Air Lines, Inc., Dept. 662, 1030 Delta Boulevard, Atlanta, Georgia 30320, TEL: (404) 765-2437, FAX: (404) 765-4327.	John R. Braden, Director of Marketing, Airport Commissioner's Office, Atlanta Int'l Airport, Atlanta, Georgia 30320, TEL: (404) 530-6834, FAX: (404) 530-6803.
Robert M. Pryor, Director-Regulatory Proceedings, Pan American World Airways, Inc., 1200 17th Street, NW., suite 500, Washington, DC 20036, TEL: (202) 659-7722.....	1	Sheryl R. Israel, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037, TEL: (202) 663-8312, FAX: (202) 663-8007.	Susan E. Neugent, Vice President-Regional Dev., 235 International Boulevard, NW., Atlanta, Georgia 30303, TEL: (404) 586-8468, FAX: (404) 586-8464.
United Air Lines, Inc.:		Don M. Adams, Assistant Vice President-Associate General Counsel, Law Department, Delta Air Lines, Inc., 1030 Delta Boulevard, Atlanta, Georgia 30320, TEL: (404) 765-2437, FAX: (404) 765-4327.	Bill Alberger, Esq., Stael Rives Boley Jones & Grey, 1275 K Street, NW., suite 1100, Washington, DC, 20005, TEL: (202) 408-2100, FAX: (202) 347-7750.
Joel Stephen Burton, Esq., Ginsburg, Feldman & Bress, Chartered, 1250 Connecticut Avenue, NW., suite 800, Washington, DC 20036, TEL: (202) 637-9130, FAX: (202) 637-6776.....	2		<i>Brazil</i>
Wallace M. Allan, Esq., O'Melveny & Myers, 400 South Hope Street, Los Angeles, California 90071-2899, TEL: (213) 669-6670, FAX: (213) 669-6407..	2		Embassy of Brazil, 3006 Massachusetts Avenue, NW., Washington, DC, 20016.
Gary Sheffert, United Air Lines, Inc., EXORF, 1200 E. Algonquin Road, Elk Grove Township, Illinois 60007, TEL: (708) 952-5295, FAX: (708) 952-4841..	3		<i>U.S. State Department</i>
Georgia & Atlanta Parties:		<i>Northwest Airlines, Inc.</i>	Mr. Charles Angevine, Deputy Assistant Secretary for Transportation Affairs, U.S. Department of State, 2201 C Street, NW., room 5830, Washington, DC, 20520.
John R. Braden, Director of Marketing, Airport Commissioner's Office, Atlanta Int'l Airport, Atlanta, Georgia 30320, TEL: (404) 530-6834, FAX: (404) 530-6803.....	1	Michael F. Goldman, Esq., Lepon, McCarthy, Jutkowitz & Holzworth, 1146 19th Street, NW., Third Floor, Washington, DC 20036, TEL: (202) 857-0242, FAX: (202) 857-0733.	<i>Public Counsel</i>
Susan E. Neugent, Vice President—Regional Dev., 235 International Boulevard, NW., Atlanta, Georgia 30303, TEL: (404) 586-8468, FAX: (404) 586-8464.....	1	Elliott Seiden, Esq., Vice President, Law and Gov. Affairs, Northwest Airlines, Inc., 901 15th Street, NW., suite 500, Washington, DC 20005, TEL: (202) 842-3193, FAX: (202) 289-6834.	William J. Wagner, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, C-70, U.S. Department of Transportation, 400 Seventh Street, SW., room 4116, Washington, DC, 20590, TEL: (202) 366-9349, FAX: (202) 366-7152.
Bill Alberger, Esq., Stael Rives Boley Jones & Grey, 1275 K Street, NW., suite 1100, Washington, DC 20005, TEL: (202) 408-2100, FAX: (202) 347-7750.....	1		<i>U.S. Department of Transportation</i>
Public Counsel:		<i>United Air Lines, Inc.</i>	Mr. Robert S. Goldner, Office of the Deputy Assistant Secretary for Policy & International Affairs, room 9216, P-7, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, TEL: (202) 366-4826.....
William J. Wagner, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, C-70, U.S. Department of Transportation, 400 Seventh Street, SW., room 4116, Washington, DC 20590, TEL: (202) 366-9349, FAX: (202) 366-7152.....	1	Joel Stephen Burton, Esq., Ginsburg, Feldman & Bress, Chartered, 1250 Connecticut Avenue, NW., suite 800, Washington, DC 20036, TEL: (202) 637-9130, FAX: (202) 637-6776.	Mr. Robert S. Goldner, Office of the Deputy Assistant Secretary for Policy & International Affairs, room 9216, P-7, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, TEL: (202) 366-4826.
U.S. Department of Transportation:		Wallace M. Allan, Esq., O'Melveny & Myers, 400 South Hope Street., Los Angeles, California 90071-2899, TEL: (213) 669-6670, FAX: (213) 669-6407.	Docket Section, C-55, room 4107, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590.
Mr. Robert S. Goldner, Office of the Deputy Assistant Secretary for Policy & International Affairs, room 9216, P-7, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, TEL: (202) 366-4826.....	1	Cyril Murphy, Vice President, Int'l Affairs, United Air Lines, Inc. 1200 E Algonquin Road, Elk Grove Township, Illinois 60007, TEL: (708) 952-5831, FAX: (708) 952-4841.	The Honorable Robert L. Barton, Jr., Administration Law Judge, Office of Hearings, M-50, room 9228, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, TEL: (202) 366-2140, FAX: (202) 366-7536.....
The Honorable Robert L. Barton, Jr., Administration Law Judge, Office of Hearings, M-50, room 9228, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, TEL: (202) 366-2140, FAX: (202) 366-7536.....	3		
Total.....	38	<i>California Parties</i>	
		Mr. Douglas H. Gordon, Vice President-Corporate Affairs, California Chamber of Commerce, 1201 K Street, 12th Floor, P.O. Box 1736, Sacramento, California 95812-1736, TEL: (916) 444-6670, FAX: (916) 444-6685.	
		Mr. James K. Hahn, Attention: Jerome A. Montgomery, City Attorney's Office, Department of Airports, 1 World Way, room 104, P.O. Box 92216, Los Angeles, California 90009-2216, TEL: (213) 646-3260, FAX: (213) 646-9617.	
		Mr. Donald D. Doyle, President, San Francisco Chamber of Commerce, 465 California Street, Ninth Floor, San	

Appendix C—Service List—U.S.-Brazil Combination Service Case

American Airlines, Inc.

Carl B. Nelson, Jr., Associate General Counsel, American Airlines, Inc., 1101 17th Street, NW., suite 600, Washington, DC 20036, TEL: (202) 857-4228, FAX: (202) 857-4246.

[FR Doc. 91-20464 Filed 8-22-91; 9:36 am]

BILLING CODE 4910-02-M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1991, Public Law 101-516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an

announcement in the Federal Register every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street,

SW., room 9301, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Obligation date
Bay Area Rapid Transit District, San Francisco-Oakland, CA.....	CA-03-0367-00.....	\$11,652,750	07-18-91
City of Fort Collins, Fort Collins, CO.....	CO-03-0047-00.....	326,001	06-27-91
Jacksonville Transportation Authority, Jacksonville, FL.....	FL-03-0112-00.....	208,468	07-30-91
Broward County Commission, Ft. Lauderdale, FL.....	FL-03-0113-00.....	1,755,000	07-30-91
Metropolitan Dade County, Miami, FL.....	FL-03-0116-00.....	2,650,002	07-17-91
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL-Northwestern IN.....	IL-03-0149-01.....	10,871,625	07-31-91
Chicago Transit Authority, Chicago, IL-Northwestern IN.....	IL-03-0157-00.....	9,000,000	07-31-91
Northern Indiana Commuter Transportation District, Northwestern IN.....	IN-03-0060-01.....	9,249,999	07-11-91
Northern Indiana Commuter Transportation District Northwestern IN.....	IN-03-0062-01.....	2,967,501	07-11-91
New Jersey Transit Corporation, New York, NY-Northeastern NJ.....	NJ-03-0067-01.....	35,199,999	07-11-91
New Jersey Transit Corporation, New York, NY-Northeastern NJ.....	NJ-03-0081-02.....	4,800,000	07-11-91
Rockland County, New York, NY-Northeastern NJ.....	NY-03-0272-00.....	56,250	07-31-91
Greater Cleveland Regional Transit Authority, Cleveland, OH.....	OH-03-0115-00.....	15,959,700	07-08-91
City of Charleston Charleston, SC.....	SC-03-0007-00.....	518,712	07-02-91
Utah Transit Authority, Salt Lake City, UT.....	UT-03-0015-00.....	4,800,000	07-31-91
Virginia Department of Transportation, Virginia.....	VA-03-0046-00.....	3,723,201	07-19-91

SECTION 9 GRANTS

Transit property	Grant number	Grant amount	Obligation date
City of Gadsden, Gadsden, AL.....	AL-90-X045-02.....	\$4,000	06/28/91
Tuscaloosa County and Transit Authority, Tuscaloosa, AL.....	AL-90-X056-00.....	176,000	06/28/91
Birmingham-Jefferson County Transit Authority, Birmingham, AL.....	AL-90-X057-00.....	1,030,280	06/28/91
City of Phoenix, Phoenix, AZ.....	AZ-90-X028-00.....	499,000	06/28/91
City of Modesto, Modesto, CA.....	CA-90-X430-00.....	1,654,228	06/29/91
Stockton Metropolitan Transit District, Stockton, CA.....	CA-90-X445-00.....	1,359,464	06/29/91
City of Merced, Merced, CA.....	CA-90-X451-00.....	400,000	06/28/91
City of Greeley, Greeley, CO.....	CO-90-X061-00.....	533,800	06/28/91
Connecticut Department of Transportation, Connecticut.....	CT-90-X186-00.....	110,852	06/28/91
Washington Metropolitan Area Transit Authority, Washington, D.C.-D.C.-MD.-VA.....	DC-90-X169-01.....	30,433,600	06/28/91
Orange-Seminole-Osceola Transportation Authority, Orlando, FL.....	FL-90-X156-02.....	224,000	06/28/91
Escambia Co Bd of Commissioners, Pensacola, FL.....	FL-90-X170-00.....	1,443,706	06/28/91
Brevard County Commissioners—Space Coast Area Transit, Melbourne-Cocoa, FL.....	FL-90-X171-00.....	1,752,216	06/28/91
Pinellas Suncoast Transit Authority, St. Petersburg, FL.....	FL-90-X172-00.....	615,814	06/28/91
City of Orlando, Orlando, FL.....	FL-90-X173-00.....	600,000	06/28/91
St. Lucie County Metropolitan Planning Organization, Fort Pierce, FL.....	FL-90-X174-00.....	50,000	06/28/91
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA.....	GA-90-X059-01.....	1,255,433	06/28/91
Consolidated Government of Columbus, Columbus, GA-AL.....	GA-90-X063-00.....	1,515,867	06/28/91
City of Augusta, Augusta, GA-S.C.....	GA-90-X064-00.....	1,467,071	06/28/91
City of Bettendorf, Davenport-Rock Island-Moline, IA-ILL.....	IA-90-X125-00.....	120,670	06/28/91
Des Moines Metropolitan Transit Authority, Des Moines, IA.....	IA-90-X126-00.....	110,072	06/28/91
Rockford Mass Transit District, Rockford, IL.....	IL-90-X179-00.....	1,271,412	06/24/91
Loves Park Transit System (LPTS), Rockford, IL.....	IL-90-X180-00.....	429,088	06/24/91
City of Anderson, Anderson, IN.....	IN-90-X149-00.....	469,341	06/03/91
Topeka Metropolitan Transit Authority, Topeka, KS.....	KS-90-X049-00.....	1,261,800	06/28/91
Wichita-Sedgwick County Metro Area Planning Department, Wichita, KS.....	KS-90-X050-00.....	96,144	06/28/91
Transit Authority of Northern Kentucky, Cincinnati, OH.....	KY-90-X054-00.....	1,526,487	06/24/91
City of Owensboro, Owensboro, KY.....	KY-90-X055-00.....	361,477	06/26/91
Transit Authority of the Lexington-Fayette Urban County Govt., Lexington-Fayette, KY.....	KY-90-X057-00.....	1,951,988	06/26/91
Lafayette Area-wide Planning Commission, Lafayette, LA.....	LA-90-X112-00.....	100,000	06/28/91
City of Lafayette, Lafayette, LA.....	LA-90-X116-00.....	1,459,151	06/28/91
Rapids Area Planning Commission, Alexandria, LA.....	LA-90-X117-00.....	33,600	06/28/91

SECTION 9 GRANTS—Continued

Transit property	Grant number	Grant amount	Obligation date
City of Lake Charles, Lake Charles, LA	LA-90-X118-00	368,300	06/28/91
City of Monroe, Monroe, LA	LA-90-X119-00	1,904,197	06/28/91
St. Bernard Parish, New Orleans, LA	LA-90-X120-00	243,000	06/28/91
Worcester Regional Transit Authority, Worcester, MA	MA-90-X116-01	162,760	06/28/91
Greater Attleboro-Taunton Regional Transit Authority, Providence-Pawtucket-Warwick, RI-MA	MA-90-X121-01	60,000	06/28/91
State Railroad Administration, Baltimore, MD	MD-90-X046-00	7,606,520	06/28/91
Maine Department of Transportation, Mairca	ME-90-X057-00	91,948	06/28/91
City of Detroit Department of Transportation, Detroit, MI	MI-90-X128-01	6,582,400	06/24/91
Battle Creek Transit System, Battle Creek, MI	MI-90-X144-00	439,467	06/24/91
County of Muskegon, Muskegon-Muskegon Heights, MI	MI-90-X145-00	679,325	06/24/91
Jackson Transit System, Jackson, MI	MI-90-X146-00	106,400	06/24/91
City of Columbia Department of Public Works, Columbia, MO	MO-90-X078-00	398,686	06/28/91
Mid-America Regional Council, Kansas City, MO-KS	MO-90-X077-00	110,000	06/28/91
Gulf Regional Planning Commission, Biloxi-Gulfport, MS	MS-90-X037-00	185,400	06/28/91
Great Falls Transit District, Great Falls, MT	MT-90-X029-00	485,727	06/28/91
Missoula Urban Transportation District, Missoula, MT	MT-90-X030-00	364,067	06/28/91
City of Fayetteville, Fayetteville, NC	NC-90-X113-01	100,000	06/26/91
City of High Point, High Point, NC	NC-90-X123-00	467,062	06/26/91
City of Hickory, Hickory, NC	NC-90-X124-00	255,106	06/26/91
City of Santa Fe, Santa Fe, N.M.	NM-90-X030-00	447,828	06-28-91
City of Las Cruces, Las Cruces, N.M.	NM-90-X031-00	321,154	06-28-91
Regional Transportation Commission of Clark County, Las Vegas, NV	NV-90-X016-00	1,425,207	06-28-91
Putnam County, New York, N.Y.-Northeastern N.J.	NY-90-X203-00	173,772	06-29-91
Dutchess County, Poughkeepsie, N.Y.	NY-90-X205-00	415,200	06-29-91
Central New York Regional Transportation Authority, Syracuse, N.Y.	NY-90-X207-00	1,939,294	06-29-91
Onondaga County Civic Center, Syracuse, N.Y.	NY-90-X208-00	639,128	06-27-91
Chemung County Transit System, Elmira, N.Y.	NY-90-X209-00	404,432	06-27-91
Central Ohio Transit Authority, Columbus, OH	OH-90-X133-01	384,000	06-24-91
Canton Regional Transit Authority, Canton, OH	OH-90-X150-00	103,200	06-24-91
Central Ohio Transit Authority, Columbus, OH	OH-90-X151-00	287,600	06-24-91
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK-90-X037-00	3,922,008	06-28-91
Tri-County Metropolitan Transportation District of Oregon, Portland, OR-WA	OR-90-X035-01	16,558,976	06-28-91
Rogue Valley Transportation District, Medford, OR	OR-90-X038-00	337,998	06-28-91
County of Lackawanna Transit System, Scranton-Wilkes Barre, PA	PA-90-X199-01	20,000	06-26-91
Berks Area Reading Transportation Authority, Reading, PA	PA-90-X211-00	1,377,135	06-28-91
Lehigh and Northampton Transportation Authority, Allentown-Bethlehem-Easton, PA-N.J.	PA-90-X212-00	3,204,440	06-26-91
Erie Metropolitan Transit Authority, Erie, PA	PA-90-X213-00	1,218,400	06-28-91
Red Rose Transit Authority, Lancaster, PA	PA-90-X214-00	1,032,219	06-28-91
City of Sharon, Sharon, PA-OH	PA-90-X216-00	317,143	06-26-91
York County Transportation Authority, York, PA	PA-90-X217-00	778,727	06-26-91
Transportation and Motor Buses for Public Use Authority, Altoona, PA	PA-90-X218-00	789,090	06-26-91
Municipality of Vega Baja, Vega-Baja-Manati, P.R.	PR-90-X024-02	678,408	06-28-91
Municipality of Loiza, San Juan, P.R.	PR-90-X049-02	140,000	06-28-91
City of San Juan, San Juan, P.R.	PR-90-X061-00	1,200,000	06-28-91
Greenville Transit Authority, Greenville, S.C.	SC-90-X035-01	37,346	06-28-91
City of Charleston, Charleston, S.C.	SC-90-X040-00	1,745,148	06-28-91
Pee Dee Regional Transit Authority, Florence, S.C.	SC-90-X041-00	291,208	06-28-91
Greenville Transit Authority, Greenville, S.C.	SC-90-X042-00	807,843	06-28-91
Central Midlands Regional Planning Council, Columbia, S.C.	SC-90-X043-00	1,393,832	06-28-91
Aiken County, Augusta, GA-S.C.	SC-90-X045-00	127,150	06-28-91
Memphis Area Transit Authority, Memphis, TN-AR-MS	TN-90-X086-02	888,000	06-28-91
City of Johnson City, Johnson City, TN	TN-90-X092-00	394,000	06-28-91
City of Clarksville, Clarksville, TN-KY	TN-90-X093-00	557,000	06-28-91
Jackson Transit Authority, Jackson, TN	TN-90-X094-00	306,200	06-28-91
City of Lancaster, Dallas-FT. Worth, TX	TX-90-X170-00	34,400	06-28-91
Capital Metropolitan Transportation Authority, Austin, TX	TX-90-X212-00	8,120,805	06-28-91
City of Mesquite, Dallas-FT. Worth, TX	TX-90-X215-00	12,000	06-28-91
Brazos Valley Community Action Agency, Bryan-College Station, TX	TX-90-X218-00	1,155,112	06-28-91
Tidewater Transportation District Commission, Norfolk-Portsmouth, VA	VA-90-X082-01	480,000	06-26-91
Greater Lynchburg Transit Company, Lynchburg, VA	VA-90-X083-00	857,369	06-26-91
Greeter Roanoke Transit Company, Roanoke, VA	VA-90-X084-00	916,980	06-26-91
Jaunt, Inc., Charlottesville, VA	VA-90-X085-00	91,824	06-26-91
Snohomish County Public Trans. Benefit Area Corp., Seattle-Everett, WA	WA-90-X114-00	1,016,000	06-28-91
City of Everett Transit, Seattle-Everett, WA	WA-90-X116-00	1,035,575	06-28-91
Pierce County Public Transportation Benefit Area Authority, Tacoma, WA	WA-90-X118-00	3,346,520	06-28-91
Spokane Transit Authority, Spokane, WA	WA-90-X120-00	3,050,764	06-28-91
City of Green Bay Transit System, Green Bay, WI	WI-90-X146-00	748,483	06-24-91
City of Chippewa Falls, Eau Claire, WI	WI-90-X147-00	75,616	06-24-91
Mid-Ohio Valley Transit Authority, Parkersburg, W. VA-OH	WV-90-X043-00	385,009	06-26-91
Tri-State Transit Authority, Huntington-Ash, W. VA-KY-OH	WV-90-X044-00	613,754	06-26-91
City of Cheyenne, Cheyenne, WY	WY-90-X009-00	333,297	06-28-91

Issued on: August 20, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-20332 Filed 8-23-91; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Centre Savings Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Centre Savings Association, F.A., Arlington, Texas, on August 16, 1991.

Dated: August 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 20354 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

First American Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First American Federal Savings Bank, Tucson, Arizona, on August 16, 1991.

Dated: August 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 20355 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

Capital-Union Federal Savings Association, Baton Rouge, LA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Capital-Union Federal Savings Association, Baton Rouge, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 19, 1991.

Dated: August 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20359 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

Centre Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Centre Savings Association, Arlington, Texas, OTS number 8502, on August 16, 1991.

Dated: August 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20356 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

Commonwealth Federal Savings Association, Houston, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Commonwealth Federal Savings Association, Houston, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: August 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20360 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

Continental Savings, A Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Continental Savings, A Federal Savings and Loan Association, Bellaire, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 16, 1991.

Dated: August 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20361 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

Duval Federal Savings Association, Jacksonville, FL; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Duval Federal Savings Association, Jacksonville, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 16, 1991.

Dated: August 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20362 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

First American Federal Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First American Federal Bank, F.S.B., Tucson, Arizona, OTS No. 8048, on August 16, 1991.

Dated: August 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20357 Filed 8-23-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association of Conroe, Conroe, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Association of Conroe, Conroe, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 19, 1991.

Dated: August 19, 1991.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-20214 Filed 8-23-91; 8:45 am]
BILLING CODE 6720-01-M

First Federal Savings Association, Las Vegas, NM; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Association, Las Vegas, New Mexico ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: August 20, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-20363 Filed 8-23-91; 8:45 am]
BILLING CODE 6720-01-M

Southern Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Southern Federal Savings Bank, Gulfport, Mississippi ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 16, 1991.

Dated: August 20, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-20364 Filed 8-23-91; 8:45 am]
BILLING CODE 6720-01-M

Southeast Texas Federal Savings Association, Woodville, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Southeast Texas Federal Savings Association, Woodville, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 27, 1991.

Dated: August 20, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-20365 Filed 8-23-91; 8:45 am]
BILLING CODE 6720-01-M

State Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for State Federal Savings Association, Tulsa, Oklahoma ("Association"), with the Resolution Trust Corporation a sole Receiver for the Association on August 16, 1991.

Dated: August 20, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-20366 Filed 8-23-91; 8:45 am]
BILLING CODE 6720-01-M

Superior Savings Bank, F.S.B., Nacogdoches, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Superior Savings Bank, F.S.B., Nacogdoches, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 19, 1991.

Dated: August 19, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-20215 Filed 8-23-91; 8:45 am]
BILLING CODE 6720-01-M

Travis Federal Savings and Loan Association, San Antonio, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Travis Federal Savings and Loan Association, San Antonio, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: August 20, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-20367 Filed 8-23-91; 8:45 am]
BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 165

Monday, August 26, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, August 29, 1991.

PLACE: 1776 G Street, N.W., Washington, D.C. 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Agency Office Space. Closed pursuant to exemptions (2), (4), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-20534 Filed 8-22-91; 1:14 pm]

BILLING CODE 7535-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 2:00 p.m., August 27, August 28, 1991.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R90-1.

CONTACT PERSON FOR MORE

INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268-0001, Telephone (202) 789-6840.

[FR Doc. 91-20476 Filed 8-22-91; 11:09 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 26, 1991.

A closed meeting will be held on Wednesday, August 28, 1991, at 2:30 p.m. An open meeting will be held on Thursday, August 29, 1991, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 28, 1991, at 2:30 p.m., will be:

- Institution of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of injunctive actions.
- Formal order of investigation.
- Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, August 29, 1991, at 10:00 a.m., will be:

1. Consideration of whether to propose for comment recordkeeping and reporting rules to implement the risk assessment provisions of the Market Reform Act of 1990. The proposed rules would require brokers and dealers in securities to make and keep records concerning the financial and securities activities of certain of their

affiliated companies. The proposed rules would also require brokers and dealers to file quarterly reports with the Commission summarizing the records maintained pursuant to the recordkeeping rule. For further information, contact Roger C. Coffin at (202) 272-2396.

2. Consideration of whether to approve a rule change from the National Association of Securities Dealers, Inc. ("NASD") that would increase certain quantitative eligibility standards for securities quoted on the NASDAQ system. Specifically, SR-NASD-90-18 would increase the initial and continued eligibility standards for securities in the NASDAQ system in the following areas: (1) the number of required market makers per security, (2) the total assets of the issuer, (3) the capital and surplus of the issuer, (4) the minimum bid price per security, and (5) the market value of the issuer's public float. The eligibility standards for securities listed as NASDAQ/National Market System issues are not changed by SR-NASD-90-18. For further information, please contact Lee Antone at (202) 272-2888.

3. Consideration of whether to approve largely similar rule proposals filed by the American, New York, Pacific, and Philadelphia Stock Exchanges, and the Chicago Board Options Exchange (collectively, the "Exchanges") to amend their rules governing the selection and continuing eligibility criteria for exchange-traded options. In general, the proposals would lower or relax the non-default, net income, number of shareholders, and market price per share criteria as applied to the underlying stocks of exchange-traded options. For further information, please contact Joe McDonald at (202) 272-2843.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272-2000.

Dated: August 21, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-20484 Filed 8-22-91; 1:10pm]

BILLING CODE 8010-01-M

federal register

**Monday
August 26, 1991**

Part II

**Department of
Housing and Urban
Development**

Office of the Secretary

**Regulatory Waiver Requests Granted;
Notice for Calendar Year 1990 Through
May 31, 1991**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-91-3038; FR-2736-N-2].

Notice of Regulatory Waiver Requests Granted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waiver requests: calendar year 1990 through May 31, 1991.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This Notice is the first of a series, to be published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT:

For general information about this Notice, contact Grady J. Norris, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone 202-755-7055. This is not a toll-free number.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)), provides that:

(a) Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

(b) Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

(c) Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing

a Notice in the Federal Register. These Notices (each covering the period since the most recent previous notification) shall:

- (1) Identify the project, activity, or undertaking involved;
- (2) Describe the nature of the provision waived, and the designation of the provision;
- (3) Indicate the name and title of the person who granted the waiver request;
- (4) Describe briefly the grounds for approval of the request;
- (5) State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the first Notice of its kind to be published under section 106. In the spirit of maximum compliance with Reform Act requirements, the Department began immediately following passage of the Reform Act to retain and catalogue waiver actions taken, in preparation for publication of the required quarterly notices. Accordingly, waiver actions published today date from the earliest time that the Department was able to provide effective notice to its staff of the necessity of maintaining records of this kind and reporting this information.

This initial Notice follows the final development and publication of internal procedures to carry out Section 106. The published Statement of Policy, referenced above, outlines in greater detail the Department's interpretation of section 106.

HUD intends to update this publication with its second. Notice on this subject matter during October 1991. The October Notice, unlike this one, will cover waivers granted over a three-month period from June 1, 1991 (when collection of information for today's document closed) through the end of August 1991. Today's document covers a much longer period and reflects the Department's early efforts, before the Statement of Policy was formulated and published, to implement the requirements of section 106 of the Reform Act at an early date. The Department intends to develop a quarterly publication schedule that would provide for publication in January, April, June and September each year.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in

a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, 24 CFR 24.200 (involving the waiver of a provision in part 24) comes early in the sequence, while waivers in the section 8 and section 202 programs (24 CFR chapter VIII) are among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) will appear sequentially in this listing under § 811.105(b).)

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the October 1991 report will include these earlier actions, as well as those that occur between June 1 and August 31, 1991.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: August 7, 1991.

Jack Kemp,
Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development Through May 31, 1991

1. Regulation: 24 CFR 24.200.

Project/Activity: Harold M. Kline.

Nature of Requirement: Mr. Kline was debarred from participation in government programs because of his conviction on a conspiracy charge involving the HUD/FHA Single Family Insured Loan Program.

Granted By: Alfred A. DelliBovi,
Deputy Secretary.

Date Granted: June 4, 1991.

Reason Waived: Mr. Kline was the seller of a property that was to be purchased through HUD/FHA insured financing and all of the sale proceeds were applied to liquidate the existing mortgage.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: James L. Anderson, Participation and Compliance Division, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, (202) 708-3776.

2. Regulation: 24 CFR 51.104(b)(2).
Project/Activity: Cleveland National Terminals Project. National Terminals Apartments; a.k.a. Lighthouse Plaza, Cleveland, Ohio. Project Number 042-36622.

Nature of Requirement: Environmental Impact Statement required by 24 CFR 51.104(b)(2) where a project is located in an unacceptable noise zone and other environmental problems may be present.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 1, 1990.

Reason Waived: Noise attenuation measures designed for the structure to be rehabilitated, plus upgrading of the surrounding environment as planned by the city and developer.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Mr. Jan C. Oppen, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 Seventh Street SW., room 7270, Washington, DC 20410-7000, Phone: (202) 708-2565.

3. Regulation: 24 CFR 81.45(b).

Project/Activity: Book-entry requirement applicable to Federal National Mortgage Association (FNMA).
Nature of Requirement: 24 CFR 81.45(b) provides that debentures issued on or after March 10, 1978 will be issued in book-entry form only.

Granted By: Alfred A. Delibovi, Deputy Secretary of Housing and Urban Development.

Date Granted: May 10, 1991.

Reason Waived: This waiver extended a previous waiver of book-entry requirements for certain identified FNMA debt securities that (1) are issued in the Euro-Market or in other countries outside the United States; or (2) are issued in the United States and (i) are denominated in foreign currency, (ii) have principal or interest tied to an index or a formula, or (iii) otherwise cannot be issued in book-entry form on the book-entry system of the Federal Reserve Banks, either because of the nature of the security or because the Banks cannot accomplish the book-entry issuance within the market-required time constraints; or (3) are medium term notes (MTNs) with maturities ranging from one day to 30 years: (i) U.S. MTNs that are Currency MTNs or Amortizing MTNs and (ii) Euro-MTNs.

Absent the waiver, FNMA could not legally issue these securities. HUD is seeking to amend its regulations to exempt from book-entry requirements

the particular types of securities enumerated.

The waiver is subject to restrictions: During the year, FNMA must notify HUD of all issuances of debt securities under the waiver authority in definitive form, including the amount, maturity, interest rate and type of instrument. The waiver in no way affects or purports to affect the Treasury Department's authority to approve the issuance of FNMA's debt securities under sections 304(b) and 304(e) of the FNMA Charter Act.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Walter Cassidy, Attorney, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Phone: (202) 708-3087.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 4 through 8 in this listing is: Mr. Jan C. Oppen, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street SW., room 7270, Washington, DC 20410-7000, Phone: (202) 708-2565.

4. Regulation: 24 CFR 90.30 and 576.51.

Project/Activity: Republic of Palau. Comprehensive Homeless Assistance Plan (CHAP) submission deadline and ESG application deadline.

Nature of Requirement: 24 CFR 90.30 requires submission of the CHAP from ESG formula cities and counties no later than July 15 of each year, and from States no later than August 30 of each year. 24 CFR 576.51 requires submission of an application no later than 45 days after the date of notification by HUD. A 30-day extension of the CHAP submission deadline and a 30-day extension of the ESGP application deadline.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 1, 1990.

Reason Waived: This is the Republic of Palau's initial participation in the CHAP process and the Emergency Shelter Grants (ESG) program and Palau does not have the program background and knowledge to prepare a CHAP within the short time frame provided.

5. Regulation: 24 CFR 90.30.

Project/Activity: Des Moines, Iowa. Submission of the Comprehensive Homeless Assistance Plan (CHAP).

Nature of Requirement: 24 CFR 90.30 requires submission of the CHAP from

ESG formula cities and counties no later than July 15 of each year.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: June 29, 1990.

Reasons Waived: Waiver of the deadline permitted the City two additional weeks to receive comments from service and shelter providers.

6. Regulation: 24 CFR 90.30.

Project/Activity: Minneapolis, Minnesota. Submission of the Comprehensive Homeless Assistance Plan (CHAP).

Nature of Requirement: 24 CFR 90.30 requires submission of the CHAP from ESG formula cities and counties no later than July 15 of each year. The City requested a waiver extending the submission date for 90 days. A waiver and 75-day extension were granted.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: July 23, 1990.

Reasons Waived: The waiver and extension were granted to enable the City time to adopt a new ordinance concerning siting of group homes.

7. Regulation: 24 CFR 90.30.

Project/Activity: Portland, Oregon. Submission of the Comprehensive Homeless Assistance Plan (CHAP).

Nature of Requirement: 24 CFR 90.30 requires submission of the CHAP from ESG formula cities and counties no later than July 15 of each year. The City requested a waiver extending the submission date to July 29, 1990.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: July 23, 1990.

Reasons Waived: The waiver and extension were granted because the City lost the availability of the principal staff person familiar with the preparation of the CHAP.

8. Regulation: 24 CFR 90.30.

Project/Activity: State of Texas. Submission of the Comprehensive Homeless Assistance Plan (CHAP).

Nature of Requirement: 24 CFR 90.30 requires submission of the CHAP from ESG States no later than August 30 of each year. The State requested extension of the CHAP submission deadline from August 30, 1990 to September 28, 1990. An extension to September 14, 1990 was granted.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: August 17, 1990.

Reasons Waived: The waiver and extension were granted to enable the State additional time to receive the

entitlement CHAPs and to obtain Interagency Council on the Homeless data for inclusion in the CHAP.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 9 through 22 in this listing is: Morris E. Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Phone: (202) 708-2700.

9. Regulation: 24 CFR 203.42.

Project/Activity: Three South Morris Avenue properties in Tucson, Arizona.
Nature of Requirement: The regulation prohibits insuring property to be rented if the mortgagor has any financial interest in 8 or more adjacent or contiguous properties.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 20, 1991.

Reason Granted: The City of Tucson is involved in redeveloping and revitalizing the area and will allocate Section 8 Housing Assistance Payments to help low and moderate income families. This request is consistent with Secretary Kemp's goal of expanding affordable housing opportunities.

10. Regulation: 24 CFR 203.42.

Project/Activity: Two fourplexes on Hawthorne Avenue in Kalispell, Montana.

Nature of Requirement: The regulation prohibits insuring property to be rented if the mortgagor has any financial interest in 8 or more adjacent or contiguous properties.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 26, 1991.

Reason Waived: The existing FHA loans will be streamline refinanced to a lower rate. Reducing the interest rate on the existing FHA loans is in the best interest of the Department.

11. Regulation: 24 CFR 203.42.

Project/Activity: 1176-1178 Park Avenue properties in Bridgeport, CT.

Nature of Requirement: The regulation prohibits insuring property to be rented if the mortgagor has any financial interest in 8 or more adjacent or contiguous properties.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 19, 1991.

Reason Granted: The City of Bridgeport is involved in redeveloping and revitalizing the area and will allocate Section 8 Housing Assistance Payments to help low and moderate

income families. This request is consistent with Secretary Kemp's goal of expanding affordable housing opportunities.

12. Regulation: 24 CFR 203.42.

Project/Activity: Six Mid-Atlantic Financial Group properties consisting of 10 units in the Jackson Ward neighborhood of Richmond, Virginia.

Nature of Requirement: The regulation prohibits insuring property to be rented if the mortgagor has any financial interest in 8 or more adjacent or contiguous properties.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 1991.

Reason Granted: The City of Richmond is involved in encouraging investment and development in this neighborhood. This waiver will allow the mortgagor to refinance six properties consisting of 10 units with Section 203(k) mortgages. This request is consistent with Secretary Kemp's goal of expanding affordable housing opportunities.

13. Regulation: 24 CFR 203.42(a).

Project/Activity: 605 SW Sixth Street, Miami, FL, FHA Case Number: 092-4799365.

Nature of Requirement: The regulation, cited above, prohibits insured mortgage financing on rental property if such property is a part of, adjacent to or contiguous to a project, subdivision or group of similar rental properties which involve eight or more units, if the mortgagor has any financial interest in said properties.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 31, 1990.

Reason Waived: To permit the rehabilitation of eight dwelling units using the FHA Section 203(k) Rehabilitation Mortgage Insurance Program.

14. Regulation: 24 CFR 203.49(c).

Project/Activity: Norwest Mortgage Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the date of the mortgagor's initial monthly payment.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 26, 1990.

Reason Waived: To facilitate the continuing participation of certain

mortgages in the FHA Adjustable Rate Mortgage program.

15. Regulation: 24 CFR 203.49(c).

Project/Activity: Foster Mortgage Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's initial monthly payment.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 26, 1990.

Reason Waived: To facilitate the continuing participation of certain mortgages in the FHA Adjustable Rate Mortgage program.

16. Regulation: 24 CFR 203.49(c).

Project/Activity: Independence One Mortgage Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 28, 1990.

Reason Waived: To facilitate the continuing participation of certain mortgages in the FHA Adjustable Rate Mortgage program.

17. Regulation: 24 CFR 203.49(c).

Project/Activity: Valley National Mortgage Company and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 31, 1991.

Reason Waived: To facilitate the continuing participation of certain mortgages in the FHA Adjustable Rate Mortgage program.

18. Regulation: 24 CFR 203.49(c).

Project/Activity: Independence One Mortgage Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that

interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 7, 1991.

Reason Waived: To make delivery to GNMA and facilitate the continuing participation of certain mortgages in the FHA Adjustable Rate Mortgage Program.

19. **Regulation:** 24 CFR 203.49(c).

Project/Activity: First Commercial Mortgage Company and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 30, 1991.

Reason Waived: To make delivery to GNMA and facilitate the continuing participation of certain mortgages in the FHA Adjustable Rate Mortgage Program.

20. **Regulation:** 20 CFR 206.11(d).

Project Activity: Home Equity Conversion Mortgages.

Nature of Requirement: The regulation, cited above, requires that reservations of insurance authority for the Home Equity Conversion Mortgage Insurance Program issued to mortgagees expire six months after the date of issue.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 1990.

Reason Waived: To permit these mortgages to reach the conditional commitment stage of processing, it is necessary to postpone the expiration date of the reservations to twelve months after the date of issue, inasmuch as it would further the program.

Attachment

LIST OF MORTGAGEES WITH RESERVATIONS TO BE EXTENDED

[Number of reservations per mortgagee=50]

Mortgagee	Issue date
1. Main State Housing Authority, Augusta, ME.....	7/24/89

LIST OF MORTGAGEES WITH RESERVATIONS TO BE EXTENDED—Continued

[Number of reservations per mortgagee=50]

Mortgagee	Issue date
2. Rhode Island Housing Authority, Providence, RI.....	7/24/89
3. Chittenden Bank, Burlington, VT.....	7/24/89
4. American Mortgage Banking, Westbury, NY.....	7/31/89
5. Onondaga Savings Bank, Syracuse, NY.....	7/24/89
6. Rockwell Equities, Jericho, NY.....	7/24/89
7. Boulevard Mortgage Co., Philadelphia, PA.....	7/24/89
8. Kislak National Bank, Miami Lakes, FL.....	7/24/89
9. Capital One Mortgage Corp., Tucker, GA.....	7/24/89
10. Bank of Louisville, Louisville, KY.....	7/24/89
11. Peoples Bank & Trust, Rocky Mount, NC.....	7/24/89
12. South Carolina State Housing Finance and Development Authority, Columbia, SC.....	7/24/89
13. Leader Federal Mortgage, Memphis, TN.....	7/24/89
14. Summit Mortgage Corp., Bridgeview, IL.....	7/24/89
15. Merchants Mortgage Corp., Indianapolis, IN.....	7/24/89
16. Executron Mortgage Network, Bloomington, MN.....	7/24/89
17. The Leader Mortgage Co., Cleveland, OH.....	7/24/89
18. Mid-America Mortgage Corp., Cleveland, OH.....	7/24/89
19. Empire Mortgage, Columbus, OH.....	7/27/89
20. Oklahoma Housing Finance Agency, Oklahoma City, OK.....	8/17/89
21. Charter Bank for Savings, FSB, Albuquerque, NM.....	7/24/89
22. Sunwest Bank of Albuquerque, Albuquerque, NM.....	7/24/89
23. James B. Nutter Co., Kansas City, MO.....	7/24/89
24. Commercial Federal Mortgage Corp., Omaha, NE.....	7/24/89
25. United Mortgage Co., Englewood, CO.....	7/24/89
26. Medallion Mortgage Co., San Jose, CA.....	7/24/89
27. Bank of Lodi, NA, Lodi, CA.....	7/24/89
28. First California Mortgage Corp., San Rafael, CA.....	7/24/89
29. Philadelphia Freedom, Las Vegas, NV.....	7/24/89
30. ARCS Mortgage, Inc., Bellevue, WA.....	7/24/89
31. West One Bank, Tacoma, WA.....	7/24/89

21. **Regulation:** 24 CFR 234.26(e)(3).

Project Activity: The Little River Square Condominium, Fairfax County, VA.

Nature of Requirement: The regulation, cited above, requires that in order for a condominium project to be eligible for FHA-insured financing, at least 51 percent of the units must be occupied by owners of the units.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner

Date Granted: May 22, 1990.

Reason Waived: To expand affordable housing opportunities for moderate income families as well as

encourage Fairfax County's initiative to provide affordable rental units.

22. **Regulation:** 24 CFR 234.26(e)(3).

Project/Activity: Yorktown Square Condominium, Falls Church, VA.

Nature of Requirement: The regulation requires that in order for a condominium project to be eligible for FHA-insured financing, at least 51 percent of the units must be occupied by owners of the units.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 1991.

Reason Waived: To expand affordable housing opportunities for moderate income, first-time homebuyers.

23. **Regulation:** 24 CFR 265.13(a).

Project/Activity: Prohibit nonprofit owners from remuneration—MacArthur Park Towers Apartments Project No. 122-45043

Nature of Requirement: The conditions which govern the release of this waiver is in keeping with the requirement that remuneration to nonprofit sponsors serve a public oriented purpose and further new low-income housing.

Granted By: James L. Logue III, Deputy Assistant Secretary for Multifamily Housing Programs, HM.

Date Granted: November 22, 1989.

Reason Waived: Based on review and direct negotiations with the Retirement Foundation (RHF) and the National Retirement Housing Trust (NRHT), the appropriate provisions of 24 CFR 265 (Section 265) are to be waived and permit RHF to receive payment from the syndication of the project subject to a specific agreement on use of proceeds.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Karen Braner, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-3730.

Note To Reader: The person to be contacted for additional information about the waiver-grant items numbered 24 through 67 in this listing is: Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street SW., room 7270, Washington, DC 20410-7000. Phone: (202) 708-2565.

24. **Regulation:** 24 CFR 510.105(h).

Project/Activity: Restructuring of Section 312 loan and purchase by SNAP V Limited Partnership, with NHP as

general partner, of 94 units of low income housing from Savannah Landmark, Inc. to avoid possible foreclosure, including the balance on \$1,540,300 in Section 312 loans.

Nature of Requirement: All partners of any partnership which is a borrower on a Section 312 loan shall be personally liable for repayment of the Section 312 loan.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: April 6, 1990.

Reasons Waived: Under authority of 24 CFR 510.104, the Assistant Secretary found, in this case, that requiring personal liability for the entities borrowing Section 312 funds would adversely affect achievement of the purposes of the Section 312 Rehabilitation Loan program in assuring expeditious rehabilitation of units for continued low-to-moderate income occupancy.

25. Regulation: 24 CFR 510.105(h).

Project/Activity: St. Louis, Missouri. Waiver of personal liability regarding seven Section 312 multifamily rehabilitation loans containing 105 dwelling units.

Nature of Requirement: 24 CFR 510.105(h), in part, permits the Section 312 loan approving officer to require an officer of a corporation or principal stockholder to personally guarantee the loan. It also requires all partners of a partnership to be personally liable for repayment of the loan.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: December 24, 1990.

Reasons Waived: Six related partnerships own seven financially troubled Section 312 multifamily projects. Though these projects are in good condition, the partnerships could file for bankruptcy and threatened the availability of housing for their low and moderate income tenants and the stability of the neighborhoods, as well as the Government's financial interest. Two local nonprofit corporations have agreed to assume the loans if the Section 312 loan could be subordinated, loan payments restructured, and personal liability waived. To deny the waiver of personal liability would adversely affect the purposes of the Section 312 program.

26. Regulation: 24 CFR 511.76(c)(2).

Project/Activity: State of Oregon. Use of Rental Rehabilitation program income for rental assistance for lower income tenants.

Nature of Requirement: 24 CFR 511.76(c)(2) provides that program income from a local Rental

Rehabilitation program (RRP) may be used to provide rental assistance to lower income tenants who initially occupy properties rehabilitated through the RRP.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 24, 1991.

Reasons Waived: The State of Oregon requested a waiver of the provisions of 24 CFR 511.76(c)(2) on behalf of the City of Corvallis. Though nearly 250 units have been rehabilitated through the RRP in Corvallis, the vacancy rate is extremely low at about 0.5% (about one-tenth of the normal rate) and the Linn-Benton Housing Authority seldom has RRP units available for rental. To deny the waiver would cause undue hardship and would deny the use of RRP program income for rental assistance to lower income persons on the PHA's general waiting list even after all RRP families in RRP units had been served.

27. Regulation: 24 CFR 570.200(a)(5) and 24 CFR 570.200(h).

Project/Activity: Suffolk County, New York. Reimbursement of pre-agreement costs to repay municipal bond for construction of an eligible public facility (day care facility).

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement, but not the acquisition cost of real property. 24 CFR 570.200(a)(5) limits preagreement costs to those described in subparagraph 570.200(a)(5).

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: April 5, 1990.

Reasons Waived: The County needed to be able to pledge a three-year repayment of the bond from its FY 1991-93 CDBG grants. Not granting a waiver of the above-cited regulations would cause undue hardship and adversely affect the purposes of the Act, considering the benefits to Suffolk County in meeting its community development objectives in a timely manner and being able to undertake a multi-year project. In granting the waiver, the County was required to: (1) Provide citizens an examination and comment period prior to construction of the facility; (2) describe the activity in detail in each future year's Final Statement; (3) ensure that all CDBG program requirements will be met with respect to the project; and (4) determine that the facility remain eligible for CDBG assistance and otherwise meet statutory and regulatory requirements.

28. Regulation: 24 CFR 570.200(a)(5) and 24 CFR 570.200(h).

Project/Activity: Tarrant County, Texas. Reimbursement of preagreement costs to for completion of construction of the Keller Senior Citizens Center.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement, but not the acquisition cost of real property. 24 CFR 570.200(a)(5) limits preagreement costs to those described in subparagraph 570.200(a)(5).

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: August 28, 1990.

Reasons Waived: Waiving the requirements of the above-cited regulations would prevent a delay in senior citizens receiving needed support services that would be provided by the Keller Senior Citizens Center, and it would avoid causing undue hardship and adversely affecting the purposes of the Act.

29. Regulation: 24 CFR 570.200(h).

Project/Activity: Des Moines, Iowa. The City's CDBG program year start date is December 16. Due to problems with fund assignments, the City would not have had a signed grant agreement by its program year start date. This would affect the following projects expected to begin service delivery on December 16, 1989:

ACORN Loan Counseling
Capitol/East Neighborhood Home Rehabilitation
Capitol/East Neighborhood Roofing
Neighborhood Conservation Strategy
a. Housing Support Programs
b. CDBG Funded Loan Programs
c. Leverage Programs
New Horizons Model City Home Rehabilitation
New Horizons Program
a. Home Remodeling
b. Handyman/Chore Service
c. Elderly Handyman Chore Service
d. Minor Home Repair
e. Summer Youth Employment
Opening the Door to Home Ownership
Tenant/Landlord Project
Des Moines Tutoring Center
Elderly Nutrition
Family and Child Development
Family Violence
Homes of Oakridge
Human Services Coordinating Board
Meals on Wheels
Neighborhood Mediation
Our Community Kitchen
Paratransit
Police Athletic League
Recreation Activities Program
Retired Senior Volunteer Program
(R.S.V.P.)
Urban Dreams

City View Plaza Redevelopment
 City Wide Garden Project
 Economic Development Financing
 Incentive Program
 Intensified Rodent Control
 Model City Community Center Section
 108 Payment
 Southeast/Pioneer Columbus Public
 Improvements
 Woodland Willkie Public Improvements

Nature of Requirement: 24 CFR 570.200(h) limits the activities for which a grantee may obligate local funds prior to receipt of an annual entitlement grant and then reimburse itself with funds from its grant to cover those costs. Any exceptions to these specified activities require a waiver of the pre-agreement costs provisions.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: February 20, 1990.

Reason Waived: Waivers may only be granted by the Department when a determination has been made that undue hardship will result from applying the requirement and that applying the requirement would adversely affect the purpose of the Housing and Community Development Act of 1974.

This waiver was approved; however, the effective date on which the City could incur pre-agreement costs to be reimbursed later with CDBG funds was January 1, 1990. This is due to a regulatory requirement at 24 CFR 570.302(b)(1) that does not permit final statements to be submitted earlier than December 1 (or later than the first working day in September). The regulations permit a thirty day review period by HUD officials which permits sufficient time to complete Housing Assistance Plan (HAP) reviews and the apportionment/fund assignment process, as well as other reviews.

30. Regulation: 24 CFR 570.200(h).

Project/Activity: Cobb County, Georgia. Construction of a support services public facility designed to contribute to a Transitional Housing Demonstration Program project.

Nature of Requirement: 24 CFR 570.200(h) limits the activities for which a grantee may obligate local funds prior to receipt of an annual entitlement grant and then reimburse itself with funds from its grants to cover those costs. Any exceptions to these specified activities require a waiver of the pre-agreement costs provisions.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: February 20, 1990.

Reason Waived: The waiver was approved to allow the grantee to

complete the project, thus preventing a delay in low income and homeless persons receiving needed support services and also reducing construction costs.

31. Regulation: 24 CFR 570.200(h).

Project/Activity: Cobb County, Georgia. Major renovations of the Cobb Central Senior Citizens Center.

Nature of Requirement: 24 CFR 570.200(h) limits the activities for which a grantee may obligate local funds prior to receipt of an annual entitlement grant and then reimburse itself with funds from its grant to cover those costs. Any exceptions to the specified activities require a waiver of the pre-agreement costs provision.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 9, 1990.

Reason Waived: The waiver was approved to allow the grantee to complete the renovation, thus holding down renovation costs and allowing senior citizens to receive needed services within a shorter period of time.

32. Regulation: 24 CFR 570.200(h).

Project/Activity: Cobb County, Georgia. Waiver of pre-agreements cost limitations for acquisition of a facility to house the Blind and Low Vision Service of North Georgia, Inc. in Smyrna, Georgia.

Nature of Requirement: 24 CFR 570.200(h) limits the activities for which a grantee may obligate local funds prior to receipt of an annual entitlement grant and then reimburse itself with funds from its grant to cover those costs. Any exceptions to these specified activities require a waiver of the pre-agreement costs provision.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: July 31, 1990.

Reason Waived: The waiver was approved to allow Smyrna, Georgia, a cooperating jurisdiction of Cobb County, to acquire the above-mentioned facility using CDBG funds for fiscal years 1990, 1991, and 1992. Without the waiver, the City would be forced to acquire a smaller facility, limiting the number of clients it could serve.

33. Regulation: 24 CFR 570.200(h).

Project/Activity: Arlington, Texas. Waiver of pre-agreements cost limitations for acquisition of a building for the Children's Advocacy Center.

Nature of Requirement: 24 CFR 570.200(h) limits the activities for which a grantee may obligate local funds prior to receipt of an annual entitlement grant and then reimburse itself with funds from its grant to cover those costs. Any exceptions to these specified activities

require a waiver of the pre-agreement costs provision.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: May 23, 1991.

Reason Waived: According to the City, delay of construction of the day care center would pose a hardship on low-income families with children. At the time of the waiver request, approximately 600 pre-school children were on the waiting list, and an estimated 27,000 children under the age of twelve required day care services. Without the waiver, the City would not have sufficient funds from its current grants to carry out the project.

34. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: City of Atlanta, Georgia CDBG Program Public Service Activities.

Nature of Requirement: The CDBG program regulations at 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 4, 1990.

Reason Waived: The waiver was granted based on the City's desire to carry out public service programs to support efforts to assist the homeless; provide job training opportunities; address substance abuse problems and support programs for youth at risk of anti-social behavior. If the request had been denied the City would have experienced undue hardship in that such programs would not have been carried out or would require a reduction in the delivery of programs and services.

35. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: Fort Worth, Texas. The City wants to fund a subrecipient to carry out a Rental Assistance Demonstration program for eligible households in conjunction with other services designed to help the participants become self-sufficient over a two-year period. This activity clearly supports the Secretary's priorities. However, planned obligations for this project exceed the 15 percent limitation on public services.

Nature of Requirement: 24 CFR 570.201(e)(2) implements the statutory 15 percent limitation on the amount of CDBG funds that may be used for public services. The regulation specifies that

compliance is based on the amount of CDBG funds obligated for public service activities in each program year compared to 15 percent of the entitlement grant for that program year.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 12, 1990.

Reasons Waived: Waivers may only be granted by the Department when a determination has been made that undue hardship will result from applying the requirement and that applying the requirement would adversely affect the purposes of the Housing and Community Development Act of 1974.

This waiver was approved to allow the City to calculate its public service limitation by comparing its current program year obligations for public service activities to 15 percent of the entitlement grant for that program year plus 15 percent of the immediately previous year's program income (or 15 percent of approximately \$350,000). Without the waiver, approximately 11 families would not have been served by this program. Therefore, application of the regulatory requirement would cause undue hardship on program beneficiaries and adversely affect the purposes of the Act.

36. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: Pierce County, WA Community Development Block Grant waiver of the public service limitation to amend an earlier waiver for the FY 1988 program year which inadvertently omitted some public service charges from a contract change order.

Nature of Requirement: The CDBG program regulations at 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: April 9, 1990.

Reasons Waived: A hardship would be caused by requiring the under-obligation of future CDBG funds for public services.

37. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: San Jose, California. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant.

The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: May 14, 1990.

Reasons Waived: The waiver was granted to enable the City to undertake housing counseling services to low and moderate income persons and to fund additional assistance to shelter the homeless. Denial of the waiver would have caused an undue hardship on those persons, and would have adversely affected the purposes of the Act by impeding the City's attempts to provide a suitable living environment for persons of low and moderate income.

38. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: Miami, Florida. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: May 17, 1990.

Reasons Waived: The waiver was approved to enable the City to tackle its increasing social service needs due to the dramatic influx of immigrants. The City had depleted all other sources of public service resources.

39. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: Contra Costa County, California. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: June 20, 1990.

Reasons Waived: The waiver was granted to enable the County to carry out public service activities that combat drugs and create job opportunities for low and moderate income persons.

Denial of the waiver would have created an undue hardship on program beneficiaries and adversely affected the purposes of the Act.

40. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: Alameda, California. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: July 25, 1990.

Reasons Waived: The City needs additional funds for operating expenses for the Midway Center which is a 30-bed homeless shelter. If the waiver were not granted, the Midway Center would close, causing undue hardship on the City and its homeless population.

41. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: Grand Rapids, Michigan. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: August 21, 1990.

Reasons Waived: The City needs the additional CDBG funds for public services to permit the continuation and increase in services provided by neighborhood associations. The City estimates that an additional 6,000 lower-income families will be served. If the waiver were denied, many lower-income persons would experience undue hardship, and the purposes of the Act would adversely affect lower-income persons of the program.

42. Regulation: 24 CFR 570.201(e)(2).

Project/Activity: Amarillo, Texas. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant.

The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: August 31, 1990.

Reasons Waived: The City needs additional funds to support "The Bridge" program sponsored by the Panhandle Coalition for Child Abuse Prevention. An estimated 85 percent of the children served by The Bridge are members of low and moderate income families. A reduction in CDBG funding has left the City without other resources to fully support the program. Not waiving the regulation would cause undue hardship on the program beneficiaries and adversely affect the purposes of the Act.

43. Regulation: 24 CFR 570.201(e)(2)

Project/Activity: Los Angeles, California. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: September 21, 1990.

Reasons Waived: The City stated that changing demographics, particularly increases in the homeless population, have created a growth in demand for public services and that low income persons would be adversely affected if the waiver were not granted to support: (1) A human service delivery system; (2) a public service crime prevention/emergency survival/housing/nutrition activity; (3) an emergency one-time housing assistance program for homeless families; (4) a program for persons with AIDS who are homeless or at risk of becoming homeless; (5) a youth sports program targeted to public housing residents; and (6) a housing voucher/certificate program for homeless persons.

44. Regulation: 24 CFR 570.201(e)(2)

Project/Activity: Portsmouth, New Hampshire. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable

it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: September 21, 1990.

Reasons Waived: The City needed to use the additional funds as a local match to an UMTA grant to purchase a bus that is accessible to handicapped persons in electric wheelchairs. The bus would operate as part of a Senior Citizens Transportation program administered by the Portsmouth Housing Authority. Characteristics of electric wheelchairs hamper their use with regular buses for the handicapped.

45. Regulation: 24 CFR 570.201(e)(2)

Project/Activity: Chula Vista, California. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: October 12, 1990.

Reasons Waived: The City needs the additional CDBG funds for public services to permit it to more adequately address its increasing needs, particularly for the homeless, low-income seniors, and disabled. Due to the influx of low-income immigrants, the City would like to expand public services in the areas of housing, nutrition, drug abuse, crime prevention, and housing assistance. The City also wants to fund "Shared Housing", a program that locates affordable housing opportunities for low-income seniors and disabled persons, which the City considers to be an integral part of its Housing Assistance Plan. If the waiver were denied, many of the City's neediest residents would experience undue hardship, and the purposes of the Act would be adversely affected.

46. Regulation: 24 CFR 570.201(e)(2)

Project/Activity: Hennepin County, Minnesota. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in

the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: December 6, 1990.

Reasons Waived: The County needs the additional CDBG funds for public services to enable it to carry out services for senior citizens, to provide critical day care services, and to provide youth/family counseling and referral services for low and moderate income County residents. To deny the waiver would cause undue hardship to those persons and adversely affect the purposes of the Act.

47. Regulation: 24 CFR 570.201(e)(2)

Project/Activity: Fort Worth, Texas. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 24, 1991.

Reasons Waived: The City needs the additional CDBG funds for public services to enable it to continue its rental assistance demonstration program. The program's goal is to provide affordable housing and an opportunity for economic stability to low and moderate income persons. To deny the waiver would cause undue hardship to those persons and adversely affect the purposes of the Act.

48. Regulation: 24 CFR 570.201(e)(2)

Project/Activity: Redwood City, California. Limitation on the amount of CDBG funds for public service.

Nature of Requirement: 24 CFR 570.201(e)(2) limits the amount of funds which may be obligated for public service activities to fifteen percent (15%) of a grantee's annual entitlement grant. The City requested the waiver to enable it to include program income in the calculation for determining the maximum amount of funding which can be obligated for public service activities.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 24, 1991.

Reasons Waived: The City needs the additional CDBG funds for public services to permit it to fund the

Redwood City Family Living Center, the only homeless shelter in Redwood City. Without additional funds to cover operating costs, the facility would have to close. To deny the waiver would cause undue hardship to Redwood City's homeless and adversely affect the purposes of the Act.

49. Regulation: 24 CFR 570.202

Project/Activity: Bayonne, New Jersey. Waiver to permit CDBG funding of privately owned non-residential structures by nonprofit community-based organizations.

Nature of Requirement: 24 CFR 570.202 permits use of CDBG funds to finance rehabilitation of: (1) Privately owned buildings and improvements for residential use; (2) low-income public housing and other publicly owned residential buildings and improvements; (3) publicly and privately owned commercial or industrial buildings, limited to exterior or code violation improvements; and (4) manufactured housing that is part of the community's permanent housing stock.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: August 15, 1990.

Reasons Waived: The waiver will permit the rehabilitation of non-residential structures, owned by nonprofit organizations, that are in serious disrepair, constituting a threat to public health and safety.

50. Regulation: 24 CFR 570.302 (b)(1)

Project/Activity: Yonkers, New York. CDBG Final Statement submission deadline.

Nature of Requirement: 24 CFR 570.302(b)(1) requires that the grantee submit its Final Statement no earlier than December 1 nor later than the first working day in September of the Federal fiscal year for which funds are appropriated.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: September 21, 1990.

Reasons Waived: The City's CDBG program was disrupted by litigation (United States v. Yonkers Board of Education) so that its Federal fiscal year 1984 grant was not made until 1986, pursuant to the Housing Remedy Order of May 28, 1986. The Order requires, among other things, Yonkers to apply for CDBG grants and to use specified percentages of the grants to fund the Affordable Housing Trust Fund (AHTF). The AHTF is to be used to foster the private development of low and moderate income housing in the City to remedy the Court's finding of discrimination.

To apply the requirements of 24 CFR 570.302(b)(1) would result in the City losing its FY 1988 CDBG funds and the AHTF would not receive the funds as specified in the Order needed to remedy discrimination. In addition, not granting the waiver would adversely affect the purpose of the Act because the intended beneficiaries of the CDBG program would not be benefited.

51. Regulation: 24 CFR 570.302(b)(1)
Project/Activity: Rockland County, New York. CDBG Final Statement submission deadline.

Nature of Requirement: 24 CFR 570.302(b)(1) requires that the grantee submit its Final Statement no earlier than December 1 nor later than the first working day in September of the Federal fiscal year for which funds are appropriated. An extension was granted to November 15, 1990.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: September 26, 1990.

Reasons Waived: Over the past three years, HUD has sought to improve the County's performance through the use of special grant conditions. That action and recent case law on the Department's grant conditioning authority led to delays in awarding grants. The County received its FY 1989 grant at the end of FY 1990.

Even in the face of so clear a deadline, failure to grant a waiver of the submission deadline would have resulted in undue hardship to the community because it had insufficient time to carry out the steps necessary to submit its statement by the deadline. The CDBG funds has been allocated for the purpose of addressing the needs of low- and moderate-income residents of the County, and loss of funds would clearly adversely affect the purposes of this Act.

52. Regulation: 24 CFR 570.304(d)
Project/Activity: Yonkers, New York. FY 1988 CDBG grant agreement execution.

Nature of Requirement: 24 CFR 570.304(d), in part, states that, "The grantee shall execute and return such [grant] agreement to HUD within 60 days of the date of its transmittal."

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: November 21, 1990.

Reasons Waived: The City's CDBG program was disrupted by litigation (United States v. Yonkers Board of Education) so that its Federal fiscal year 1984 grant was not made until 1986, pursuant to the Housing Remedy Order of May 28, 1986. The Order requires, among other things, Yonkers to apply for

CDBG grants and to use specified percentages of the grants to fund the Affordable Housing Trust Fund (AHTF). The AHTF is to be used to foster the private development of low- and moderate-income housing in the City to remedy the Court's finding of discrimination.

The City's attorney raised substantive and procedural objections to conditions included in the FY 1988 CDBG agreement, and requested additional time to discuss those objections with HUD.

To apply the requirements of 24 CFR 570.304(d) would result in the City losing its FY 1988 CDBG funds and the AHTF would not receive the funds as specified in the Order needed to remedy discrimination. In addition, not granting the waiver would adversely affect the purpose of the Act because the intended beneficiaries of the CDBG program would not be benefited.

53. Regulation: 24 CFR 570.306(d)(2)
Project/Activity: Yonkers, New York. Housing Assistance Plan (HAP) submission date.

Nature of Requirement: 24 CFR 570.306(d)(2) requires that a city or county grantees expecting to receive an entitlement grant submit a HAP between September 1 and October 31 prior to its submission of the final statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 5, 1990.

Reasons Waived: The waiver was granted to allow the City until March 31, 1990 to submit its HAP due to the unique political circumstances existing in the City government that require that the HAP be developed in cooperation with HUD and the Department of Justice. The additional time was needed to complete this process and to allow the Federal Court time to deem the HAP to be the City's HAP. If the waiver had been denied, the City would have experienced undue hardship because availability of its CDBG funds would have been in jeopardy. This would have adversely affected the purpose of the Act.

54. Regulation: 24 CFR 570.306(d)(2)
Project/Activity: Yonkers, New York. Extension of FY 1991 Housing Assistance Plan submission deadline.

Nature of Requirement: 24 CFR 570.306(d)(2) requires that a city or county grantees expecting to receive an entitlement grant submit a HAP between September 1 and October 31 prior to its submission of the final statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: November 21, 1990.

Reasons Waived: The waiver was granted to allow the City until February 8, 1991 to submit its HAP due to the unique political circumstances existing in the City government that require that the HAP be developed in cooperation with HUD and the Department of Justice. The additional time is needed to complete this process or to allow the Federal Court time to deem the HAP to be the City's HAP. If the waiver had been denied, the City would have experienced undue hardship because availability of its CDBG funds would have been in jeopardy. This would have adversely affected the purpose of the Act because the intended beneficiaries of the CDBG program would not be benefitted.

55. Regulation: 24 CFR 570.405(e)(1)

Project/Activity: Virgin Islands.

Extension of application submission date to October 31, 1990.

Nature of Requirement: 24 CFR 570.405(e)(1) requires insular areas to submit applications within 90 days of HUD's notification of its grant amount.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: October 2, 1990.

Reasons Waived: The Virgin Islands requested the extension to allow time to schedule the required public hearings on all three islands and to allow time for the mandatory legislative oversight process. The legislature was not scheduled to reconvene until October 16, 1990. The legislative oversight process is beyond the control of the staff responsible for CDBG administration. To deny participation in the CDBG program would impose severe hardship on low and moderate income program beneficiaries in the Virgin Islands, which has already suffered severely as a result of Hurricane Hugo.

56. Regulation: 24 CFR 570.490(b)

Project/Activity: Montana. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each State administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The State has requested an extension to May 31, 1990 for submission of its Fiscal Year 1990 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of Montana if the State is not awarded its Fiscal Year 1990

CDBG Allocation. The State needs time to assess and negotiate the restructuring of its economic development component of its CDBG Program. This requires the States to issue new guidelines and conduct the required citizen participation. The State is also subject to State Legislature oversight.

57. Regulation: 24 CFR 570.490(b)

Project/Activity: Connecticut. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each State administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The State has requested an extension to May 31, 1990 for submission of its Final Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of Connecticut if the State is not awarded its Fiscal Year 1990 CDBG Allocation. The State did not receive information about its allocation until March 8, 1990. The State believed that its Final Statement should contain a firm financial figure. In addition, the extension will allow the State time for the Connecticut legislature to conduct its 45 day review and comment.

58. Regulation: 24 CFR 570.490(b)

Project/Activity: Massachusetts. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each State administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The State has requested an extension to May 31, 1990 for submission of its Fiscal Year 1990 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of Massachusetts if the State is not awarded its Fiscal Year 1990 CDBG Allocation. The State requested the extension on the basis that Fiscal Year 1990 State CDBG fund allocations and operating instructions were not provided on a timely basis, thereby making it difficult to precisely allocate funds among various programs and hampering program design. Additionally, Massachusetts officials have been restructuring their programs to fulfill unmet needs in the

Commonwealth as a result of budgetary difficulties.

59. Regulation: 24 CFR 570.490(b)
Project/Activity: Pennsylvania. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each state administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The State has requested an extension to May 31, 1990 for submission of its Fiscal Year 1990 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of Pennsylvania if the State is not awarded its Fiscal Year 1990 CDBG Allocation. The State needs the extension so that program staff will be able to adequately plan and undertake HUD pre-agreement requirements.

60. Regulation: 24 CFR 570.490(b)

Project/Activity: Wyoming. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each state administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The State has requested an extension to April 30, 1990 for submission of its Fiscal Year 1990 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of Wyoming if the State is not awarded its Fiscal Year 1990 CDBG Allocation. The State requested the extension to allow time for the State Legislature to conduct its 45 day review and comment period.

61. Regulation: 24 CFR 570.490(b)

Project/Activity: Florida. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each state administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The State has requested an extension to July 31, 1990 for submission of its Fiscal Year 1990 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of Florida if the State is not awarded its Fiscal Year 1990 CDBG Allocation. The State requested the extension because of the dates of the Florida Legislative session, which is scheduled to be April 3 and June 1, 1990. The Florida Legislature is closely involved with the State's CDBG Program and the State believes that several changes in state legislation which authorizes program administration will be enacted during the session. The State wishes to issue its Final Statement after the legislative session to be able to incorporate the necessary changes to the Final Statement.

62. Regulation: 24 CFR 570.490(b).

Project/Activity: Mississippi. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each state administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The State has requested an extension to May 31, 1990 for submission of its Fiscal year 1990 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of Mississippi if the State is not awarded its Fiscal Year 1990 CDBG Allocation. The State requested the extension because the state agency which administers the CDBG Program is undergoing a major reorganization. This involves designing a new CDBG Program that maximizes other resource and better addresses the needs of the State.

63. Regulation: 24 CFR 570.490(b).

Project/Activity: South Carolina. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each state administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The State has requested an extension to May 31, 1990 for submission of its Fiscal year 1990 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of South Carolina if the State is not awarded its Fiscal Year 1990

CDBG Allocation. The State requested the extension because of several ongoing efforts to alleviate the damage caused by Hurricane Hugo. The State needs time to integrate CDBG funds with these recovery efforts and other Federal funds to more effectively use all available resources. Conducting the citizen participation process and completing the Final Statement before the damage assessment and planning activities have been completed would be inappropriate and would result in undue hardship to the citizens.

64. Regulation: 24 CFR 570.490(b).

Project/Activity: Commonwealth of Puerto Rico. Final Statement Submission Date.

Nature of Requirement: Section 570.490(b) requires each state administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The Commonwealth of Puerto Rico has requested an extension to April 30, 1990 for submission of its Fiscal year 1990 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 1990.

Reason Waived: A hardship would be placed on the low- and moderate-income persons of the Commonwealth of Puerto Rico if the Commonwealth is not awarded its Fiscal Year 1990 CDBG Allocation. The Commonwealth requested the extension because it was not until March 16, 1990 that it was notified of its exact allocation. Puerto Rico was waiting for this information to incorporate it into its citizen participation process.

65. Regulation: 24 CFR

570.507(a)(2)(i)(A).

Project/Activity: St. Louis County, Missouri. Submission of the performance and evaluation report (Grantee Performance Report [GPR]).

Nature of Requirement: 24 CFR 570.507(a)(2)(i)(A) requires that CDBG Entitlement grantees submit a performance and evaluation report no later than 90 days after the completion of the most recent program year. The County requested a 60-day extension of the submission deadline.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: June 28, 1990.

Reasons Waived: The County experienced difficulty integrating its local accounting system and the Department's Activity Management and Reporting System (AMRS). The County was attempting to convert its manual

system for maintaining program data and information to the AMRS. The Department supports these efforts to improve the quality and accuracy of the County's records and its GPR.

66. Regulation: 24 CFR 576.55(a)(1).

Project/Activity: State of West Virginia. Emergency Shelter Grants (ESG).

Nature of Requirement: 24 CFR 576.55(a)(1) requires that states make grants available to its State recipients within 65 days of the grant award by HUD. The State requested a 90-day extension of the deadline.

Granted By: Anna Kondratas, Assistant Secretary for community Planning and Development.

Date Granted: May 10, 1990.

Reasons Waived: The State received feasible projects totalling only \$216,146 for a State allocation of \$442,000. The State developed a plan of action to distribute the remaining funds within the requested extended deadline.

67. Regulation: 24 CFR 576.55(b)(1).

Project/Activity: County of Fresno, California. Extension of the deadline for obligating Emergency Shelter Grant funds.

Nature of Requirement: 24 CFR 576.55(b)(1) requires each formula city and county, and each territory, to obligate all Emergency Shelter Grant funds within 180 days of the date of the grant award.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: September 18, 1990.

Reasons Waived: The City had completed all procedures except for the environmental review, and to recapture funds at that point would only further delay serving Chicago's homeless population, causing an undue hardship.

68. Regulation: 24 CFR 791.403(a).

Project/Activity: Dignity Housing, Philadelphia, PA.

Nature of Requirements: The regulation requires unreserved Section 8 budget authority carried over from prior fiscal years be fair shared with any newly appropriated budget authority.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 21, 1990.

Reason Waived: Former Regional Administrator promised project-based certificate units to specific project sponsor. Authority to use carry over authority for such a purpose is improbable in the future since the subsequent distribution of such resources must now be done competitively.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Gerald Benoit, Director, Rental Assistance Division, Department of HUD, 451 Seventh Street SW., room 6128, Washington, DC 20410, (202) 708-0477 This is not a Toll-Free Number.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 69 through 121 in this listing is: James B. Mitchell, Financial Policy Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708-4325.

69. *Regulation:* 24 CFR 811.105(b), 811.107(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Baltimore City Housing Corporation, refunding of bonds which financed two Section 8 assisted projects: Mount Clare and Louis Foxwell Apartments.

Nature of Requirement: The Regulations provide for early call of FHA debentures at HUD's discretion and set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: C. Austin Fitts, Assistant Secretary.

Date Granted: December 19, 1989.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and are irrelevant to refunding transactions.

70. *Regulation:* 24 CFR 811.105(b), 811.107(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Housing Assistance Corporation of Mobile, Alabama, refunding of bonds which financed four Section 8 assisted projects: Shelton Beach, Halls & Mill, Willow Wood, and Isle Parkway.

Nature of Requirement: The Regulations provide for early call of FHA debentures at HUD's discretion and set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: C. Austin Fitts, Assistant Secretary.

Date Granted: January 17, 1990.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and are irrelevant to refunding transactions.

71. *Regulation:* 24 CFR 811.105(b), 811.107(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Lake Charles (LA) Non-Profit Housing Development Corporation, refunding of bonds which financed a Section 8 assisted project: Chateau-du-Lac.

Nature of Requirement: The Regulations provide for early call of FHA debentures at HUD's discretion and set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: C. Austin Fitts, Assistant Secretary.

Date Granted: February 22, 1990.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and are irrelevant to refunding transactions.

72. *Regulation:* 24 CFR 811.105(b), 811.107(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Wood Glen (Texas) Housing Finance Corporation, refunding of bonds which financed two Section 8 assisted projects: Copperwood I and Copperwood II.

Nature of Requirement: The Regulations provide for early call of FHA debentures at HUD's discretion and set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: C. Austin Fitts, Assistant Secretary.

Date Granted: March 1, 1990.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and are irrelevant to refunding transactions.

73. *Regulation:* 24 CFR 811.105(b), 811.107(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Greenwood/Leflore Housing Development Corporation, (Louisville, MS), refunding of bonds which financed four Section 8 assisted projects: McNease Apartments, W. J. Bishop Apartments, Maureen Jones Apartments, and Ivory Lane Apartments.

Nature of Requirement: The Regulations provide for early call of FHA debentures at HUD's discretion and set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Peter Monroe, General Deputy Assistant Secretary.

Date Granted: April 13, 1990.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and are irrelevant to refunding transactions.

74. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Santa Cruz Housing Authority advance refunding of bonds which financed four Section 8 assisted projects in Santa Cruz County (CA): Elizabeth Oaks, Riverfront, Eagle Avenue, and Seaside Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: May 18, 1990.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on May 14, 1990. Refunding bonds have been priced to an average yield of 7.775%. The refunding bond issue of \$18,675,000 at current low-interest rates will save \$2.1 million in Section 8 subsidy (present value of annual savings for remaining term of Section 8 contract). The Treasury also gains long-term tax revenue benefits through replacement of outstanding 11-12% tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.72%, reducing by \$1.6 million tax revenue foregone. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

75. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1).

811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(b)(4), 811.114(d), 811.115(b).

Project/Activity: The Venango (PA) Housing Corporation advance refunding of bonds which financed a Section 8 assisted project in Franklin, Pennsylvania: Evergreen Arbors.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: June 13, 1990.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on May 24, 1990. Refunding bonds have been priced to an average yield of 8.00%. The refunding bond issue of \$5,875,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding 11.45% tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 8.00%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

76. Regulation: 24 CFR 811.105(b), 811.105(c)(3), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(b)(4), 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing advance refunding of bonds which financed two Section 8 assisted projects: Fish Creek Plaza (FHA-042-35395-PM-L8) and Parkside Apartments (FHA-046-35557-SR-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income

taxation and authorize call of debentures for redemption prior to maturity.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: June 13, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on June 8, 1990. Refunding bonds have been priced to an average yield of 7.655%. The tax-exempt refunding bond issue of \$4,560,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding 12% tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.655%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

77. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.115(b).

Project/Activity: The Coahoma-Clarksdale Housing Development Corporation advance refunding of bonds which financed two Section 8 assisted projects in Clarksdale, Mississippi: The Gooden Estates and McLaurin Arms, FHA No. 065-35-353-PM-L8 and FHA No. 065-35-352-PM-L8.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: June 18, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding

transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on May 11, 1990. Refunding bonds have been priced to an average yield of 7.99%. The refunding bond issue of \$6,455,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding 11-12% tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.99%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

78. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.108(a)(3), 811.114(b)(3), 811.115(b).

Project/Activity: The Troy Housing Authority advance refunding of bonds which financed three Section 8 assisted projects in Troy, New York: Ninth Street I and II Projects and the T.U.R. Project.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: June 27, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on October 12, 1989. Refunding bonds have been priced to an average yield of 8.10%. The tax-exempt refunding bond issue of \$8,815,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through

replacement of outstanding tax-exempt coupons of 10.40% to 12% at the call date in 1992 with tax-exempt bonds yielding 8.10%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contracts thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

79. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.115(b).

Project/Activity: The Sayreville, Housing Authority advance refunding of bonds which financed a Section 8 assisted projects in Sayreville, New Jersey: Lakeview Apartments (FHA No. 031-35227).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: C Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: June 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on June 19, 1989. Tax-exempt refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of \$16,160,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.750%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects

will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

80. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.11(b).

Project/Activity: The Tulsa Housing Authority advance refunding of bonds which financed two Section 8 assisted projects in Tulsa, Oklahoma: West Edison and Review Bank Plaza Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: June 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on May 24, 1990. Refunding bonds have been priced to an average yield of 7.88%. The refunding bond issue of \$5,445,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding 11.25% tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.88%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

81. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Clark County Housing Authority advance refunding of bonds which financed a Section 8 assisted projects in Clark County,

Nevada: Highland Village Apartments, FHA Project No. 125-35106-PM-L8.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: June 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on June 25, 1990. Refunding bonds have been priced to an average yield of 8.35%. The tax-exempt refunding bond issue of \$6,285,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.89%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

82. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.115(b).

Project/Activity: The Demopolis Housing Development Corporation refunding of bonds which financed one Section 8 assisted projects in Demopolis, Alabama: Crossgates, Project Number 062-35333-PM-L8.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: July 17, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on July 16, 1990. Refunding bonds have been priced to an average yield of 7.81%. The tax-exempt refunding bond issue of \$1,775,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.50% to 10.45 % at the call date in 1990 with tax-exempt bonds yielding 7.81%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

83. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Housing Assistance Corporation of Mobile, refunding of bonds which financed a Section 8 assisted project in Alabama: Quail Village Apartments, HFA No. 062-35323-PM-LA.

Nature of Requirement: The Regulations provide for early call of FHA debentures at HUD's discretion and set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: C. Austin Fitts, Assistant Secretary.

Date Granted: July 17, 1990.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and are irrelevant to refunding transactions.

84. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.115(b).

Project/Activity: The Grand Rapids Housing Finance Authority advance refunding of bonds which financed a Section 8 assisted projects in Grand Rapids, Michigan: Weston Apartments (FHA No. 047-35183).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing

revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: August 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on August 23, 1989. Tax-exempt refunding bonds have been priced to an average yield of 7.87%. The tax-exempt refunding bond issue of \$7,650,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.87%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

85. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Mobile and LCM Housing Assistance Corporation current refundings of bonds which financed Section 8 assisted projects in Alabama: Town Creek Apartments (FHA No. 062-35332-PM-L8) and Citronelle Apartments (FHA No. 062-35312-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: October 30, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding

transactions. This refunding proposal was approved by HUD on October 23, 1990. Tax-exempt refunding bonds have been priced to an average yield of 7.85%. The tax-exempt refunding bond issues of \$1,345,000 and \$960,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.45% at the call date in 1990 with tax-exempt bonds yielding 7.85%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

86. Regulation: 24 CFR Sections 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The St. Alfio's Housing Corporation current refunding of bonds which financed a Section 8 assisted projects in Lawrence, Massachusetts: Common Street Project (FHA No. 023-32046).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner

Date Granted: October 30, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 220.836 to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on August 16, 1989. Tax-exempt refunding bonds have been priced to an average yield of 8.0%. The tax-exempt refunding bond issue of \$7,600,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date

in 1992 with tax-exempt bonds yielding 8.0%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

87. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Lucas-Northgate Housing Development Corporation current refundings of bonds which financed a Section 8 assisted project in Toledo, Ohio: Northgate Apartments (FHA No. 042-35383-LPD-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: November 5, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 2, 1990. Refunding bonds have been priced to an average yield of 8.27%. The tax-exempt refunding bond issue of \$9,590,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 8.27%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies

expire, a priority HUD objective established by Secretary Kemp.

88. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Rogers County Housing Finance Authority advance refunding of bonds which financed three Section 8 assisted projects in Oklahoma: Claremore/Lakeshore, Catoosa/Indian Hills, and J. B. Milam Apartments (FHA No. 118-35104, 118-35103, and 118-35117).

Nature of Requirements: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: November 13, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 31, 1990. Refunding bonds have been priced to an average yield of 7.783%. The tax-exempt refunding bond issue of \$7,175,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.25% at the call date in 1992 with tax-exempt bonds yielding 7.83%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

89. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Lucas-Northgate Development Corporation current refundings of bonds which financed a Section 8 assisted project in South Carolina. The Glens Apartments (FHA No. 054-35505-PM-PAH-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: November 30, 1990.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 28, 1990. Refunding bonds have been priced to an average yield of 7.80%. The tax-exempt refunding bond issue of \$2,975,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¼% at the call date in 1992 with tax-exempt bonds yielding 7.80%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

90. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Port Chester Community Development Corporation refunding of bonds which financed a Section 8 assisted project in Port Chester, New York: Kingsport Apartments (FHA No. NY 36-0017-007).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 11, 1990.

Reasons Waived: The part 811 regulations cited above were intended

for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on May 9, 1990. Refunding bonds have been priced to an average yield of 8.18%. The tax-exempt refunding bond issue of \$6,460,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.6% at the call date in 1991 with tax-exempt bonds yielding 8.18%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

91. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Macon Bibb Urban Housing Development Authority refunding of bonds which financed a Section 8 assisted project in Macon, Georgia: Dempsey Apartments (FHA No. 061-35235-PM-L8-WAH-SR-R).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 13, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 11, 1990. Refunding bonds have been priced to an average yield of 7.87%. The tax-exempt refunding bond issue of \$8,410,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.2% to 12.1% at the call date in 1992 with tax-exempt bonds yielding 7.64%.

The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

92. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Sanford Seminole Housing, Inc. refunding of bonds which financed a Section 8 assisted project in Sanford, Florida: Georgia Arms Apartments (FHA No. 067-35258-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 13, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 7, 1990. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of \$2,465,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

93. Regulation: 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(3), 811.114(d), 811.115(b).

Project/Activity: The Huntington Housing Corporation refunding of bonds which finished a Section 8 assisted project, Huntington, West Virginia: Westview Manor (FHA No. 045-35159-PM-WAH/L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 19, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 17, 1990. Refunding bonds have been priced to an average yield of 7.625%. The tax-exempt refunding bond issue of \$3,755,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.56%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

94. Regulation: Sections 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(d), 811.115(b).

Project/Activity: The Pearl Housing Development Corporation refunding of bonds which financed a Section 8 assisted project in Louisville, Mississippi: Rose Garden Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 26, 1990. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of \$1,455,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

95. *Regulation:* Sections 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(d), 811.115(b).

Project/Activity: The Charter Mortgage Corporation refunding of bonds which financed a section 8 assisted project in Shelby, Mississippi: Church Garden Apartments (FHA 065-35316-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 4, 1990. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of \$1,410,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.0% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also

substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

96. *Regulation:* Sections 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(d), 811.115(b).

Project/Activity: The Canton Housing Development Corporation refunding of bonds which financed a section 8 assisted project in Canton, Mississippi (FHA No. 065-35351-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 26, 1990. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of \$3,575,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.6% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

97. *Regulation:* Sections 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(d), 811.115(b).

Project/Activity: The Pearl Housing Development Corporation refunding of bonds which financed a section 8 assisted project in Laurel, Mississippi: Cooks Avenue Apartments (FH No. M526-0021-003).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 4, 1990. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of \$1,735,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.85% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

98. *Regulation:* Sections 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(3), 811.114(d), 811.115(b).

Project/Activity: The Lowell Housing Development Corporation refunding of bonds which financed a section 8 assisted project in Lowell, Massachusetts: Centennial Island Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 28, 1990. Refunding bonds have been price-restricted to an average yield of 7.86%. The tax-exempt refunding bond issue of \$8,615,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12.00% at the call date in 1992 with tax-exempt bonds yielding 7.86%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

99. *Regulation:* Sections 811.105(b), 811.107(a)(2), 811.108(a)(3), 811.114(d), 811.115(b).

Project/Activity: The Keene Housing Development Corporation refunding of bonds which financed a section 8 assisted project in Keene, New Hampshire: Central Square Housing (FHA No. 024-35066-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 28, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 28, 1990. Refunding bonds have been priced to an average yield of 7.50%. The tax-exempt refunding bond issue of \$4,590,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.88% at the call date in 1992 with tax-exempt bonds yielding 7.50%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk.

The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

100. *Regulation:* 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Rawlins Housing Finance Corporation current refundings of bonds which financed a section 8 assisted project in Rawlins, Wyoming: Stage Coach Apartments (FHA No. 109-35050-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FAA Commissioner.

Date Granted: November 20, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount. HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 2, 1990. Refunding bonds have been priced to an average yield of 8.045%. The tax-exempt refunding bond issue of \$3,785,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.4% at the call date in 1992 with tax-exempt bonds yielding 8.045%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

101. *Regulation:* 24 CFR 811.114(d), 811.115(b), and 811.117.

Project/Activity: The Nebraska Investment Finance Authority, refunding of bonds which financed two section 8

assisted projects in Nebraska; Kearney Plaza and Oak Valley Apartments, FHA No. (respectively) 103-35089-PM-PAM/L8 and 103-35093-ODWAH/L8.

Nature of Requirement: The Regulations provide for early call of FHA debentures at HUD's discretion and set conditions under which HUD may grant waivers of certain section 11(b) regulations for issuance of multifamily housing revenue bonds under the Internal Revenue Code.

Granted By: Arthur J. Hill, Acting Assistant Secretary.

Date Granted: December 19, 1990.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and are irrelevant to refunding transactions.

102. *Regulation:* 24 CFR 811.114(d), 811.115(b), and 811.117.

Project/Activity: The County of Tulare (CA) Housing Authority, refunding of bonds which financed the section 8 assisted project, La Serena Apartments, FHA No. 121-35758-NP-L8.

Nature of Requirement: The Regulations provide for early call of FHA debentures at HUD's discretion and set conditions under which HUD may grant waivers of certain section 11(b) regulations for issuance of housing revenue bonds under the Internal Revenue Code.

Granted by: Arthur J. Hill, Acting Assistant Secretary.

Date Granted: March 29, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and are irrelevant to refunding transactions.

103. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing advance refundings of bonds which financed four section 8 assisted projects in Ohio: Carpenter Hall (FHA No. 043-35288-PM-L8-SR), Heritage Village (FHA No. 046-35552-PM-SR-L8), Lima I (FHA No. 043-35295-PM-L8), and Summit Garden Apartments (FHA No. 042-35390-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: March 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 25, 1991. Refunding bonds have been priced to an average yield of 7.88%. The tax-exempt refunding bond issue of \$7,150,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12 percent at the call date in 1992 with tax-exempt bonds yielding 7.88%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk by modifying the mortgage interest rate from 12.75% to 8.05%. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

104. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), and 811.115(b).

Project/Activity: The Aurora Housing Authority Finance Corporation of Aurora, Colorado, refunding of bonds which financed one section 8 assisted project: Mountain View Place, FHA Project Number 101-35289-PM-L8.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Administration Commissioner.

Date Granted: April 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on March 21, 1991. Refunding bonds have been priced to an average yield of 7.26%. The tax-exempt refunding bond issue of \$2,780,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax

revenue benefits through replacement of outstanding tax-exempt coupons of 9.74% at the call date in 1991 with tax-exempt bonds yielding 7.26%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP Contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 Program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

105. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Tchula Housing Development Corporation refunding of bonds which financed a section 8 assisted project in Mississippi: Telfair Apartments (FHA No. 065-35329-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: April 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on March 15, 1991. Refunding bonds have been priced to an average yield of 7.625%. The tax-exempt refunding bond issue of \$1,255,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.75% at the call date in 1992 with tax-exempt bonds yielding 7.625%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for

lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

106. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Goodman HCC current refunding of bonds which financed a section 8 assisted projects in Mississippi: Goodhaven Manor Apartments (FHA No. 065-35328-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: April 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on March 15, 1991. Refunding bonds have been priced to an average yield of 7.625%. The tax-exempt refunding bond issue of \$1,495,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.75% at the call date in 1991 with tax-exempt bonds yielding 7.625%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

107. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Region IV Finance Corporation refunding of bonds which financed a section 8 assisted project in Columbus, Mississippi: Greentree Apartments (FHA No. 065-35302-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: May 14, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on March 4, 1991. Refunding bonds have been priced to an average yield of 7.86%. The tax-exempt refunding bond issue of \$3,200,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1991 with tax-exempt bonds yielding 7.86%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk by modifying the mortgage interest rate from 10.73% to 8.05%. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

108. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Audubon Development Corporation, an instrumentality of the City of Jersey City, NJ, advance refunding of bonds which financed one section 8 assisted project in New Jersey: Audubon Park Apartments (FHA No. 031-35236-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: April 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance

refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 3, 1991. Three taxable bonds totaling \$9,765,000 will currently be issued. At the first optional call date, tax laws permitting, the largest taxable bond segment converts to a Tax-Exempt Bond. The tax-exempt bonds have been priced to yield 7.75%. Even if the conversion to tax-exempts cannot take place at current low-interest taxable rates, the refunding will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.75% or revenues from totally taxable bonds. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

109. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Greater Kentucky Housing Assistance Corporation refunding of bonds which financed six section 8 assisted projects: Eastridge Place, FHA Project Number 083-35386-PM-LM-PAH; Lee Manor Apartments, FHA 083-35372-L8-FAM; Northside Apartments, FHA 083-35391-L8-PM-PAH; Bruce II Apartments, FHA 083-35311-L8-PM-PAH; Louisville Riverpark Apartments, FHA 083-35371-L8-PM-WAH; and Colony House Apartments, FHA 083-35359-L8-PM-PAH.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and provide discretion to call FHA debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Administration Commissioner.

Date Granted: May 1, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA mortgage balance, HUD also agrees not to exercise its option under § 207.259(e) to all debentures prior to

maturity. This refunding proposal was approved by HUD on April 22, 1991. Refunding bonds have been priced to an average yield of 7.72%. The tax-exempt refunding bond issue of \$13,890,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75% at the call dates in 1992 with tax-exempt bonds yielding 7.72%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP Contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 Program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

110. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Rock Island County (Illinois) Housing Finance Corporation refunding of bonds which financed the section 8 assisted project: Loma Linda Apartments, FHA 071-35455-L8-PM-PAH.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and provide discretion to call FHA debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Administration Commissioner.

Date Granted: May 15, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA mortgage balance, HUD also agrees not to exercise its option under § 207.259(e) to all debentures prior to maturity. This refunding proposal was approved by HUD on March 15, 1991. Refunding bonds have been priced to an average yield of 8.0%. The tax-exempt refunding bond issue of \$5,090,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75% at the call date in 1992 with tax-exempt bonds yielding 8.0%. The refunding will also substantially reduce FHA project

mortgage debt service at expiration of the HAP Contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 Program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

111. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing advance refundings of bonds which financed four section 8 assisted projects in Ohio: Greenville Village (FHA No. 043-35247-PM-L8), Pinehurst (FHA No. 043-35241-PM-L8), Vandalia (FHA No. 043-35545-PM-L8), and West Alexandria Village Apartments (FHA No. 042-35542-L8-PAH-LD).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: May 29, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on May 22, 1991. Refunding bonds have been priced to an average yield of 7.67%. The tax-exempt refunding bond issue of \$5,650,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.67%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk by modifying the mortgage interest rate from 12% to 7.75%. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects

will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

112. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.115(b).

Project Activity: Dallas-Trails/Kiest Housing Development Corporation, mortgage/current refunding of bonds which financed a section 8 assisted project in Dallas, Texas: Cedar Glen Apartments (FHA No. TX16-E000-009).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures for redemption prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: May 31, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA-insured mortgages, HUD also agrees not to exercise its option under § 207.259(e)(3) to call high-interest rate debentures prior to maturity. This refunding proposal was approved by HUD on May 31, 1991. Refunding bonds have been priced to an average yield of 7%. The tax-exempt refunding bond issue of \$5,800,000 at current low-interest rates will save some section 8 subsidy, more importantly, reduce project debt service to eliminate deficits, and provide funds to reimburse the FHA claim payment and reinstate the defaulted project mortgage. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of approximately 11.75% at the immediate call date with tax-exempt bonds yielding 7%. The refunding will also cut the mortgage interest rate from 12% to 7.56% at expiration of the HAP Contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, reinstating a defaulted FHA mortgage, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

113. Regulation: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: The Somerville Housing Development Corporation refunding of bonds which financed a section 8 assisted project in Somerville, Massachusetts: Pearl Street Park Apartments (FHA No. 023-35284-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 26, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 20, 1990. Refunding bonds have been priced to an average yield of 7.62%. The tax-exempt refunding bond issue of \$4,710,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¼% at the call date in 1992 with tax-exempt bonds yielding 7.62%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

114. Regulation: 811.114(b), 811.114(d), 811.115(b), 811.117.

Project/Activity: The King County, Washington refunding of bonds which financed two section 8 assisted projects in the County.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: March 18, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on March 4, 1991. Refunding bonds have been priced to an average yield of 7.09%. The tax-exempt refunding bond issue of \$5,035,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12.42% at call dates in 1991-95 with tax-exempt bonds yielding 7.09%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. These are pre-FAF projects, and HUD will share savings with the Housing Authority under a HUD-approved housing assistance plan. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

115. **Regulation:** 811.114(d), 811.115(b), 811.117.

Project/Activity: The Washington State refunding of bonds which financed nine section 8 assisted projects in the State of Washington (see attached list).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 19, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhanced refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 4, 1990. Refunding bonds have been priced to an average yield of 7.72%. The tax-exempt refunding bond issue of \$8,485,000 at current low-interest rates will save

section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¾% at the call date in 1992 with tax-exempt bonds yielding 7.72%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

116. **Regulation:** 811.114(d), 811.115(b), 811.117.

Project/Activity: The New Mexico Mortgage Finance Authority refunding of bonds which financed five section 8 assisted projects in The State of New Mexico.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 20, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhanced refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 19, 1990. Refunding bonds have been priced to an average yield of 7.57%. The tax-exempt refunding bond issue of \$9,240,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 10 and 12% at the call date in 1992 with tax-exempt bonds yielding 7.57%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for

lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

117. **Regulation:** 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The City of Palmdale current refunding of bonds which financed a section 8 assisted projects in Palmdale, California: Village Gardens Apartments (FHA No. 122-35543-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 20, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhanced refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 18, 1990. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of \$3,545,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at call date in 1992 with tax-exempt bonds yielding 7.35%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

118. **Regulation:** 811.114(d), 811.115(b), 811.117.

Project/Activity: The New Orleans Housing Development Corporation's refunding of bonds which financed a section 8 assisted project in the State of Louisiana: Southwood Patio Homes/FHA #064-35228.

Nature of Requirement: The Regulations set conditions under which

HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call or debentures prior to maturity.

Granted By: Authur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 26, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 21, 1990. Refunding bonds have been priced to an average yield of 7.79%. The tax-exempt refunding bond issue of \$5,050,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.79%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

119. Regulation: 811.114(d), 811.115(b), 811.117.

Project/Activity: The Quaker Hill Housing Corporation's refunding of bonds which financed a section 8 assisted project in the State of Delaware: Quaker Hill Place Apartments/FHA #032-32002.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Authur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 26, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA mortgage amount, HUD also agrees

not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 31, 1990. Refunding bonds have been priced to an average yield of 7.68%. The tax-exempt refunding bond issue of \$8,825,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging from 11.50% to 16.00% at the call date in 1992 with tax-exempt bonds yielding 7.68%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

120. Regulation: 811.114(d), 811.115(b), 811.117.

Project/Activity: The Jefferson Housing Development Corporation's refunding of bonds which financed a section 8 assisted project in the State of Louisiana: Concordia Apartments Project/FHA #064-35244.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 26, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 29, 1990. Refunding bonds have been priced to an average yield of 7.79%. The tax-exempt refunding bond issue of \$4,780,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.50% at the call date in 1992 with tax-exempt bonds yielding 7.79%. The refunding will also substantially reduce FHA project

mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

121. Regulation: 811.114(d), 811.115(b), 811.117.

Project/Activity: The New Orleans Housing Development Corporation's refunding of bonds which financed a section 8 assisted project in the State of Louisiana: Curran Place Project/FHA #064-35225.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily revenue bonds from Federal income taxation and authorized call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 26, 1990.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 26, 1990. Refunding bonds have been priced to an average yield of 7.80%. The tax-exempt refunding bond issue of \$7,190,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging from 11.50% to 12.375% at the call date in 1992 with tax-exempt bonds yielding 7.80%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

122. Regulation: 24 CFR 813.105(b).

Project/Activity: Income Limits: Rusk County Elderly Housing—Project No. 075-EH-301, CMH Housing—Project No. 075-EH-310, Convick Rentals—Project No. MN46-ROOO55, Village Place Apartments—Project No. 084-35263.

Nature of Requirement: The project should be required to report quarterly on the income characteristics of both current tenants and prospective tenants on the waiting list during the existence of any exception. The purpose of this reporting requirement is to monitor tenant characteristics and market demand and to maintain a record supporting HUD's decision to grant this waiver.

Granted By: Donald A. Kaplan, Director, Office of Multifamily Housing Management, HMH

Date Granted: Rusk County Elderly Housing—Jan. 26, 1990, CMH Housing—Jan. 26, 1990, Convick Rentals—Oct. 24, 1989, Village Place Apartments—Dec. 20, 1989.

Reason Waived: This waiver provides an exception to the income requirements, to lease the indicated amount of units in the project to lower-income applicants. The request is based on the fact that there are no income eligible applicants on the waiting list.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Karen Braner, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708-3730.

123. **Regulation:** 24 CFR 813.105(c).

Project/Activity: Kenilworth-Parkside Cooperative Homeownership Program.

Nature of Requirement: Regulation provides that, except with the prior approval of HUD, no certificate shall be granted to any lower-income family that is not a very low-income family.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 27, 1990.

Reason Waived: To permit the DC Department of Public and Assisted Housing to issue section 8 rental certificates to current Kenilworth-Parkside public housing residents (including those who have been temporarily relocated during rehabilitation), residents of other public housing projects and recipients of other federal housing assistance who are lower income but not very low-income. This waiver facilitated the sale of Kenilworth-Parkside, a public housing project, to the resident management corporation for cooperative homeownership.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Gerald Benoit, Director, Rental Assistance Division, Department of HUD, 451 Seventh Street SW., room 6128, Washington, DC 20410, (202) 708-0477. This is not a toll-free number.

124. **Regulation:** 24 CFR 840.5.

Project/Activity: Transitional Housing, Seattle, Washington, Seattle Children's Home.

Nature of Requirement: 24 CFR 840.5 now sets a maximum residence requirement under the Supportive Housing Demonstration Program at 24 months.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 1, 1990.

Reason Waived: The nature of the changes to the Final Rule published on January 9, 1989 changed the definition of transitional housing contained in § 840.5 by extending the maximum period from 18 to 24 months. Seattle Children's Home, which received a grant under the earlier 18-month rule, serves a special population which needed the longer period.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 Seventh Street SW., room 7270, Washington, DC 20410-7000, Phone: (202) 708-2565.

125. **Regulation:** 24 CFR 880.609(b).

Project/Activity: Special Rent Increase for Security, Woodycrest Court I, Project No. 012-57279/NY96-H110-91.

Nature of Requirement: Since there is good cause to permit a Special Adjustment Rent Increase, the project may grant the increase, subject to the following: the amount of the Special Additional Adjustment is limited to the actual cost of security and in the event that security costs are subsequently reduced, the contract rents will also be reduced.

Granted By: C. Austin Fitts, Assistant Secretary for Housing, H.

Date Granted: January 2, 1990.

Reason Waived: Due to the high crime drug infested area, the security of the building is necessary for the safety of the tenants and is essential for the operation of the project.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Karen Braner, Office of Multifamily Housing

Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-3730.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 126 through 129 in this listing is: Gerald Benoit, Director, Rental Assistance Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6128, Washington, DC 20410. Phone: (202) 708-0477.

126. **Regulation:** 24 CFR 882.110.

Project/Activity: Ashley, Housing Authority (North Dakota).

Nature of Requirement: Regulation prohibits the leasing of units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, by Section 8 certificate holders.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 5, 1991.

Reason Waived: To permit eleven ground floor, accessible units owned by the Ashley Medical Center to be available for leasing under the rental certificate program permitting the low-income families already residing in these units the option to receive rental assistance without the burden of having to move. Accessible first floor efficiency or 1 bedroom units are extremely limited in this small, rural farming community and the section 8 waiting list is predominately elderly families. (The average age of all applicants is 65 years.)

127. **Regulation:** 24 CFR

882.209(a)(4)(ii)(A).

Project/Activity: Kenilworth-Parkside Cooperative Homeownership Program.

Nature of Requirement: Regulation prohibits tenant selection preference based on the identity or location of the housing which is occupied by the applicant for the Section 8 rental certificate program.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 27, 1990.

Reason Waived: To permit the DC Public Housing Agency to establish a section 8 certificate program selection preference for current public housing residents, and those tenants temporarily relocated from Kenilworth-Parkside to facilitate the sale of this public housing project to the resident management corporation for cooperative homeownership.

128. **Regulation:** 24 CFR 882.209(d)(2) and 887.165(b).

Project/Activity: New York City Department of Housing Preservation and Development Section 8 Program.

Nature of Requirement: The regulations provide a maximum 120 day term for a family to seek housing with a section 8 rental certificate or rental voucher.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 18, 1991.

Reason Waived: A waiver was granted to allow the Department of Housing Preservation and Development to extend the term of a rental voucher or rental certificate beyond 120 days. The waiver applies only where approval of new rent schedules for rehabilitated units by the City of New York's rent board cannot be completed within 120 days. The waiver will facilitate the upgrading of rental housing in New York City from a substandard condition thereby increasing the supply of decent, affordable housing available to low income families.

129. **Regulation:** 24 CFR 882.219(b)(2)(ii).

Project/Activity: Kenilworth-Parkside Cooperative Homeownership Program.

Nature of Requirement: Regulation limits issuance of rental certificates to applicants who do not qualify for a Federal preference to 10 percent of the applicants who are initially issued a rental certificate in any one-year period.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 27, 1990.

Reason Waived: To permit the DC Public Housing Agency to give preference to current Kenilworth-Parkside residents who do not qualify for a Federal preference and families receiving other Federal housing assistance in the Agency's jurisdiction who are accepted for cooperative homeownership at Kenilworth-Parkside. Assisted families who do not qualify for a Federal preference must be given preference for ownership of cooperative units under the law governing sales of public housing to resident management corporations. This waiver facilitated the sale of Kenilworth-Parkside, a public housing project, to the resident management corporation.

130. **Regulation:** 24 CFR 882.410.

Project/Activity: Southern Hills Apartments, Washington, DC.

Nature of Requirement: Special adjustments to rents for units under a Moderate Rehabilitation Housing Assistance Payments Contract are allowed only to reflect substantial general increases in real property taxes,

utility rates, assessments and utilities not covered by regulated rates.

Granted By: Arthur J. Hill, Acting Assistant Secretary.

Date Granted: September 10, 1990.

Reason Waived: Consistent with the Secretarial objective of providing drug-free housing, the regulation was waived to provide a special adjustment to rents at Southern Hills Apartments to reflect security cost increases.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Madeline Hastings, Director, Moderate Rehabilitation Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-4969.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 131 through 137 in this listing is: Gerald Benoit, Director, Rental Assistance Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6128, Washington, DC 20410, Phone: (202) 708-0477.

131. **Regulation:** 24 CFR 882.703(a)(1), 882.708, 882.709(b)(3), 882.711(a), 882.701(a), 882.713(b), 882.716, 882.720, 882.723, 882.724 (a) and (c), 882.725, 882.730(a), 882.731, 882.732, 882.733 (a), (b), and (d).

Nature of Requirements: Ganado Acres, Ganado, Arizona.

Project/Activity: The above regulations center around the maximum number of a PHA's rental certificates which can be attached to structures and the unit selection and construction requirements for the project-based certificate program.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 7, 1991.

Reason Waived: Congress specifically appropriated funding for project based certificates to be used with Ganado Acres, which was constructed in 1989 under HUD's Housing Development Grant Program. Since the Department does not normally provide rental certificate funding for project-based use, designate section 8 rental certificate funding for specific projects, nor allow PHAs to select projects for which construction is complete or which were funded under the Housing Development Grant Program, it is necessary to provide numerous regulatory waivers to enable project-based certificates assistance to be attached to Ganado Acres as required by law.

132. **Regulation:** 24 CFR 882.720.
Project/Activity: Dignity Housing; Philadelphia, PA.

Nature of Requirements: The regulation requires competitive selection of units for project-based certificate assistance including advertising for proposals and ranking and rating of applications in accordance with the HUD-approved PHA written unit selection policy.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 1990.

Reason Waived: During the initial implementation of the project based certificate program, the former Regional Administrator promised 200 units to a specific non-profit sponsor in support of a homeless program. Of the two hundred units, only 63 units were given to the non-profit sponsor in the first allocation of units. The waiver was necessary to complete the obligation. The promise to provide certificate funding for the Dignity Housing units was made before publication of the current competitive selection requirements in the regulations and may have occurred even before the publication of the November 8, 1988 HUD Notice requiring the PHA to adopt a written policy. Further, there is little potential for precedential applications, since HUD must distribute any such funds competitively by statute, and PHAs are bound by clear regulations to award funds competitively.

133. **Regulation:** 24 CFR 882.720(b).

Project/Activity: Jacksonville, Florida Department of Housing and Urban Development.

Nature of Requirement: The project based certificate program regulation requires that pursuant to an advertisement in the newspaper, the PHA must select owner applications based on ranking factors such as the site.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 12, 1991.

Reason Waived: To allow PHA selection of a project consisting of up to 65 project-based certificate units on a pre-designated site to accommodate the needs of elderly residents of a nearby public housing project which was demolished.

134. **Regulation:** 24 CFR 882.740(b).

Project/Activity: City of Louisville, Kentucky.

Nature of Requirement: The regulation requires that the project based certificate program Housing Assistance Payments Contract term may not be less than two years and may not extend

beyond the ACC expiration date for the funding source.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 29, 1990.

Reason Waived: To induce urgently needed rehabilitation in an area of predominately substandard housing with extremely high rental vacancies, and to further the program purpose of inducing owners to upgrade substandard housing and make it available for lower income people.

135. Regulation: 24 CFR 882.740(b).

Project/Activity: Philadelphia Housing Authority.

Nature of Requirement: The regulation requires that the project based certificate program Housing Assistance Payments Contract term may not be less than two years and may not extend beyond the ACC expiration date for the funding source.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 11, 1990.

Reason Waived: The rehabilitation of these units will provide much needed decent affordable housing in a community development target area.

136. Regulation: 24 CFR 882.740(b).

Project/Activity: Reading, Pennsylvania Housing Authority.

Nature of Requirement: The regulation requires that the project-based certificate program Housing Assistance Payments Contract term may not be less than two years and may not extend beyond the ACC expiration date for the funding source.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 2, 1991.

Reason Waived: To further the program purpose of inducing owners to upgrade substandard housing and make it available for lower income persons.

137. Regulation: 24 CFR 882.740(b).

Project/Activity: City of Pensacola, Florida.

Nature of Requirement: The regulation requires that the project based certificate program Housing Assistance Payments Contract term may not be less than two years and may not extend beyond the ACC expiration date for the funding source.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 7, 1991.

Reason Waived: Further program and Secretarial objectives by increasing the stock of decent, safe and affordable housing available to low-income families.

138. Regulation: 24 CFR 885—Loans for Housing for the Elderly or Handicapped § 885.5, Definitions.

Project/Activity:

Project name	Project No.	Regional office
Heritage Village.....	066-EH191	Atlanta.
Green Hill Manor II...	053-EH627	Atlanta.

Nature of Requirement: The Regulations cited above prohibit section 202 assistance for intermediate care facilities due to the traditionally medical nature of such facilities.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between December 1, 1989 and March 31, 1990.

Reason Waived: Often borrowers have access to service funding if a project is designated as an intermediate care facility. Therefore, under existing Departmental procedures, a Borrower may receive a waiver if the facility is for the developmentally disabled and it provides evidence that the housing and services will not be medically oriented.

More information about the granting of these waivers, including a copy of the waiver requests and approvals, may be obtained by contacting: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410 (202) 426-8730 (This is not a toll-free number).

139. Regulation: 24 CFR 885—Loans for Housing for the Elderly or Handicapped § 885.5, Definitions, Housing and Related Facilities.

Project/Activity:

Project name	Project No.	Regional office
Emanuel Senior Hsg. Community Residences.	023-EH296	Boston.
	000-EH158	Philadelphia.

Nature of Requirement: The Regulations cited above prohibit section 202 assistance for intermediate care facilities due to the traditionally medical nature of such facilities.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between April 1, 1990 and June 30, 1990.

Reason Waived: Often borrowers have access to service funding that would not otherwise be available if a project is designated as an intermediate care facility. Therefore, under existing

Departmental procedures, a Borrower can receive a waiver if the facility is for the developmentally disabled and it provides evidence that the housing and services will not be medically oriented.

More information about the granting of these waivers, including a copy of the waiver requests and approvals, may be obtained by contacting: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-2730 (This is not a toll-free number).

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 140 through 143 in this listing is: Karen Braner, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Phone: (202) 708-3730.

140. Regulation: 24 CFR 885.5.

Project/Activity: Intermediate Care Facility—Starkey Group Home, Project No. 102-EH045, Waiver of § 885.5—ICF.

Nature of Requirement: Based on a review of the materials, there is good cause to grant a waiver. All plans and specifications relative to the structural changes required by the State for this waiver are approved by the project's office as required by the Regulatory Agreement.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 13, 1990.

Reason Waived: The waiver is necessary to provide for the needs of low-income handicapped persons in this area, along with medical services including outside doctors and nursing care.

141. Regulation: 24 CFR 885.5.

Project/Activity: RADD Housing, Project No. 046-EH-137, Portland, OR.

Nature of Requirement: To permit the project to be operated as in Intermediate Care Facility for the Developmentally Disabled.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 1, 1990.

Reason Waived: The waiver is necessary to provide specialized services for the residents.

142. Regulation: 24 CFR 885.5.

Project/Activity: TECH—Lorraine House, Hutchinson, Kansas, Project No. 102-EH033, Waiver of § 885.5—ICF.

Nature of Requirement: To permit operation of this project as an intermediate care facility.

Granted By: Athur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 19, 1990.

Reason Waived: The waiver is necessary to provide for the needs of low-income handicapped persons.

143. Regulation: 24 CFR 885.5.

Project/Activity:

Project No. 053-EH077, ARC/HDS Orange County Group Home #1, Carrboro, NC.

Project No. 053-EH118, ARC/HDS Craven County Group Home #2, New Bern, NC.

Nature of Requirement: To permit sponsor to convert the projects from group homes for the developmentally disabled to intermediate care facilities.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 5, 1991.

Reason Waived: The waiver is necessary to provide for the needs of low-income handicapped persons.

Note to Reader: The person to be contracted for additional information about the waiver-grant items numbered 144 through 152 in this listing is: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Phone: (202) 426-8730.

144. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.210(b)(9), Contents of Applications (relating to requirements for Borrower corporation).

Project/Activity:

Project name	Project No.	Regional office
Curtis House.....	023-EH273	Boston.
Edinburgh Greens....	051-EH186	Philadelphia.

Nature of Requirement: The Regulations cited above require formation of separate single-purpose Borrower corporations which may not engage in any other business or activity (including the operation of any other rental project) or incur any liability or obligation not related to the proposed project.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between December 1, 1989 and March 31, 1990.

Reason Waived: Due to the nature of these particular projects, i.e., they are additions to existing projects and will be operated virtually as a single project, it

is more feasible and to the Department's and owner's advantage to allow the existing and new facilities to be developed and owned by a single corporation.

145. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.210(b)(9). Contents of Applications (Requirement for Single Purpose Borrower Corporation).

Project/Activity:

Project name	Project No.	Regional office
Convenant House II.....	023-EH352	Boston.
Sandy Meadows.....	017-EH153; 017-EH165	Boston; Boston.
Bethany Residences II..	071-EH474	Chicago.

Nature of Requirement: The Regulations cited above require formation of separate single-purpose Borrower corporations which may not engage in any other business or activity (including the operation of any other rental project) or incur any liability or obligation not related to the proposed project.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between April 1, 1990 and June 30, 1990.

Reason Waived: Due to the nature of these particular projects, i.e., they are additions to existing projects and will be operated virtually as a single project, it is more advantageous to the Department and owner to allow the existing and new facilities to be developed and owned by a single corporation.

146. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.210(b)(22)(i)(A), Acquiring Sites From a Public Body for the New York Metropolitan Area.

Nature of Requirement: Where sites are being optioned from public bodies, evidence of clear title by the public body which will allow them to enter into a legally binding agreement with the sponsors is required.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 23, 1990.

Reason Waived: In the case of sites being acquired from the City of New York, the lengthy land acquisition procedure would exclude a major portion of available sites in New York City. Such waivers had been granted in previous fiscal years and sponsors had relied upon the approval of such waivers. Therefore, and to minimize any adverse competitive effects to sponsors submitting applications for the New York metropolitan area, waivers were

granted for all applications where sponsors were acquiring publicly-owned sites in that jurisdiction.

147. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.230, Duration of section 202 Fund Reservations.

Project/Activity:

Project name	Project No.	Regional office
Casa Edad de Oro.....	017-EH142	Boston.
Green Towers.....	023-EH331	Boston.
Archwood Eld Hsg Inc.	023-EH333	Boston.
Lebanon Group Homes.	017-EH158	Boston.
WAARC.....	023-EH321	Boston.
New Gloucester, Maine.	024-EH195	Boston.
Kentco Apartments.	016-EH058	Boston.
Hampden, Maine.....	024-EH188	Boston.
Winter Valley II.....	023-EH273	Boston.
WAARC.....	024-EH191	Boston.
Meadow Brook Gardens.	023-EH302	Boston.
Blackstone Valley Assoc.	016-EH073	Boston.
AHEPA 245 Apartments.	016-EH064	Boston.
New Bedford Hsg. Hanson Group Home.	023-EH315 023-EH341	Boston. Boston.
Teamster Retiree Hsg.	023-EH332	Boston.
Hampden Eld Hsg.	024-EH188	Boston.
Leeds Hsg for Eldg.	024-EH157	Boston.
New York Foundation.	012-EH649	New York.
Los Sures Hsg Eld.	012-EH636	New York.
Msgr. Alexius Jarka Hall.	012-EH511	New York.
Al Gomer Residence.	031-EH190	New York.
DD Housing.....	012-EH644 012-EH618	New York. New York.
Parkville Apartments.	031-EH195	New York.
M & O Apartments.	012-EH645	New York.
Grace Houses.....	014-EH233	New York.
Nativity Housing.....	012-EH571	New York.
Long Island Sr House.	056-EH270	New York.
Eld Carpenter Un of PF.	012-EH512	New York.
Net Rox Service Inc.	012-EH645	New York.
Grace Houses.....	056-EH252	New York.
Sunny Isle Housing.	012-EH642	New York.
Goodwin Place.....	035-EH076	New York.
Residential Alternative.	012-EH627	New York.
Echo Apartments.....	034-EH357	New York.
Corinthian Square..	056-EH316	New York.
Egida Padre Jose Boyd.	014-EH217	New York.
St. Jude Apartments.	012-EH570	New York.
Holy Spirit Apts.....	031-EH223	New York.
Columbian Arms.....	021-EH347	New York.
Tweemill House.....	012-EH633	New York.
Proj Hope Sr House.	012-EH583	New York.
Casa Victoria Hsg Eld.		New York.

Project name	Project No.	Regional office	Project name	Project No.	Regional office	Project name	Project No.	Regional office
Pinewood Drive Residence.	014-EH213	New York.	MHA Chatham County GH.	053-EH544	Atlanta.	Lakeview Villa	063-EH205	Atlanta.
Holy Spirit Apts.....	012-EH570	New York.	KC Home of Savannah.	081-EH133	Atlanta.	Lakeview Place	063-EH206	Atlanta.
Spita Hsg for Eld.	012-EH487	New York.	Northwest Apts Inc.	081-EH136	Atlanta.	Glades-Diamond Hsg.	066-EH235	Atlanta.
Rutherford Sr Hsg.	031-EH224	New York.	Northwest Homes Inc.	081-EH137	Atlanta.	SOAT Inc.....	061-EH172	Atlanta.
Mamaroneck Gardens.	012-EH559	New York.	JWC Hsg Corp Inc.	081-EH139	Atlanta.	Coffee County Resource.	061-EH197	Atlanta.
Riese-St. Gerard Sr.	031-EH221	New York.	Volunteers of America.	067-EH240	Atlanta.	Colonial Apts.....	066-EH214	Atlanta.
Carmen Parsons Hsg.	012-EH625	New York.	Life Concepts.....	067-EH256	Atlanta.	Biscayne Sr Hsg....	066-EH222	Atlanta.
Academy Arms Apts.	013-EH111	New York.	St. Francis Apts Federation	065-EH160	Atlanta.	PARC	067-EH234	Atlanta.
Schenectady B'nai B'rith.	014-EH210	New York.	Gardens.	066-EH232	Atlanta.	Centre	062-EH254	Atlanta.
Live II	031-EH220	New York.	Federation Gardens.	066-EH236	Atlanta.	Community Home.		
Calvary Baptist Church.	012-EH557	New York.	North Metro GH.....	061-EH153	Atlanta.	Villa Elizabeth	065-EH155	Atlanta.
Ramsey Senior Hsg.	031-EH208	New York.	Heart Homes	061-EH180	Atlanta.	Orange Grove Dev Two.	087-EH156	Atlanta.
Academy Arms Apts.	013-EH111	New York.	Jewish Home Tower N.	061-EH194	Atlanta.	Teamster Retiree Hsg.	087-EH157	Atlanta.
Nativity Housing.....	014-EH233	New York.	Laurens County Res.	061-EH196	Atlanta.	Overlook	087-EH166	Atlanta.
East Brunswick Sr Hsg.	031-EH201	New York.	Baskerville Houses..	054-EH126	Atlanta.	Community Hsg.		
Ravena-Coeymans Sr Hsg.	013-EH130	New York.	Williamsburg Manor.	054-EH129	Atlanta.	Bethlehem Manor..	073-EH283	Chicago.
Margate Terrace	035-EH098	New York.	Lee County Sr Apts.	054-EH130	Atlanta.	Find-A-Way II	046-EH177	Chicago.
Bishop Ryan Village.	012-EH581	New York.	Baptist Village Apts.	054-EH131	Atlanta.	Pike Industry	073-EH285	Chicago.
George Link Jr Sr. Citz.	012-EH626	New York.	Memorial Highway Apts.	066-EH193	Atlanta.	Prophetstown Good Samar.	071-EH464	Chicago.
Sor Isolina Ferrer... Solvay	056-EH328	New York.	Westover Apts.....	054-EH122	Atlanta.	Little Village Eld Hsg.	071-EH430	Chicago.
Apartment.	014-EH226	New York.	Sunburst Homes....	062-EH219	Atlanta.	Burnell Brown Hsg.	071-EH502	Chicago.
Alexian Manor.....	031-EH234	New York.	HELP Group Home.	062-EH220	Atlanta.	Netcare Resid Apt. III.	043-EH251	Chicago.
South River Sr Hsg.	031-EH227	New York.	Parkland Place.....	062-EH222	Atlanta.	Liberty Commons..	071-EH392	Chicago.
Abundant Life Towers.	052-EH116	Philadelphia.	St. Marks Villa.....	065-EH158	Atlanta.	Marycrest Village...	071-EH511	Chicago.
Advent Senior Hsg.	052-EH124	Philadelphia.	Evers Manor.....	065-EH167	Atlanta.	Logan Vistas	071-EH381	Chicago.
University Gardens.	000-EH123	Philadelphia.	Dogwood Plaza.....	061-EH146	Atlanta.	Deliverance Manor.	071-EH500	Chicago.
Evergreen Place	045-EH092	Philadelphia.	New Horizons.....	063-EH190	Atlanta.	Good Samaritan....	073-EH291	Chicago.
E.A. Hawse Hsg. Inc.	045-EH080	Philadelphia.	Orange Blossom Village.	063-EH239	Atlanta.	NBGC Upper Sandusky.	042-EH364	Chicago.
Tenth Memorial BAPT.	034-EH345	Philadelphia.	Christian Sr Hsg....	066-EH211	Atlanta.	Logan Vistas	071-EH381	Chicago.
Crossroads	052-EH138	Philadelphia.	ARC Dare County GH.	053-EH533	Atlanta.	LSS Hsg	075-EH319	Chicago.
Edgewood Village..	045-EH090	Philadelphia.	ARC Camden County GH.	053-EH534	Atlanta.	Waukesha Inc.		
Isle of Wight GH....	051-EH128	Philadelphia.	Sampson County GH.	053-EH536	Atlanta.	Birchgrove Apts	047-EH119	Chicago.
Mountain Manor Homes.	051-EH164	Philadelphia.	Crestline Homes Inc.	062-EH218	Atlanta.	Maplewood Manor.	042-EH358	Chicago.
Spring Knoll Manor.	051-EH165	Philadelphia.	KC Home of Clarksville.	086-EH118	Atlanta.	Over Rainbow	071-EH394	Chicago.
Ridge Residences.	052-EH153	Philadelphia.	Cumberland Hldg Co.	086-EH115	Atlanta.	Gross Point Eld....	071-EH450	Chicago.
Tucker Rehabilitation.	045-EH088	Philadelphia.	Teamster Retir Hsg.	061-EH189	Atlanta.	St. Mark Eld Hsg ...	071-EH401	Chicago.
Shiloh Apartments.	045-EH086	Philadelphia.	St. Mark's Tower II.	061-EH206	Atlanta.	Edgemont Parke	072-EH465	Chicago.
Mountain Terrace Apts.	045-EH082	Philadelphia.	CODEC Inc.....	066-EH246	Atlanta.	Jane Dent	071-EH347	Chicago.
AMC Housing.....	032-EH014	Philadelphia.	CODEC Inc.....	066-EH248	Atlanta.	Little Village Eld Hsg.	071-EH430	Chicago.
Maple City Apts	034-EH338	Philadelphia.	Nat'l Church Resid.	066-EH257	Atlanta.	Miami Manor	046-EH174	Chicago.
Haddington OIC	034-EH378	Philadelphia.	Knights of Peter Claver.	065-EH127	Atlanta.	Covenant Manor....	046-EH175	Chicago.
United Neighborhood Sr.	034-EH355	Philadelphia.	Sixty-two Plaza Ctr.	054-EH142	Atlanta.	Immanuel Manor....	046-EH176	Chicago.
Advent Senior Hsg.	052-EH124	Philadelphia.	Pineridge.....	054-EH147	Atlanta.	Northeast Residential.	042-EH333	Chicago.
Phoenix Village II...	051-EH163	Philadelphia.	Chesterfield Ct.....	054-EH151	Atlanta.	LSS Housing-Waukesha.	075-EH319	Chicago.
Tulphohocken Terrace.	034-EH376	Philadelphia.	KC Home of Columbia.	086-EH117	Atlanta.	Chicago Towers.....	071-EH433	Chicago.
Harford Senior Housing.	052-EH152	Philadelphia.	MHA Sampson County GH.	053-EH536	Atlanta.	Family Initiative	042-EH418	Chicago.
Project Independence.	086-EH133	Atlanta.	Green Hill	053-EH627	Atlanta.	Riverview Terrace...	042-EH410	Chicago.
			Holston Terrace.....	087-EH172	Atlanta.	West Town Hsg.....	071-EH291	Chicago.
			Villa Pacis	065-EH142	Atlanta.	Roseland Manor	071-EH495	Chicago.
			Lake Marion Hsg ...	063-EH202	Atlanta.	St. Bernard Manor.	064-EH187	Fort Worth.
			ARC Madison	063-EH203	Atlanta.	McKinney Retir Hsg.	112-EH107	Fort Worth.
			SJH-ARC-St. Johns.	063-EH204	Atlanta.	Bonham Retir Hsg.	112-EH109	Fort Worth.
						Sterling Grove Apts.	064-EH151	Fort Worth.
						VOA Living Centers.	064-EH192	Fort Worth.
						Westminster Woods.	064-EH204	Fort Worth.
						National Church Res.	115-EH150	Fort Worth.
						Raphael Manor	064-EH224	Fort Worth.
						Teamster Manor Apts.	112-EH110	Fort Worth.

Project name	Project No.	Regional office
Teamster Retir Hsg.	085-EH146	Kansas City.
Rainbow Village II..	085-EH152	Kansas City.
PFP Apartments II.	085-EH153	Kansas City.
Burrell Hsg Alt.....	084-EH146	Kansas City.
Maisons Denree II.	084-EH173	Kansas City.
Denver VOA Elderly Hsg.	101-EH123	Denver.
Eureka Silvercrest II.	121-EH301	San Francisco.
TELACU Sr Hsg of LA.	122-EH477	San Francisco.
Bear Mountain Residence.	136-EH103	San Francisco.
Homebase.....	121-EH291	San Francisco.
Santa Monica Sr Hsg.	122-EH476	San Francisco.
La Posada.....	122-EH439	San Francisco.
Fuller Lodge.....	121-EH288	San Francisco.
Concord Residential.	121-EH299	San Francisco.
The Disciple Hsg ..	121-EH245	San Francisco.
Providence House.	121-EH243	San Francisco.
Burt Center Adult Unit.	121-EH289	San Francisco.
Eagle Tail Village...	123-EH077	San Francisco.
Salvation Army Ventura.	122-EH450	San Francisco.
Eureka Silvercrest II.	121-EH301	San Francisco.
ARC of Hawaii Hsg #10.	140-EH056	San Francisco.
Captain Cook Eld Hsg.	140-EH060	San Francisco.
Salvation Army Chula.	122-EH484	San Francisco.
Philip St Eld Hsg....	140-EH054	San Francisco.
Gene Rice/Rosa L Carter.	123-EH090	San Francisco.
North Shore Villas.	121-EH276	San Francisco.
Homeport.....	121-EH268	San Francisco.
Residential Hsg Inc.	126-EH112	Seattle.
Seattle Vista.....	127-EH136	Seattle.
Good Shepherd I...	127-EH124	Seattle.
Good Shepherd II...	127-EH125	Seattle.

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any Section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 24 months after the Notice of section 202 Fund Reservation is issued, unless a six-month's extension is granted by the Field Office Manager, for a total maximum 36-month period.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between December 1, 1989 and March 31, 1990.

Reason Waived: Circumstances beyond the control of the section 202 Borrowers delayed project development within the maximum period of 36 months. Further, sponsors have expended substantial funds to bring the projects to construction starts in the

near future, and development of these units furthers the Secretary's goal of expanding affordable housing opportunities. Waivers of this section grant authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

148. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.230. Duration of section 202 Fund Reservations

Project/Activity:

Project name	Project No.	Regional office
Meadow Brook Gardens.	023-EH302	Boston.
Groton Commons..	023-EH318	Boston.
Milton Valley II	023-EH273	Boston.
Sandy Meadows	017-EH153	Boston.
WAARC.....	017-EH165	Boston.
Emanuel Sr. Hsg ...	023-EH321	Boston.
AHEPA 245.....	023-EH296	Boston.
AHEPA.....	017-EH064	Boston.
Calvary Baptist Church.	016-EH064	Boston.
Calvary Baptist Church.	012-EH557	New York.
Tweemill House.....	012-EH347	New York.
Bishop Ryan Village.	012-EH481	New York.
Long Island City Sr.	012-EH571	New York.
Fourval House.....	012-EH550	New York.
M&O Apartments...	031-EH195	New York.
Al Gomer Residence.	031-EH190	New York.
Net Rox/East 170th.	012-EH512	New York.
Spirit Hsg for Eldg ..	012-EH487	New York.
Msg. Alexius Jarka Hall.	012-EH511	New York.
Greenpoint Houses.	012-EH558	New York.
Mcaill Liberty House.	031-EH211	New York.
John Paul II Apts ...	012-EH421	New York.
Everlasting Pines...	012-EH447	New York.
Enon-Toland Newhall.	034-EH317	Philadelphia.
Harrisburg VOA Elderly.	034-EH342	Philadelphia.
Abundant Life Towers.	052-EH116	Philadelphia.
Antonian Tower	034-EH267	Philadelphia.
Advent Senior Hsg.	052-EH124	Philadelphia.
Luther Tower of Milton.	032-EH012	Philadelphia.
Mountain Terrace Apt.	045-EH082	Philadelphia.
St. Mathew Manor.	034-EH371	Philadelphia.
Haddington OIC.....	034-EH378	Philadelphia.
MH Residences	034-EH231	Philadelphia.
Raymond Davis Sr Hsg.	000-EH132	Philadelphia.
Corinthian Square...	034-EH356	Philadelphia.
Life Concepts.....	067-EH256	Atlanta.
Ebenezer Gardens.	056-EH269	Atlanta.
Westover Apts	054-EH122	Atlanta.
Egida United Brohood.	056-EH270	Atlanta.
Memorial Hgwy Apt.	066-EH193	Atlanta.
Jefferson-Chalmers.	044-EH159	Chicago.
Residential Apts.....	072-EH353	Chicago.

Project name	Project No.	Regional office
Jacksonville Homes Hdc.	071-EH387	Chicago.
Streator Apts.....	072-EH408	Chicago.
Torrington VOA Eldg.	109-EH027	Denver.
President Andrew Jackson.	136-EH107	San Francisco.
La Posada.....	122-EH439	San Francisco.
Long Beach VOA ..	122-EH462	San Francisco.
Arbor Cove.....	121-EH292	San Francisco.

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 24 months after the Notice of section 202 Fund Reservation is issued, unless a six-month's extension is granted by the Field Office Manager, for a total maximum 36-month period.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between April 1, 1990 and June 30, 1990.

Reason Waived: Circumstances beyond the control of the section 202 Borrowers delayed project development within the maximum period of 36 months. Further, sponsors have expended substantial funds to bring the projects to construction starts in the near future, and development of these units furthers the Secretary's goal of expanding affordable housing opportunities. Waivers of this section grant authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

149. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped, § 885.230. Duration of section 202 Fund Reservations

Project/Activity:

Project name	Project No.	Regional office
Kentco Apts	16-EH058	Boston.
Blackstone Valley..	16-EH073	Boston.
Residential Alter ...	35-EH076	New York.
Everlasting Pine.....	12-EH447	New York.
Net Rox Services ..	12-EH512	New York.
Holy Spirit Apts.....	12-EH570	New York.
John Paul II Apts ...	12-EH421	New York.
East Brunswick.....	31-EH201	New York.
Alexian Manor	31-EH234	New York.
Casa Victoria Hsg..	12-EH583	New York.
Spirit Hsg for Eld ...	12-EH487	New York.
Tenth Memorial Bapt.	34-EH345	Philadelphia.
Jefferson East Apts.	34-EH357	Philadelphia.
Crossroads.....	52-EH138	Philadelphia.
North Metro GH.....	61-EH153	Atlanta.
Westover Apts	54-EH122	Atlanta.
Sunny Isle Hsg for Eld.	56-EH252	Atlanta.

Project name	Project No.	Regional office
Villa Pacis	65-EH142	Atlanta.
Christian Sr Hsg.	66-EH211	Atlanta.
Padre Jose Boyd	56-EH316	Atlanta.
KC Homes of Clarkville, Cumberland Holding Corp.	86-EH118	Atlanta.
Little Village Eldg.	86-EH115	Atlanta.
Seton Dover	71-EH430	Chicago.
Gross Point Eldg.	42-EH362	Chicago.
Miss Eldg Hsg Inc.	71-EH450	Chicago.
Villa Additions	116-EH090	Fl. Worth.
McKinney Retirement.	64-EH203	Fl. Worth.
Santa Monica Sr Hsg.	112-EH107	Fl. Worth.
Salvation Army Ventura.	122-EH476	San Francisco.
Eagle Tail Village.	122-EH450	San Francisco.
Burt Center Adult Unit.	123-EH077	San Francisco.
Vista Serena Apts Lazzell	121-EH289	San Francisco.
Residence.	122-EH479	San Francisco.
Sierra Horizons	122-EH487	San Francisco.
Riverside VOA Eldg.	121-EH286	San Francisco.
Post Falls Terrace.	122-EH434	San Francisco.
Good Shepherd II.	124-EH034	Seattle.
Good Shepherd I.	127-EH125	Seattle.
	127-EH124	Seattle.

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 18 months after the Notice of section 202 Fund Reservation is issued, unless a six-month extension is granted by the Field Office Manager, for a total maximum 24-month period.

Granted By: C. Austin Pitts, Assistant Secretary for Housing—Federal Housing Commissioner OR Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between July 1, 1990 and September 30, 1990.

Reason Waived: Circumstances beyond the control of the section 202 Borrowers delayed project development within the maximum period of 24 months. Further, sponsors have expended substantial funds to bring the projects to construction starts in the near future, and development of these units furthers the Secretary's goal of expanding affordable housing opportunities. Waivers of this section grant authority to extend these fund reservations beyond 18 months to allow additional time to reach construction starts.

150. **Regulation:** 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.230. Duration of section 202 Fund Reservations.

Project/Activity:		
Project name	Project No.	Regional office
Mental Health Assoc.	023-EH330	Boston.
The Housing Foundation.	024-EH188	Boston.
School House Apts.	017-EH153	Boston.
Winter Valley III.	023-EH273	Boston.
Hessed House.	023-EH335	Boston.
College Highway.	023-EH345	Boston.
Holy Family terrace.	023-EH349	Boston.
Maples II.	023-EH348	Boston.
Project HOPE Sr Hsg.	012-EH633	New York.
John Paul II Apts.	012-EH421	New York.
Grace Houses.	012-EH645	New York.
St. Barnabas Housing.	012-EH629	New York.
Solvay Apts.	014-EH226	New York.
Latham Senior Hsg.	013-EH130	New York.
Quinby Park Manor.	014-EH221	New York.
Calvary Baptist Church.	012-EH557	New York.
Spiti Hsg for Eld.	012-EH487	New York.
Everlasting Pine.	012-EH447	New York.
Carmen Parson Hsg.	012-EH625	New York.
Paumanack Village III.	012-EH613	New York.
Parkville Apts.	012-EH618	New York.
Project Live II East	031-EH220	New York.
Brunswick Sr Hsg.	031-EH201	New York.
South River Sr Hsg.	031-EH227	New York.
MCAIL Liberty House.	031-EH211	New York.
Evergreen Place.	045-EH092	Philadelphia.
Mountain Terrace.	045-EH082	Philadelphia.
Harrisburg VOA Eld.	034-EH342	Philadelphia.
Raymond Davis Sr Hsg.	000-EH132	Philadelphia.
Abundant Life II.	052-EH116	Philadelphia.
Ridge Residences.	052-EH153	Philadelphia.
Hartford Sr Hsg II.	052-EH152	Philadelphia.
Hartley Hall Sr Hsg.	052-EH154	Philadelphia.
Advent Sr Hsg.	052-EH124	Philadelphia.
Phoenix Village II.	051-EH163	Philadelphia.
Antonian Tower.	034-EH267	Philadelphia.
Enon Toland Newhall.	034-EH317	Philadelphia.
Harrisburg VOA.	034-EH342	Philadelphia.
Tenth Memorial BAPT.	034-EH345	Philadelphia.
Corinthian Square.	034-EH356	Philadelphia.
Jefferson East Apts.	034-EH357	Philadelphia.

Project name	Project No.	Regional office
Ebenezer Gardens.	056-EH269	Atlanta.
Sunny Isle Hsg.	056-EH252	Atlanta.
Fernando	056-EH318	Atlanta.
Sierra Berdecia.	056-EH323	Atlanta.
Danish Garden Apts.	066-EH214	Atlanta.
Colonial Apts.	062-EH220	Atlanta.
HELP.	061-EH194	Atlanta.
Jewish Home Tower.	066-EH235	Atlanta.
Glades-Diamond.	067-EH267	Atlanta.
UPARC Apartments.	056-EH320	Atlanta.
Luisa Capetillo.	073-EH285	Chicago.
Pike Industry Hsg.	046-EH176	Chicago.
Immanuel Manor.	071-EH490	Chicago.
Augustana Group Home.	071-EH514	Chicago.
Stonebridge Manor.	071-EH511	Chicago.
Marvcrest Village.	073-EH259	Chicago.
Adams & Bruce Hsg Corp.	071-EH501	Chicago.
Bobby Wright.	109-EH027	Denver.
Torrington VOA Eld.	126-EH119	Seattle.
SOHA Apts.		

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any section 202 fund reservation for which construction, rehabilitation or acquisition has not begun with 24 months after the Notice of section 202 Fund Reservation is issued, unless a six-month's extension is granted by the Field Office Manager, for a total maximum 36-month period.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between October 1, 1990 and December 31, 1990.

Reason Waived: Circumstances beyond the control of the section 202 Borrowers delayed project development within the maximum period of 36 months. Further, sponsors had expended substantial funds to bring the projects to construction starts and development of these units furthered the Secretary's goal of expanding affordable housing opportunities. Waivers of this section granted authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

151. **Regulation.** 24 CFR Part 885—Loans for Housing for the Elderly or Handicapped § 885.230. Duration of section 202 Fund Reservations.

Project/Activity:

Project name	Project No.	Regional office
Worcester Area Assoc.	023-EH321	Boston.
Worcester Area Comm.	023-EH334	Boston.
Carmen Parson.....	012-EH625	New York.
St. Barnabas Hsg..	012-EH629	New York.
Rutherford Sr Hsg.	031-EH224	New York.
Margate Terrace....	035-EH098	New York.
Quinby Park Manor.	014-EH221	New York.
Al Gomer Residence.	031-EH190	New York.
Rutherford Sr Hsg.	031-EH224	New York.
Solvay Apts.....	014-EH226	New York.
Msgr. Fiorentino Apts.	012-EH622	New York.
Clinton Housing....	012-EH555	New York.
Co-MHAR Residential.	034-EH305	Philadelphia.
Isle of Wright GH..	051-EH128	Philadelphia.
Abundant Life Towers II.	052-EH116	Philadelphia.
Advent Senior Hsg.	052-EH124	Philadelphia.
Crossroads.....	052-EH138	Philadelphia.
Tenth Memorial Bapt.	034-EH345	Philadelphia.
Corinthian Square..	034-EH356	Philadelphia.
CIBC Housing.....	034-EH335	Philadelphia.
Tulpehocken Terrace.	034-EH376	Philadelphia.
Diakonia Housing...	034-EH312	Philadelphia.
Ernesto Carrasquillo.	056-EH320	Atlanta.
Teamsters Retiree Hsg.	087-EH157	Atlanta.
Padre Jose D. Boyd.	056-EH316	Atlanta.
Colonial Apts.....	066-EH214	Atlanta.
Ginger Thomas Home.	056-EH324	Atlanta.
Teamsters Retiree Hsg.	061-EH189	Atlanta.
PARC Apartments.	071-EH390	Chicago.
Jacksonville Homes.	072-EH387	Chicago.
Augustana Group Home.	071-EH490	Chicago.
Little Village Eld....	071-EH430	Chicago.
Sterling Grove Hsg Dev.	064-EH151	Ft. Worth.
Raphael Manor.....	064-EH224	Ft. Worth.
National Church Resid.	112-EH103	Ft. Worth.
National Church Resid.	112-EH106	Ft. Worth.
National Church Resid.	113-EH028	Ft. Worth.
National Church Resid.	133-EH018	Ft. Worth.
Teamster Retiree Hsg.	085-EH146	Kansas City.
Torrington VOA Eld Hsg.	109-EH027	Denver.
Arbor Cove.....	121-EH292	San Francisco.
Eureka Silvercrest.	121-EH301	San Francisco.
Sierra Horizons.....	121-EH286	San Francisco.
The Disciple Hsg Dev.	121-EH245	San Francisco.
San Diego County VOA.	122-EH508	San Francisco.
Salvation Army Chula.	122-EH484	San Francisco.
Hale Kanaloa.....	140-EH047	San Francisco.
Sherman Hamlet....	122-EH485	San Francisco.

Project name	Project No.	Regional office
Lazzell Residence.	122-EH487	San Francisco.
Vista Serena Apts.	122-EH479	San Francisco.
Riverside VOA Eld Hsg.	122-EH434	San Francisco.
Long Beach VOA Eld Hsg.	122-EH462	San Francisco.
Project Not Yet Named.	122-EH480	San Francisco.

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 24 months after the Notice of section 202 Fund Reservation is issued, unless a six-month's extension is granted by the Field Office Manager, for a total maximum 36-month period.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between January 1, 1991 and March 31, 1991.

Reason Waived: Circumstances beyond the control of the section 202 borrowers delayed project development within the maximum period of 36 months. Further, sponsors had expended substantial funds to bring the projects to construction starts and development of these units furthered the Secretary's goal of expanding affordable housing opportunities. Waivers of this section granted authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

152. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.230. Duration of section 202 Fund Reservations.

Project/Activity:

Project name	Project No.	Regional office
Holy Spirit Sr Hsg..	012-EH570	New York.
Margate Terrace....	035-EH098	New York.
Hope Senior Hsg....	012-EH633	New York.
Parkville Apts.....	012-EH618	New York.
Holy Family Apts....	034-EH396	Philadelphia.
Evergreen Place....	045-EH092	Philadelphia.
Coursey Station.....	052-EH172	Philadelphia.
Corinthian Square..	034-EH356	Philadelphia.
Ridge Residences.	052-EH153	Philadelphia.
Mountain Terrace Apts.	045-EH082	Philadelphia.
Teamster Retiree Hsg.	087-EH157	Atlanta.
Overlook Community Hsg.	087-EH166	Atlanta.
Georgetown 202....	054-EH137	Atlanta.
Pinellas ARC.....	067-EH276	Atlanta.
Dove, Inc.....	063-EH203	Atlanta.
Sunflower Manor....	065-EH167	Atlanta.

Project name	Project No.	Regional office
Edgemont Parke Apts.	072-EH465	Chicago.
Adam & Bruce Hsg.	073-EH259	Chicago.
Pike Industry Hsg..	073-EH285	Chicago.
Jacksonville Homes.	073-EH387	Chicago.
Augustana Group Home.	071-EH490	Chicago.
Exchange Sunshine Home.	112-EH116	Fort Worth.
Salvation Army Silvrst.	116-EH095	Fort Worth.
Vista Lane Hsg Disabled.	122-EH367	San Francisco.

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 24 months after the Notice of section 202 Fund Reservation is issued, unless a six-month's extension is granted by the Field Office Manager, for a total maximum 36-month period.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between April 1, 1991 and June 30, 1991.

Reason Waived: Circumstances beyond the control of the section 202 Borrowers delayed project development within the maximum period of 36 months. Further, sponsors had expended substantial funds to bring the projects to construction starts in the near future, and development of these units furthers the Secretary's goal of expanding affordable housing opportunities. Waivers of this section granted authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

153. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.410(g), Loan Interest Rate.

Project/Activity:

Project name	Project No.	Regional office
Leeds Hsg for Eld.	024-EH157	Boston.
Washington Court..	024-EH191	Boston.
Washington County.	024-EH193	Boston.
Willard Manor.....	017-EH162	Boston.
Bridge House #5...	012-EH660	New York.
Chung Pak/ Everlast Pine.	012-EH447	New York.
John Paul II Apts...	012-EH421	New York.
Grace Houses.....	012-EH645	New York.
St. Barnabas Hsg..	012-EH629	New York.
Nashopa House.....	012-EH004	New York.

Project name	Project No.	Regional office
Harrisburg VOA Eld.	034-EH342	Philadelphia.
Abundant Life Twr II.	052-EH116	Philadelphia.
Lynchburg Supervised.	051-EH171	Philadelphia.
Frederick House.....	051-EH181	Philadelphia.
Spring Knoll Manor.	051-EH165	Philadelphia.
UPARC Apts.....	067-EH267	Atlanta.
Luisa Capetillo.....	056-EH320	Atlanta.
Bobby Wright	071-EH501	Chicago.
CAAP Housing Inc.	073-EH298	Chicago.
URC of Pickerington.	043-EH306	Chicago.
Brownstone Terrace.	043-EH307	Chicago.
Martin Farrell House.	071-EH568	Chicago.
Meadow Creek Apts.	084-EH154	Kansas City.
Good Shepherd Manor.	084-EH007	Kansas City.
SOHA Apartments.	126-EH119	Seattle.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between October 1, 1990 and December 31, 1990.

Reason Waived: These projects required a waiver to use the Fiscal Year 1990 interest rate of 8% percent because, while the rate had already been determined, it had not yet been published in the Federal Register at the time the waivers were granted. Without approval of these waivers, additional delays would have occurred, which would have made these projects more costly to the Government.

154. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.410(g). Loan Interest Rate.

Project/Activity:

Project name	Project No.	Regional office
Laurens County Spec.	054-EH118	Atlanta.
MHA Pitt County GH.	053-EH537	Atlanta.
Houston VOA Eld Hsg.	114-EH152	Fort Worth.

Nature of Requirement: The Regulations cited above require the use of the interest rate in effect for the year in which the section 202 project goes to initial loan closing or the optional interest rate for those projects which are eligible when an acceptable conditional or firm commitment application is received.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between December 1, 1989 and March 31, 1990.

Reason Waived: Circumstances beyond the control of the section 202 Borrowers delayed project development. As a result, reprocessing for a change in the interest rate would further delay the project and/or render the project infeasible. Without the approval of the waivers, these projects would be more costly to the government or would not be built because the Section 8 rents would not support the additional interest costs.

More information about the granting of these waivers, including a copy of the waiver requests and approvals, may be obtained by contacting: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 426-8730 (This is not a toll-free number).

155. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.410(g). Loan Interest Rate.

Project/Activity:

Project name	Project No.	Regional office
Booth Gardens.....	127-EH136	Seattle.

Nature of Requirement: The Regulations cited above require the use of the interest rate in effect for the year in which the section 202 project goes to initial loan closing or the optional interest rate for those projects which are eligible when an acceptable conditional or firm commitment application is received.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between April 1, 1990 and June 30, 1990.

Reason Waived: This project required a waiver to use the Fiscal Year 1990 interest rate of 8% percent because, while the rate had already been determined, it had not yet been published in the Federal Register at the time the waiver was granted. Without approval of this waiver, additional delays would have occurred, which would have made this project more costly to the Government.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Robert W. Wilden, Director, Assisted Elderly and

Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-2730 (This is not a toll-free number).

156. Regulation: 24 CFR 885.410(g).

Project/Activity:

Project name	Project No.	Field office
Evergreen Commons Apartments.	EH 170	Houston.
Tenth Memorial Baptist Housing.	EH 345	Philadelphia.
Teamster Manor Apartments.	EH 178	

Nature of Requirement: The Regulations cited above require the use of the interest rate in effect for the year in which the section 202 project goes to initial loan closing or the optional interest rate for those projects which are eligible when an acceptable conditional or firm commitment application is received.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 25, 1990 and November 28, 1990.

Reason Waived: To not grant the above requested waiver would cause hardship to the nonprofit Borrower who has expended substantial funds to reach this stage of processing. Further, if the project is cancelled, the funds will be lost and the housing would not be built, since the Department does not have statutory authority to recapture and reuse section 202 funds. Granting the waiver is, therefore, in the public interest and is consistent with both programmatic objectives and the Secretary's goal of increasing affordable housing opportunities for low income families and individuals.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Ed Winiarski Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 426-7624 (This is not a toll-free number).

157. Regulation: 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.416(b). Requirements for Awarding Construction Contracts

Project/Activity:

Project name	Project No.	Regional office
College Highway	023-EH345	Boston.
Somerset Villas	034-EH390	Philadelphia.
Allen House	000-EH140	Philadelphia.
AHEPA	074-EH175	Kansas City.
La Posada	122-EH438	San Francisco.
Salvation Army Ventura.	122-EH450	San Francisco.
Sherman Way Sr Hsg.	122-EH473	San Francisco.
TELACU Sr Hsg of LA.	122-EH477	San Francisco.
Lazzell Residence.	122-EH487	San Francisco.
Providence House.	121-EH243	San Francisco.

Nature of Requirement: The Regulations cited above require construction contracts for section 202 projects to be competitively bid unless the project mortgage is under \$2 million, the section 8 rents are under 100 percent of the applicable Fair Market Rents or the project sponsor is a labor union.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between April 1, 1990 and June 30, 1990.

Reason Waived: Due to market changes since this policy was initiated, the delays caused by competitive bidding often increase, rather than reduce, construction costs. In addition, this year's lower interest rate is very favorable for projects which have been delayed due to cost problems. Given these two factors, and the Department's desire to facilitate the development of section 202 projects, waivers are being approved for borrowers which provide evidence that such a waiver will enable them to start construction in the current fiscal year.

More information about the granting of these waivers, including a copy of the waiver requests and approvals, may be obtained by contacting: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-2730 (This is not a toll-free number).

158. **Regulation:** 24 CFR part 885—Loans for Housing for the Elderly or Handicapped § 885.416(b), Requirements for Awarding Construction Contracts

Project/Activity:

Project/name	Project No.	Regional office
Franklin Windsor Apts.	012-EH669	New York.
TELACU Senior Court.	122-EH509	San Francisco.
	122-EH491	San Francisco.

Project/name	Project No.	Regional office
Los Robles Terrace.	122-EH509	San Francisco.
Santa Monica Sr Hsg.	122-EH476	San Francisco

Nature of Requirement: The Regulations cited above require construction contracts for section 202 projects to be competitively bid unless the project mortgage is under \$2 million, the section 8 rents are under 110 percent of the applicable Fair Market Rents or the project sponsor is a labor union.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner or Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between July 1, 1990 and September 30, 1990.

Reason Waived: Due to market changes since this policy was initiated, the delays caused by competitive bidding often increase, rather than reduce, construction costs. In addition, this year's lower interest rate is very favorable for projects which have been delayed due to cost problems. Given these two factors, and the Department's desire to facilitate the development of section 202 projects, waivers are being approved for borrowers which provide evidence that such a waiver will enable them to start construction in the current fiscal year.

More information about the granting of these waivers, including a copy of the waiver requests and approvals, may be obtained by contacting: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-2730 (This is not a toll-free number).

159. **Regulation:** 24 CFR 885.416(c).

Project/activity:

Project name	Project No.	Field office
Tulpechocken Terrace.	034-EH357	Philadelphia.
Ocean View Manor.	122-EH466	Los Angeles.
Valentine Court	122-EH486	Los Angeles.
Lawndale Senior Housing.	122-EH474	Los Angeles.

Nature of Requirements: Regulation requires that the construction contract be competitively bid if the development cost of the project is at least \$2,000,000. The waiver permits contract award to be through negotiation when either the competitive bid process has not resulted

in contract award or where there would likely be no savings to the Government through the use of the competitive bidding process.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between October 1, 1989 and March 31, 1990.

Reason Waived: To not grant the above requested waiver would cause hardship to the nonprofit Borrower who has expended substantial funds to reach this stage of processing. Further, if the project is cancelled, the funds will be lost and the housing would not be built, since the Department does not have statutory authority to recapture and reuse section 202 funds. Granting the waiver is, therefore, in the public interest and is consistent with both programmatic objectives and the Secretary goal of increasing affordable housing opportunities for low income families and individuals.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Edward Winiarski, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 426-7624.

160. **Regulation:** 24 CFR 885.416(c).

Project/Activity:

Project name	Project No.	Field office
Franklin Windsor Apartments.	EH-669	New York.

Nature of Requirements: Regulations cited above require construction contracts for section 202 projects to be competitively bid unless the project mortgage is under \$2 million, the section 8 rents are under 110 percent of the applicable Fair Market Rents or the project sponsor is a labor union.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 6, 1990.

Reason Waived: To not grant the above requested waiver would cause hardship to the nonprofit Borrower who has expended substantial funds to reach this stage of processing. Further, if the project is cancelled, the funds will be lost and the housing would not be built, since the Department does not have statutory authority to recapture and reuse section 202 funds. Granting the waiver is, therefore, in the public

interest and is consistent with both programmatic objectives and the Secretary goal of increasing affordable housing opportunities for low income families and individuals.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Edward Winiarski, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 426-7624.

161. *Regulation:* 24 CFR 885.425(d).
Project/Activity:

Project name	Project No.	Field office
Conway Housing....	082-EH252	Little Rock.

Nature of Requirement: Regulation requires that the owner's simplified certificate of actual cost be verified by an independent certified public accountant or an independent public accountant licensed by a State or local regulatory agency prior to December 31, 1970.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 22, 1990.

Reason Waived: To avoid placing a financial hardship on the Borrower and inasmuch as we believe, as is indicated in outstanding section 202 and full insurance instructions, that an accountant's opinion is not always necessary to protect the Secretary's and the Borrower's interests when a project qualifies to use the simplified form of cost certification, Form HUD-92205.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Edward Winiarski, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 426-7624.

162. *Regulation:* 24 CFR 886.312(c).

Project/Activity: Special Rent Increase—Church Street South, Project No. CT26-E000-021.

Nature of Requirement: A waiver for a special rent increase of \$214,848 for a security system at the project is granted, however the approval is denied for the \$20,275 for lighting since lighting is considered a capital improvement and not an eligible operating expense under 24 CFR 886.312(c).

Granted By: C. Austin Fitts, Assistant Secretary for Housing.

Date Granted: March 20, 1990.

Reason Waived: This waiver approved a special rent increase of \$214,848 for a needed security system at the project.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Karen Braner, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-3730.

163. *Regulation:* 24 CFR 887.203(b)(2).

Project/Activity: Essex House.

Nature of Requirement: Regulation prohibits housing owned or substantially controlled by a PHA administering the ACC from being leased under the rental voucher program.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 1, 1991.

Reason Waived: To prevent termination of Section 8 rental assistance and probable displacement of 40 families living in Essex House, a project whose owner opted out of two section 8 loan management set-side contracts and also refused to execute any rental voucher contracts on behalf of the low income tenants. In order to provide a necessary relocation resource, this waiver will allow forty eligible families to use their rental vouchers, at the family's sole option, in the nonsubsized units in the Glebe Park and Jefferson Village housing developments owned by the PHA.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Gerald Benoit, Director, Rental Assistance Division, Department of HUD, 451 Seventh Street SW., room 6128, Washington, DC 20410, (202) 708-0477. This is not a toll-free number.

164. *Regulation:* 24 CFR 888.103(e)(4).

Project/Activity:

Project name	Project No.	Field office
Community Residences of Arlington.	000-EH158	Washington, DC.
Columbus County Group Home No. 2.	053-EH593	Greensboro.
Davidson County Group Home No. 2.	053-EH589	Greensboro.
Pitt County Group Home No. 2.	053-EH583	Greensboro.
Camden County Group Home.	053-EH534	Greensboro.

Project name	Project No.	Field office
Robeson County Group Home.	053-EH581	Greensboro.
Spring Manor	084-EH151	Kansas City.
El Dorado Group Home.	102-EH196	Kansas City.
Boonslick Group Home.	085-EH172	St. Louis.
Denver VOA Elderly Housing.	101-EH123	Denver.

Nature of Requirement: Regulation requires that one bedroom Fair Market Rents (FMRs) may be applied only when the bedroom space plus the proportionate part of the common space totals at least 450 square feet. Waivers to this regulation permit the use of the one bedroom FMRs where needed for project feasibility on a project that otherwise meets the Department's cost containment guidelines.

Granted By: C. Austin Fitts, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between October 1, 1989 and March 31, 1990.

Reason Waived: To not grant the above requested waiver would cause hardship to the nonprofit Borrower who has expended substantial funds to reach this stage of processing. Further, if the project is cancelled, the funds will be lost and the housing would not be built, since the Department does not have statutory authority to recapture and reuse section 202 funds. Granting the waiver is, therefore, in the public interest and is consistent with both programmatic objectives and the Secretary goal of increasing affordable housing opportunities for low income families and individuals.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Edward Winiarski, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 426-7624.

165. *Regulation:* 24 CFR 905.404(a), 24 CFR 905.407(b)(1)(3), 24 CFR 905.407(c), 24 CFR 905.413 (a), (b) and (d), 24 CFR 905.416 (c) and (d), 24 CFR 905.419 (b) and (c), 24 CFR 905.422, 24 CFR 905.440(b)(2).

Project/Activity: Jicarilla Apache Housing Authority, Dulce, New Mexico.

Nature of Requirement: Conversion of 19 rental units to the Mutual Help Homeownership Opportunity Program.

Granted By: Joseph Schiff, Assistant Secretary.

Date Granted: November 13, 1990.

Reason Waived: The regulation waivers apply to the construction, development, funding and occupancy of new development projects. The request for conversion applies to existing units which are currently occupied. Therefore, the above regulations are not appropriate for application in this instance.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: Mr. Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-1015.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 166 through 172 in this listing is: Edward C. Whipple, Occupancy Division, Office of Management Operations, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Phone: (202) 708-0744.

166. Regulation: 24 CFR 912.3(c)(1).

Project/Activity: Public housing projects owned and operated by the Cincinnati Metropolitan Housing Authority.

Nature of Requirement: 24 CFR 912.3(c)(1) limits the admission of single, non-elderly persons to public housing to projects meeting certain criteria related to vacancies and where HUD approval has been obtained.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 22, 1991.

Reason Waived: This waiver allows the Cincinnati Metropolitan Housing Authority to admit non-elderly single persons to all of its projects in a manner consistent with the requirements of a Court order in *Hutchins v. CMHA*.

167. Regulation: 24 CFR 912.3(f).

Project/Activity: Public housing projects owned and operated by the Deshler Housing Authority of the City of Deshler, Nebraska.

Nature of Requirement: 24 CFR 912.3(f) limits the number of single, non-elderly applicants who may be admitted to public housing under the jurisdiction of the PHA to 15% of the assisted units within the PHA's jurisdiction.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 1991.

Reason Waived: This waiver allows the Deshler Housing Authority to exceed the 15% limitation set forth in 24 CFR 912.3(f). The admission of singles would assist the PHA in resolving a

longstanding vacancy problem within its complex.

168. Regulation: 24 CFR 912.3(f).

Project/Activity: Public housing projects owned and operated by the North Loup Housing Authority of the City of North Loup, Nebraska.

Nature of Requirement: 24 CFR 912.3(f) limits the number of single, non-elderly applicants who may be admitted to public housing under the jurisdiction of the PHA to 15% of the assisted units within the PHA's jurisdiction.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 1991.

Reason Waived: This waiver allows the North Loup Housing Authority to exceed the 15% limitation set forth in 24 CFR 912.3(f). The admission of single persons would assist the Housing Authority in resolving a longstanding vacancy problem within its complex.

169. Regulation: 24 CFR 913.105.

Project/Activity: Public housing projects owned or operated by the Portland Housing Authority of the City of Portland, Oregon.

Nature of Requirement: 24 CFR 913.105 requires that, after July 1, 1984, public housing authorities only admit families into projects who are in the Very Low-Income category unless prior approval by HUD has been granted.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 7, 1991.

Reason Waived: To allow the Portland Housing Authority to admit a family that is not a very low-income family to occupy an accessible unit within one of its projects that is available for occupancy. The waiver is granted because there are no other families on the waiting list in need of an accessible unit and because the confinement to a wheel chair by a family member poses a hardship on the family in need.

170. Regulation: 24 CFR 913.107(a).

Project/Activity: Public housing projects owned and operated by the Red Wing, Minnesota Housing Authority.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 16, 1991.

Reason Waived: To allow the Red Wing Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

171. Regulation: 24 CFR 913.107(a).

Project/Activity: Public housing projects owned and operated by the Housing Authority of the City of Elkhart, Indiana.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: February 20, 1991.

Reason Waived: To allow the Elkhart Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

172. Regulation: 24 CFR 913.107(a).

Project/Activity: Public housing projects owned and operated by the Housing and Redevelopment Authority of Benson, Minnesota.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: March 11, 1991.

Reason Waived: To allow the Housing and Redevelopment Authority of Benson to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered

173 through 185 in this listing is: Janice D. Rattlely, Director, Office of Construction, Rehabilitation and Maintenance, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Phone: (202) 708-1800.

Regulation: 24 CFR 941.102 (a) and (b).

Project/Activity: Public Housing Development, Project Number MA 2-87, 88 and 94, Boston Housing Authority.

Nature of Requirement: A conventionally developed project [941.102(a)] requires the PHA to acquire the site, develop the plans and specifications, and solicit construction bids from general contractors. A turnkey project [941.102(b)] requires the PHA to advertise for proposals from developers involving a site (or sites) they control and their own design concepts. The PHA selects the best proposal based on developer qualifications, price, design and location.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 20, 1991.

Reason Waived: The Boston Housing Authority had previously selected a developer who was unable to proceed with the project. The BHA purchased the original developer's plans, specifications and engineering studies, etc. with the intent to solicit bids based on the existing design (as is done in a conventional development) and transfer the site and construction documents to the selected bidder so as to complete the project as a turnkey development.

Regulation: 24 CFR 941.102(c).

Project/Activity: Public Housing Development, Project Number NE 1-26, Omaha Housing Authority.

Nature of Requirement: Limits total repair costs to 10 percent of the total development cost on projects involving the acquisition of existing housing.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 25, 1991.

Reason Waived: Testing, abatement, and removal of lead-based paint increases the repair percentage to more than 10 percent, although the total cost of acquisition and repair will not exceed the development cost limitations.

Regulation: 24 CFR 941.404(b).

Project/Activity: Public Housing Development, Project Number NE 1-26, Omaha Housing Authority.

Nature of Requirement: Requires PHAs to identify a site (or sites) at the time the PHA Proposal is submitted to HUD.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 11, 1990.

Reason Waived: The Omaha Housing Authority was developing a scattered-site project, involving the purchase of single-family homes. The diversity of owners made it impossible to obtain options of a long enough duration to be able to submit all sites at the same time.

Regulation: 24 CFR 941.406(a).

Project/Activity: Public Housing Development, Project Number CA 5-27, Sacramento Housing Authority.

Nature of Requirement: Requires PHAs to develop modest, non-luxury units within a maximum total development cost limitation.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: September 26, 1990.

Reason Waived: The units were determined to have been economically designed. An increase in the total development cost was approved because local donations were obtained to pay the additional costs.

Regulation: 24 CFR 941.406(a).

Project/Activity: Public Housing Development, Project Number CA 84-3, Mendocino County Housing Authority.

Nature of Requirement: Requires PHAs to develop modest, non-luxury units within a maximum total development cost limitation.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 19, 1990.

Reason Waived: The project was delayed as a result of redesign and litigation.

Regulation: 24 CFR 941.406(a).

Project/Activity: Public Housing Development, Project Number CA 7-24, Sacramento Housing Authority.

Nature of Requirement: Requires PHAs to develop modest, non-luxury units within a maximum total development cost limitation.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 16, 1990.

Reason Waived: The Sacramento Housing Authority obtained local donations to pay for items in excess of the modest, non-luxury standards.

Regulation: 24 CFR 941.406(a).

Project/Activity: Public Housing Development, Project Number HI 1-88, Hawaii Housing Authority.

Nature of Requirement: Requires PHAs to develop modest, non-luxury units within a maximum total development cost limitation.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 23, 1990.

Reason Waived: Construction costs on the island of Molokai were greater than normal. The Hawaii Housing Authority obtained local donations to pay for the additional costs.

Regulation: 24 CFR 941.406(a).

Project/Activity: Public Housing Development, Project Number WA 2-59, King County Housing Authority.

Nature of Requirement: Requires PHAs to develop modest, non-luxury units within a maximum total development cost limitation.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 25, 1991.

Reason Waived: Expanding regional economy was forcing prices up. The King County Housing Authority obtained local donations to pay for the additional costs.

Regulation: 24 CFR 941.406(a).

Project/Activity: Public Housing Development, Project Number KY 1-22, Louisville Housing Authority.

Nature of Requirement: Requires PHAs to develop modest, non-luxury units within a maximum total development cost limitation.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 1, 1991.

Reason Waived: The Louisville Housing Authority was acquiring a variety of single family homes of varying ages, which required lead-based paint testing and abatement. This caused the total project cost to exceed development cost limitations.

Regulation: 24 CFR 941.406(a).

Project/Activity: Public Housing Development, Project Number MO 2-28, Kansas City, MO, Housing Authority.

Nature of Requirement: Requires PHAs to develop modest, non-luxury units within a maximum total development cost limitation.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 8, 1991.

Reason Waived: Total project development costs were increased by a litigation delay and the need for demolition.

Regulation: 24 CFR 941.406(a).

Project/Activity: Public Housing Development, Project Number VI 1-911, Virgin Islands Housing Authority.

Nature of Requirement: Requires PHAs to develop modest, non-luxury

units within a maximum total development cost limitation.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 18, 1991.

Reason Waived: Total project development costs were increased because Hurricane Hugo created a shortage of materials and a backlog for contractors.

184. *Regulation:* 24 CFR 941.406(b).

Project/Activity: Public Housing Development, Project Numbers MA 2-88 and MA 2-94, Boston Housing Authority.

Nature of Requirement: For projects being developed under the turnkey method, advances prior to execution of the contract of sale are limited to one percent of the total development cost stated in the executed Annual Contributions Contract.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 16, 1990.

Reason Waived: The selected turnkey developer was unable to proceed with the project. The Boston Housing Authority requested authorization to purchase the existing plans, specifications, engineering studies, etc. at a cost in excess of the one percent limitation.

185. *Regulation:* 24 CFR 968.210(f).

Project/Activity: Joint reviews of proposed modernization programs under the Comprehensive Improvement Assistance Program (CIAP). See attached list of housing agencies for which waivers have been approved.

Nature of Requirement: Requires that PHAs and HUD conduct an on-site review to discuss the proposed modernization program, as set forth in the application, and reach tentative agreements on the PHAs' needs; the joint review includes an on-site inspection of the property and resolution of relevant issues, as prescribed by HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dates Granted: June 4-14, 1991.

Reason Waived: In order to maximize the use of existing staff, waivers of joint reviews were considered if the following conditions were met:

1. Application is consistent with its Comprehensive Plan for Modernization (CPM), where required;
2. Application is complete and of acceptable quality;
3. An on-site review of the development was conducted during FY '90, was fully documented at the time of the on-site review and, at a minimum,

covered all of the items covered by a joint review;

4. There are no items in the FY '91 application for the development, which were not covered by the FY '90 on-site review; and

5. The joint review checklist on the FY '91 application is completed and covers all of the work items in the application for which the waiver is requested.

JOINT REVIEW WAIVERS GRANTED AS OF 6/14/91

Date of waiver approval	Housing authority	Project #	Region
6/4/91	Hope, AR	AR 68-01	VI.
Do	Hope, AR	AR 68-02	Do.
Do	Kensett, AR	AR 146-01	Do.
Do	Wilson, AR	AR 54-01	Do.
Do	Wilson, AR	AR 54-02	Do.
6/6/91	Atchison, KS	KS 17-01	VII.
Do	Gaylord, KS	KS 51-01	Do.
Do	North Newton, KS	KS 15-01	Do.
Do	Phillipsburg, KS	KS 36-01	Do.
Do	Seneca, KS	KS 10-01	Do.
Do	Brookfield, MO	MO 75-01	Do.
Do	Chillicothe, MO	MO 65-01	Do.
Do	Mound City, MO	MO 33-01	Do.
Do	Neosho, MO	MO 62-01	Do.
6/12/91	Cedartown, GA	GA 25-01	IV.
Do	Blakely, GA	GA 114-04	Do.
Do	Morgantown, KY	KY 41-01	Do.
Do	McCreary, KY	KY 81-01	Do.
Do	Maysville, KY	KY 17-04	Do.
Do	Madisonville, KY	KY 07-01	Do.
Do	Hickman, KY	KY 37-02	Do.
Do	Hazard, KY	KY 24-03	Do.
Do	Danville, KY	KY 14-02	Do.
Do	Danville, KY	KY 14-01	Do.
Do	Cynthiana, KY	KY 21-02	Do.
Do	Cynthiana, KY	KY 21-01	Do.
Do	Berea, KY	KY 90-01	Do.
6/14/91	Grundy, TN	TN 92-04	Do.
Do	Troy, AL	AL 177-01	Do.
Do	Reform, AL	AL 66-02	Do.
Do	Atmore, AL	AL 154-02	Do.
Do	Abbeville, AL	AL 101-01	Do.
Do	Red Bay, AL	AL 51-03	Do.

JOINT REVIEW WAIVERS GRANTED AS OF 6/14/91—Continued

Date of waiver approval	Housing authority	Project #	Region
Do	Tuscaloosa, AL	AL 77-01	Do.
Do	Troy, AL	AL 177-02	Do.
Do	Enterprise, AL	AL 115-02	Do.
Do	Newton, AL	AL 142-01	Do.
Do	Newton, AL	AL 142-02	Do.
Do	Clayton, AL	AL 158-01	Do.
Do	Lanett, AL	AL 62-01	Do.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 186 through 197 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Phone: (202) 708-1872.

186. *Regulation:* 24 CFR 990.104.

Project/Activity: Crestview Housing Authority, Crestview, FL.

Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.

Granted By: Michael B. Janis, Acting Assistant Secretary.

Date Granted: February 2, 1990.

Reason Waived: To allow additional subsidy for three units used to house police officers engaged in drug prevention activities.

187. *Regulation:* 24 CFR 990.104.

Project Activity: Cambridge Housing Authority, Cambridge, MA.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Michael B. Janis, Acting Assistant Secretary.

Date Granted: March 2, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

188. *Regulation:* 24 CFR 990.104.

Project Activity: High Point, North Carolina Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: April 2, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

189. Regulation: 24 CFR 990.104.

Project/Activity: Housing Authority of Louisville, KY.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: July 13, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

190. Regulation: 24 CFR 990.104.

Project/Activity: Cuyahoga, Ohio Metropolitan Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: July 13, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

191. Regulation: 24 CFR 990.104.

Project/Activity: Minneapolis, Minnesota Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: July 13, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

192. Regulation: 24 CFR 990.104.

Project/Activity: Boston, Massachusetts Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: August 23, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

193. Regulation: 24 CFR 990.104.

Project/Activity: Seattle, Washington Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: September 17, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

194. Regulation: 24 CFR 990.104.

Project/Activity: San Antonio, Texas Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 22, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed

to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

195. Regulation: 24 CFR 990.104.

Project/Activity: Jersey City, New Jersey, Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 6, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

196. Regulation: 24 CFR 990.104.

Project/Activity: Seattle, Washington Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 9, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

197. Regulation: 24 CFR 990.104.

Project/Activity: Union, S.C., Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 14, 1991.

Reason Waived: To allow additional subsidy for one unit used to house a police officer engaged in drug prevention activities.

198. Regulation: 24 CFR 990.104.

Project/Activity: Paris, Tennessee Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for

units removed from the dwelling rental inventory.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 17, 1991.

Reason Waived: To allow additional subsidy for two units used to support the PHA's self-sufficiency program.

More information about the granting of this waiver, including a copy of the waiver request and approval, may be obtained by contacting: David Caprara, Deputy Assistant Secretary, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-4214.

Note to Reader: The person to be contacted for additional information about the waiver-grant items number 199 through 225 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Phone: (202) 708-1872.

199. *Regulation:* 24 CFR 990.104.

Project/Activity: Housing Authority of Louisville, KY.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 10, 1991.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

200. *Regulation:* 24 CFR 990.104.

Project/Activity: Covington, Kentucky, Housing Authority.

Nature of Requirement: The operating subsidy calculation excludes funding for units lost when dwelling units are reconfigured to combine two or more units to create a single larger dwelling unit.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 17, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to preclude reduction of subsidy eligibility due to such reconfigurations. This waiver was granted in order to comply with Congressional intent

pending publication of a final rule implementing this change.

201. *Regulation:* 24 CFR 990.109(b)(3)(iv).

Project/Activity: Blue Earth County, Minnesota, Housing Authority.

Nature of Requirement: The regulation requires a PHA that completes its Comprehensive Occupancy Plan (COP) without achieving an occupancy rate of 97% to use a projected occupancy percentage of 97%.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 19, 1990.

Reason Waived: The PHA has a 93% occupancy rate, but this is due to five or fewer vacant units. Normally, small PHAs with five or fewer vacant units are allowed to use their actual occupancy rate. The PHA is allowed to use 93% for FY 1990.

202. *Regulation:* 24 CFR

990.109(b)(3)(iv).

Project/Activity: Housing Authority of the City of New Orleans, Louisiana.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 15, 1991.

Reason Waived: The PHA didn't submit a reviewable Comprehensive Occupancy Plan on time. A plan has now been submitted and pending resolution of all issues, a goal of 87% for FY 1990 is permitted.

203. *Regulation:* 24 CFR

990.109(b)(3)(iv).

Project/Activity: Mountain View, Oklahoma, Housing Authority.

Nature of Requirement: The regulation requires a Low Occupancy PHA that completes its Comprehensive Occupancy Plan (COP) without achieving 97% occupancy must use a projected occupancy percentage of 97%.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 17, 1991.

Reason Waived: The PHA is in a community which has experienced a loss of population, and downturns in the agricultural and oil industries. These factors are beyond the PHA's control and it is in financial distress. The PHA can use its actual occupancy percentage for FY 1990.

204. *Regulation:* 24 CFR

990.109(b)(3)(iv).

Project/Activity: Lubbock, Texas, Housing Authority.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy

Plan (COP) to use a project occupancy percentage of 97%

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 5, 1991.

Reason Waived: The PHA didn't achieve the goal of its Comprehensive Occupancy Plan. Extenuating circumstances include persistent vacancy problems at one project which are exacerbated by drug and crime problems. Another project is experiencing delays in receiving replacement units so that an approved demolition can take place. Goal of 78% allowed for FY 1990 conditioned on the development of a set of vacancy reduction strategies.

205. *Regulation:* 24 CFR

990.109(b)(3)(iv).

Project/Activity: Newark, New Jersey, Housing Authority.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 8, 1991.

Reason Waived: The waiver allows the PHA to use the occupancy percentage contained in a Memorandum of Agreement (MOA) recently negotiated with the Authority. The PHA has used the MOA process for the past several years to arrive at vacancy reduction strategies and occupancy goals. A projected occupancy percentage of 71 percent was approved for FY 1991.

206. *Regulation:* 24 CFR

990.109(b)(3)(iv).

Project/Activity: North Loup, Nebraska Housing Authority.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 11, 1991.

Reason Waived: The PHA didn't achieve the goal of its Comprehensive Occupancy Plan. The PHA's community has experienced loss of population and economic dislocations. The strategy of admitting single, nonelderly tenants has not generated any applicants, delaying the PHA's ability to meet its goal. The PHA was permitted to use its actual occupancy rate for FY 1991.

207. *Regulation:* 24 CFR

990.109(b)(3)(iv).

Project/Activity: Chicago Housing Authority.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: May 1, 1991.

Reason Waived: The PHA submitted a second one-year Comprehensive Occupancy Plan. The Vacancy Rule regulations would not permit the submission of back-to-back COPs. The development of a one-year COP fulfills a commitment made in a Memorandum of Agreement with HUD approved on March 22, 1991. A one-year Plan allowed with goal of 85% for FY 1991.

208. *Regulation:* 24 CFR 990.110(c).

Project/Activity: Burleigh County Housing Authority, North Dakota.

Nature of Requirement: Public Housing Agencies (PHAs) keep half of any savings due to decreased utility consumption as compared to the budgeted amount for that year. The budgeted amount is the average consumption for three previous years adjusted for weather.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: August 8, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to allow incentives for PHAs which do not rely solely on HUD modernization financing for energy performance improvements. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

209. *Regulation:* 24 CFR 990.110(c).

Project/Activity: Philadelphia, PA, Housing Authority.

Nature of Requirement: Public Housing Agencies (PHAs) keep half of any savings due to decreased utility consumption as compared to the budgeted amount for that year. The budgeted amount is the average consumption for three previous years adjusted for weather.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: March 28, 1991.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to allow incentives for PHAs which do not rely solely on HUD modernization financing for energy performance improvements. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

210. *Regulation:* 24 CFR 990.110(c)(3) and 990.107(c).

Project/Activity: Barre Housing Authority, Barre, Vermont.

Nature of Requirement: Public Housing Agencies (PHAs) keep half of any savings due to decreased utility consumption as compared to the budgeted amount for that year. The budgeted amount is the average consumption for three previous years adjusted for weather.

Granted By: Michael B. Janis, Acting Assistant Secretary.

Date Granted: March 13, 1990.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to allow incentives for PHAs which do not rely solely on HUD modernization financing for energy performance improvements. This waiver was granted in order to comply with Congressional intent pending publication of a final rule implementing this change.

211. *Regulation:* 24 CFR 990.118(a)(2)(ii).

Project/Activity: Beloit, Kansas Housing Authority.

Nature of Requirement: The regulation limits conditions under which a Comprehensive Occupancy Plan can be submitted.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: July 10, 1990.

Reason Waived: The PHA didn't submit a comprehensive Occupancy Plan when first eligible because of staff turnover. Five Year Plan allowed with goal of 76% for FY 1990.

212. *Regulation:* 24 CFR 990.118(a)(2)(ii).

Project/Activity: Detroit, Michigan, Housing Authority.

Nature of Requirement: The regulation limits conditions under which a Comprehensive Occupancy Plan can be submitted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: March 4, 1991.

Reason Waived: The PHA didn't submit a Comprehensive Occupancy Plan when first eligible. The waiver permits a one-year Plan with goal of 61% for FY 1990.

213. *Regulation:* 24 CFR 990.118(a)(2)(ii).

Project/Activity: Kinsley, Kansas, Housing Authority.

Nature of Requirement: The regulation limits conditions under which a Comprehensive Occupancy Plan can be submitted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 5, 1991.

Reason Waived: The PHA didn't submit a Comprehensive Occupancy Plan when first eligible because it has

only recently begun receiving operating subsidy and was unfamiliar with all the PFS requirements.

214. *Regulation:* 24 CFR 990.118(d).

Project/Activity: Mexico, Missouri Housing Authority.

Nature of Requirement: The regulation cites limited conditions under which the timeframe for a Comprehensive Occupancy Plan can be extended.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: August 14, 1990.

Reason Waived: PHA had four Executive Directors in one ½ year period. This created an unstable administrative environment and made it difficult to implement vacancy reduction strategies. Waiver granted to extend the plan for three more years and to revise the goal for FY 1991 from 97% to 85%.

215. *Regulation:* 24 CFR 990.118(d).

Project/Activity: Housing Authority of Kansas City, Missouri.

Nature of Requirement: The regulation cites limited conditions under which the timeframe for a Comprehensive Occupancy Plan can be extended.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: March 12, 1991.

Reason Waived: Mitigating circumstances which were beyond the Authority's ability to control. Waiver granted to extend the plan to FY 1992 and to revise the FY 1991 goal to 90% and the FY 1992 goal to 97%.

216. *Regulation:* 24 CFR 990.118(d).

Project/Activity: Housing Authority of East St. Louis, IL.

Nature of Requirement: The regulation cites limited conditions under which the Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 2, 1991.

Reason Waived: The PHA received unanticipated CIAP funding in two different years after the COP had been approved. Waiver granted to adjust the goals to reflect 40 vacancies resulting from the modernization work. Approval to revise the goal for FY 1990 from 67% to 63% and adjust future year's goals as necessary to reflect this activity.

217. *Regulation:* 24 CFR 990.118(h).

Project/Activity: Housing Authority of Dresher, Nebraska.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: May 24, 1990.

Reason Waived: Small rural PHA facing lack of demand and competition

from low cost private market rentals. 1990 goal lowered from 77% to 50% but no adjustment to 1991 goal or timeframe extension.

218. *Regulation:* 24 CFR 990.118(h).

Project/Activity: Housing Authority of Kansas City, Missouri.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan (COP) goals can be adjusted.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: June 18, 1990.

Reason Waived: Fiscal year ending December 1990 COP goal adjusted from 97% to 90% for additional vacancies experienced at projects that were high occupancy when COP was approved.

219. *Regulation:* 24 CFR 990.118(h).

Project/Activity: Housing Authority of Clay Center, Nebraska.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: August 14, 1990.

Reason Waived: Former Executive Director mismanaged funds and provided ineffective maintenance operations. Recent actions include the hiring of a new Executive Director and the award of MROP funds for project improvements. These actions are having a positive impact on the vacancy problem. Waiver given to adjust goal for FY 1990 from 83% to 50%.

220. *Regulation:* 24 CFR 990.118(h).

Project/Activity: Pontiac, Michigan Housing Commission.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: August 23, 1990.

Reason Waived: The Health Department had condemned top floor units because of pigeon infestation. CIAP funds will be used to remedy this situation. The goal for FY 89 changed from 90% to 85% and for FY 90 changed from 97% to 92%.

221. *Regulation:* 24 CFR 990.118(h) and 990.118(d).

Project/Activity: Bridgeport, Connecticut, Housing Authority.

Nature of Requirement: The regulation cites limited conditions under which goals or the timeframe for a Comprehensive Occupancy Plan can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 22, 1990.

Reason Waived: Because of a significant shift in strategy resulting in a plan to demolish a project and a need to relocate tenants. Waiver granted to extend the plan for two more years with a goal of 77% for FY 1988 and FY 1989, 85% for FY 1990 and 97% for FY 1991.

222. *Regulation:* 24 CFR 990.118(h).

Project/Activity: St. Louis, Missouri, Public Housing Authority.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan (COP) goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 11, 1990.

Reason Waived: Waiver given to adjust goal for FY 1990 from 97% to 68% in order for the PHA to achieve economic stability and be able to develop a revised COP which will reflect proposals for either the rehabilitation or disposition of projects with chronic vacancy problems.

223. *Regulation:* 24 CFR 990.118(h).

Project/Activity: Ann Arbor, Michigan, Housing Commission.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan (COP) goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 17, 1991.

Reason Waived: Waiver given to adjust COP goal from 97% to 90% for FY 1990 because of unanticipated vacancies caused by modernization work.

224. *Regulation:* 24 CFR 990.118(h).

Project/Activity: Atlanta, Georgia, Housing Authority.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 18, 1991.

Reason Waived: Modernization and renovation work created more vacancies than had been anticipated. Waiver adjusts FY 1990 goal to 93% and sets goal for FY 1991 at 94%.

225. *Regulation:* 24 CFR 990.118(h)(i).

Project/Activity: Lucas Metropolitan Housing Authority, Toledo, OH.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Michael B. Janis, Acting Assistant Secretary.

Date Granted: February 6, 1990.

Reason Waived: The receipt of Comprehensive Improvement Assistance Program funding a year earlier than anticipated results in units being vacated for major improvements.

[FR Doc. 91-19825 Filed 8-23-91; 8:45 am]

BILLING CODE 4210-32-M



Governmentwide Real Property Asset Management

Monday
August 26, 1991

Part III

General Services Administration

41 CFR Part 101-16

Governmentwide Real Property Asset
Management; Temporary Regulation

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-16

[FPMR Temp. Reg. D-75]

Governmentwide Real Property Asset Management

AGENCY: General Services
Administration.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation implements Executive Order 12411, of March 29, 1983, and Executive Order 12512, of April 29, 1985. The General Services Administration's (GSA's) authority for issuing this temporary regulation is contained in Executive Order 12411, Executive Order 12512 and in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)). This temporary regulation re-issues the Work Space Management Plan and Budget Justification (GSA Form 3530) reporting requirement which expired on September 30, 1990 (Federal Property Management Temporary Regulation D-73, Quality Workplace Environment Program). Through this reporting requirement GSA will be able to collect data on square footage, personnel, and budget estimates for both agency-controlled and GSA-controlled space for the fiscal years covered by the budget cycle. Agencies will use this report to support their budget request to the Office of Management and Budget (OMB).

The reporting requirement issue addressed by this temporary regulation is only a part of what will ultimately be a Governmentwide regulation that addresses sound principles of real property asset management. The regulation will provide broad guidance in the planning, acquisition, management and disposal of real property. The regulation will not be designed to supplant existing agency regulations. Rather, it will serve as a general guide for asset management and will provide the tools to maximize economy and efficiency within the Federal community, ensure the protection and maintenance of the Federal Government's assets, support individual agency program goals, and ensure a unified Federal approach to real property asset management.

GSA will work with agency real property experts to draft the regulation. Extensive coordination is anticipated among agencies, OMB, and the President's Council on Management Improvement (PCMI). Tentative milestones include interagency and

PCMI briefings, and publication of the draft regulation by February 1992.

DATES: *Effective date:* August 26, 1991.

Expiration date: September 30, 1992.

Comments due by: To ensure their consideration in drafting additional regulations and bulletins regarding reporting requirements, comments should be received by GSA no later than October 25, 1991.

ADDRESSES: Comments should be submitted to GSA, (PG), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: James M. Cayce, Director, Governmentwide Policy Division (202) 501-0507, FTS 241-0507.

SUPPLEMENTARY INFORMATION: GSA's authority for issuing this temporary regulation is contained in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)) and in Executive Orders 12411 and 12512. The objective of this temporary regulation is to re-issue the Work Space Management Plan and Budget Justification (GSA Form 3530) reporting requirement which expired on September 30, 1990, (Federal Property Management Temporary Regulation D-73, Quality Workplace Environment Program). This temporary regulation establishes an office utilization rate goal for GSA-controlled space. The goal is an adjusted utilization rate of 135 square feet of office space or less per person, excluding support space. An adjustment factor for support space will be applied to the total office utilization rate to determine an agency's adjusted utilization rate. The adjustment factor for this regulation will be equal to the agency's supplemental space factor previously approved by GSA under Federal Property Management Temporary Regulation D-71.

It is important to note that the adjusted utilization rate is calculated by dividing the total occupiable office square footage by the number of personnel, rather than by the number of workstations, occupying that space.

This temporary regulation will ultimately become a part of a final regulation on Governmentwide real property asset management.

GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning

the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101-16

Federal real property asset management.

GSA's authority for issuing this temporary regulation is contained in Executive Order 12411, Executive Order 12512 and in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)).

Appendix to Subchapter D— [Amended]

In 41 CFR chapter 101, the following temporary regulation is added to the Appendix to subchapter D to read as follows:

[FPMR Temp. Reg. D-75]

August 2, 1991.

Governmentwide Real Property Asset
Management

1. *Purpose.* This regulation re-issues the Work Space Management Plan and Budget Justification (GSA Form 3530) reporting requirement established in section 101-17.007 of Temporary Regulation D-73, Quality Workplace Environment Program. Temporary Regulation D-73 expired on September 30, 1990. The objective of this temporary regulation is to enable GSA to collect data on square footage, personnel and budget estimates for both agency-controlled and GSA-controlled space for the fiscal years covered by the budget cycle. Agencies will use this report to support their budget request to the Office of Management and Budget (OMB).

2. *Effective date.* This regulation is effective August 26, 1991.

3. *Expiration date.* This regulation expires on September 30, 1992.

4. *Background.* Executive Order 12411, Government Work Space Management Reforms, was signed by the President on March 29, 1983. The Order recognizes the importance of reducing the amount and cost of Federal Work Space while ensuring that work space is effectively used to support agency missions. Executive Order 12512, Federal Real Property Management, signed by the President on April 29, 1985, reinforces the accountability and responsibility of agency heads for managing real property assets. These Executive Orders authorize the Administrator of General Services to provide Governmentwide policy oversight and guidance for managing Federal real property and to establish procedures, guidelines, and regulations to guide agencies in managing real property assets. The Balanced Budget and Emergency Deficit Control Act of 1985 recognizes the importance of reducing deficits and achieving a balanced budget through reduced Government spending. The Work

Space Management Plan and Budget Justification (GSA Form 3530) reporting requirement, established by FPMR Temporary Regulation D-73, Quality Workplace Environment Program, was used by GSA to collect data on agency and GSA-controlled space. OMB used the form to review agencies' workspace budget. Temporary Regulation D-73 expired on September 30, 1990.

5. *Authority.* This temporary regulation implements Executive Order 12411 of March 29, 1983, 48 FR 13391; Executive Order 12512 of April 29, 1985, 50 FR 18453; and applicable provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

6. *Summary.*

(a) The head of each Federal agency shall prepare an annual Work Space Management Plan and Budget Justification (GSA Form 3530) to establish square footage targets, to report progress and plans for achieving the Government's work space management goals, and to support the annual budget request to OMB.

(b) Each executive agency shall maintain an average adjusted utilization rate of 135 square feet or less per person, excluding a supplemental space factor for office support area. This goal will apply at the national level to the total inventory of GSA-controlled space assigned to each executive agency.

(c) An agency's Work Space Management Plan and Budget Justification form should be organized to support the agency's budget request to OMB. Each agency Plan will provide estimates of office utilization rates, personnel, work space, rent and related obligation amounts for the fiscal years covered by the corresponding budget cycle.

(d) Agencies' Plans will be submitted on GSA Form 3530, and completed according to the instructions which accompany that form. The only exception to the instructions lies in the formula used for computing adjusted utilization rate. For the purposes of this temporary regulation, the adjusted utilization rate is calculated by dividing the total occupiable office square footage by the number of personnel occupying that space and adjusted by subtracting the supplemental space factor.

7. *Comments.* Comments concerning the effect or impact of this regulation may be submitted to the General Services Administration, Office of Governmentwide Real Property Relations (PG), Washington, DC 20405. Comments should be submitted within 60 days of publication of this regulation.

Richard G. Austin,
Administrator of General Services.

PART 101-16—GOVERNMENTWIDE REAL PROPERTY ASSET MANAGEMENT

Sec.

101-16.000	Scope of part.
101-16.001	Authority.
101-16.002	Definition of terms.
101-16.003	Basic Policy.
101-16.004	Supplemental Space Factor.
101-16.005	Work Space Management Plan.
101-16.006	GSA Form 3530: Work Space Management. Plan and Budget Justification.

§ 101-16.000 Scope of part.

This part re-issues the Work Space Management Plan and Budget Justification (GSA Form 3530) reporting requirement which expired on September 30, 1990 (Federal Property Management Temporary Regulation D-73, Quality Workplace Environment Program). The scope of this part applies to all Federal work space.

§ 101-16.001 Authority.

This part 101-16 implements Executive Order No. 12411, 48 FR 13391, March 29, 1983; Executive Order No. 12512, 50 FR 18453, April 29, 1985; and the applicable provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

§ 101-16.002 Definition of terms.

(a) *Adjusted utilization rate* is an indicator of the efficiency with which the primary office area is used. It is calculated by dividing the total occupiable office square footage by the number of personnel occupying that space and adjusted by subtracting the supplemental space factor.

(b) *Agency-controlled space* means federally owned, leased, or controlled space acquired or used by executive agencies under any authority other than the Federal Property and Administrative Services Act of 1949, as amended. It also includes space for which authorities for acquisition, use, or disposal have been delegated to other executive agencies by GSA.

(c) *Executive agency* means an executive department, military department, a Government corporation, and an independent establishment.

(1) Executive departments:

Department of State.
Department of the Treasury.
Department of Defense.
Department of Justice.
Department of the Interior.
Department of Agriculture.
Department of Commerce.
Department of Labor.
Department of Health and Human Services.
Department of Housing and Urban Development.
Department of Transportation.
Department of Energy.
Department of Education.
Department of Veterans Affairs.

(2) Military departments:

Department of the Army.
Department of the Navy.
Department of the Air Force.

(3) *Government corporation* means a corporation owned or controlled by the Government of the United States; and *Government controlled corporation* does not include a corporation owned by the Government of the United States.

(4) *Independent establishment* means an establishment in the Executive Branch (other than the United States Postal Service or the Postal Rate Commission) which is not an executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and the General Accounting Office.

(d) *Federally owned* means space, the title to which is vested, or will become vested

pursuant to existing agreement, in the United States Government.

(e) *Federally leased* means space for which the United States Government has a right of occupancy by virtue of having acquired a leasehold interest.

(f) *Federally controlled or Government controlled* means space for which the United States Government has a right of occupancy by ownership, by lease, or by any other means, such as by contract, barter, license, easement, permit, requisition, or condemnation, whether or not paid for. This does not include space owned or leased by private sector entities performing work on Government contracts.

(g) *Gross square footage* means all floor area (including all openings in floor slabs) measured to the outer surfaces of exterior or enclosing walls, and includes all floors, mezzanines, halls, vestibules, stairwells, service and equipment rooms, penthouses, enclosed passages and walks, inside parking, finished usable space with sloping ceilings (such as attic space) having 5 feet or more headroom, and appended covered shipping or receiving platforms at truck or railroad car height. Also included in gross floor area, but calculated at one-half of actual floor area, are covered open porches, passages and walks, with appended uncovered receiving and shipping platforms at truck or railroad car height.

(h) *GSA-controlled space* means space assigned to an agency by GSA by authority of the Federal Property and Administrative Services Act of 1949, as amended, or by authority of any other statute. It includes any space for which an agency pays GSA directly.

(i) *Office support area* means all secondary/shared workstations, extraordinary circulation space, and those specific and discrete areas constructed as office space and used to meet mission needs outside the agency's requirements for housing personnel. This includes space for mission needs such as reception/waiting areas; hearing, meeting, and interview areas; file areas, central storage areas, processing areas, and library and reference areas. Such space is most cost-effectively collocated with normal office space.

(j) *Personnel* means the peak number of persons to be housed by an executive agency during a single 8-hour shift, regardless of how many workstations are provided for them. In addition to permanent employees of the agency, personnel includes temporary, part-time, seasonal, and contractual employees; and budgeted vacancies. Employees of other agencies and organizations who are housed in the space are also included in the personnel total.

(k) *Primory office area* is the personnel-occupied area in which an activity's normal operational functions are performed.

(l) *Space* means physical space in buildings, and land incidental to the use thereof, which is under the custody and control of an executive agency.

(m) *Supplemental space factor* means the square feet per person to be subtracted from the total office utilization rate to approximate the primary office utilization rate of an

agency. The supplemental space factor for each agency was previously approved by GSA under Federal Property Management Temporary Regulation D-71, and remains in effect for this temporary regulation.

(n) *Workstation* means a location within an office space assignment that provides a working area for one or more persons during a single 8-hour shift. Secondary or shared workstations are part of office support area.

§ 101-16.003 Basic policy.

Executive Order 12411, dated March 29, 1983, "Government Work Space Management Reforms" requires each executive agency to initiate programs that will result in the efficient utilization of the Federal work space. Recognizing that executive agencies' housing requirements in office space are relatively uniform, a goal is hereby established for such space assignments. Effective with the issuance of this regulation, each executive agency shall maintain an average adjusted utilization rate of 135 square feet or less per person, excluding a supplemental space factor for office support area. The adjusted utilization rate goal will apply at the national level to the total inventory of GSA-controlled space assigned to each executive agency. Regulations concerning the assignment of GSA-controlled space are contained in 41 CFR part 101-17, Assignment and Utilization of Space.

§ 101-16.004 Supplemental space factor.

(a) The supplemental space factor for each agency was previously approved by GSA under Federal Property Management Temporary Regulation D-71 and will remain in effect until:

- (1) An agency mission change dictates that a new factor be developed;
- (2) GSA determines that the factor must be modified to more accurately reflect actual requirements; or
- (3) The agency determines that the factor must be modified to more accurately reflect

actual requirements and submits supporting documentation to GSA.

(b) GSA will develop with each agency and approve the supplemental space factors for the agency's bureaus or operational units where modification is appropriate. For example, GSA and the Department of Transportation will develop supplemental space factors for the Federal Railroad Administration, the Urban Mass Transportation Administration, etc. The supplemental space factor will indicate the maximum amount of supplemental space required in relation to the primary office area for all assignments in the agency, bureau, or operational unit as appropriate. Each agency is responsible, on behalf of its bureaus, for submitting to GSA narrative descriptions for each type of office support area to be used in establishing the supplemental space factor. One concise paragraph should suffice to explain each type of office support area. The description must contain the nationwide quantity of primary office area and office support area, and a certification from the agency head of the validity of the data and compliance with office support area criteria.

(c) Agencies wanting to modify their supplemental space factor must send all supporting documentation to GSA, Office of Governmentwide Real Property Relations, Governmentwide Policy Division, 18th & F Streets, NW., room 1300, Washington, DC 20405.

§ 101-16.005 Work Space Management Plan.

(a) Executive agencies shall submit annually to the Administrator of General Services and to OMB their Work Space Management Plan and Budget Justification (GSA Form 3530, interagency report control number 0323-GSA-XX). This plan will be submitted coincident to the agency's initial budget submission according to the schedule established by OMB, but in no event later than September 30 of each year. Each

executive agency's submission must be organized to support its budget request. This means that for most large executive agencies, the submission will consist of:

(1) Separate plans prepared by each bureau, operating entity, or other subordinate organization that makes rental payments or holds space; and

(2) An executive agencywide summary of the bureau plans.

Executive agencies whose space is held and/or paid for centrally are only required to submit a single executive agency-wide plan. The plan shall provide square footage, personnel, and budget estimates for both agency-controlled and GSA-controlled space for the fiscal years covered by the corresponding budget cycle, generally referred to as the "prior year," "current year," and "budget year" in accordance with OMB Circular No. A-11.

(b) Executive agencies must also submit to both GSA and OMB an updated plan not later than 60 days following publication of the President's budget. The updated plan shall reflect any changes based on OMB budget guidance for the budget year, congressional action for the current year, and final end-of-year square footage, personnel, and expenses for the prior year.

§ 101-16.006 GSA Form 3530: Work Space Management Plan and Budget Justification Form

The GSA Form 3530 used for the purposes of this reporting requirements is the form used under Federal Property Management Temporary Regulation D-73, Quality Workplace Environment Program, 41 CFR part 101-17. The instructions are the same with the noted exception of using personnel figures, rather than workstation figures, for computing the utilization rate.

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Part IV

General Services Administration

41 CFR Part 101-17
Assignment and Utilization of Space;
Temporary Regulation

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Temp. Reg. D-76]

Assignment and Utilization of Space

AGENCY: Public Buildings Service,
General Services Administration.

ACTION: Temporary regulation.

SUMMARY: On November 1, 1989 (54 FR 46206), GSA published in the Federal Register a proposed rule which contained revised procedures governing the assignment and utilization of space in Federal facilities under the custody and control of GSA. On December 5, 1989 (54 FR 50251), GSA published a revision to the proposed rule that addressed agency concerns about paying for telecommunications costs associated with moves in GSA space. Comments were received on each rule and have been incorporated where appropriate. Major changes are described in the Supplementary Information below.

DATES: *Effective date:* August 26, 1991.

Expiration date: August 26, 1992.

ADDRESSES: Agencies wishing to comment further on this regulation should submit them to the General Services Administration (PQ), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Real Estate (202-501-4266).

SUPPLEMENTARY INFORMATION: On November 1, 1989, GSA published a proposed amendment to 41 CFR chapter 101. Comments were received from 27 Federal agencies, three national Federal employee unions and one union local, the Small Agency Council, and the International Downtown Association. Comments were also received from the Administrative Office of the United States Courts (AOC) concerning space for the judiciary. These comments are being addressed in direct meetings with the AOC. The majority of the comments address three issues: (1) The space assignment process including utilization rate calculation; (2) move policy; and (3) location policy. The comments on these issues and GSA's response to them are discussed below:

(1) Space Assignment Process and Utilization Rate (UR) Calculation

The FPMR establishes a cooperative process for the determination of requirements and the assignment of space to client agencies. It proposes that GSA participate early in the process by assisting agencies in the technical

aspects of requirements development prior to submission of the Standard Form 81, Request for Space. The purpose is to avoid unnecessary delays, expedite space delivery, and ensure that quality workspace is delivered in a timely manner. The revised UR method develops a review threshold for assignments exceeding 125 square feet per person in the primary area. Assignments exceeding this threshold may be subject to further review. It also provides for an additional 22 percent of the primary area to house Support area requirements.

The U.S. Army Corps of Engineers (Corps), a large real property management agency itself, was the only major agency to favor the new assignment and UR procedures. The Corps noted that "the important aspect (of the space assignment process) is that the mission must be provided for, and this regulation adequately protects that element." The Corps also stated that the new UR procedure is reasonable because it "allows enough flexibility so as to cover situations which might develop outside of the specified standard."

Objections by other agencies to the proposed procedures centered around the concerns that the 125 square feet represents a 10 square foot reduction from the 135 square foot goal; the proposed method would not be flexible enough to recognize unique agency missions needs; the utilization rate requirements were too stringent; existing Space Allocation Standards (SAS) would be abrogated; and the new method would not be cost-effective. Several agencies also objected to the proposed requirements development process on the basis that it would be too cumbersome for routine space actions and that GSA would not make good on its commitment to provide technical space programming assistance.

GSA understands the concerns of client agencies and believes that most of these are addressed by the proposed new assignment process including the method for calculating UR. This method is not intended to produce a space reduction, but only to establish a more precise measuring standard (people) than was used under the prior regulation (workstations). The square footage thresholds under the new system compare favorably to the previous standard (contained in FPMR Temporary Regulation D-73) of 195 square feet per workstation when adjustments are made to equate the two. The new UR method separates office space into its principal components, Primary area and Support area, and measures the UR based on the number

of personnel occupying the Primary area. This provides a more accurate, equitable, and professional method for estimating and evaluating an agency's office space needs. In addition, the new procedures for requirements development provide greater flexibility and will produce more cost effective processing of space requests. These procedures will be used to expedite the delivery process and this will be primarily for larger and more complex cases.

GSA has already committed resources for the expanded requirements development work and plans to continue this in future years. In fiscal year 1990, 70 new positions have been authorized for the real estate program along with \$14 million for space programming/planning contracts. In fiscal year 1991, another 30 positions will be authorized along with a planned \$12.1 million for space programming/planning services. These significant increases in resources are directed at providing the increased level of service contained in the FPMR.

In developing the space assignment process GSA accepted informal agency comments and incorporated a number of suggested changes. Among these was the addition of extraordinary circulation as a category of support space. GSA agreed with agency concerns that there had to be formal recognition of the occasional need for a higher than average amount of circulation space. GSA also understands that there may be instances where extraordinary circulation combined with other support space requirements may cause the support space to exceed 22 percent. Procedures in the proposed regulation are flexible enough to accommodate these situations. GSA also agreed to increase the UR for Primary space from 120 to 125 square feet. This is a realistic standard and is based on an analysis of the use of space by the various types of workers housed in GSA office space (clerical, administrative, para-professional, professional, managerial, and executive) and considers the use of both conventional furniture and furniture systems.

This new regulation on the Assignment and Utilization of Space will soon be followed by the publication of Part 101-16, Government-wide Real Property Management. This regulation (101-16) provides for a primary utilization rate goal of 135 square feet per person for all GSA-controlled space and predominant use office buildings under the custody and control of other Federal agencies. The utilization rate goal in 101-16 is higher than the threshold in 101-17 because the 101-16

goal reflects all existing assignments (many of which are in older buildings where space utilization efficiencies cannot be economically achieved), and all new assignments as they are made. It becomes the base against which the entire space inventory can be tracked.

With regard to space allocation standards (SAS), the new procedures are designed to work with existing SAS' and these will be retained.

GSA believes that an understanding of the new procedures can be enhanced by adding clarifying language to the FPMR. Therefore, a new § 101-17.200, Scope of subpart, has been added to clarify and explain how the new assignment procedures will affect agency space requests. This section reads as follows:

Section 101-17.200 Scope of Subpart

(a) This subpart establishes a cooperative process for the determination of requirements and the assignment of space to GSA client agencies. This space assignment process is designed to expedite space delivery and ensure that quality workspace is delivered in a timely manner. § 101-17.201(g) states that GSA will assist agencies early in the space delivery process by providing technical assistance in the development of space requirements. This will ensure that agencies have the benefit of GSA expertise, that technical information is accurate and correct, and that unnecessary delays are minimized.

(b) A new method for calculating utilization rates (UR) is established in § 101-17.201(h). The new method focuses on the portion of the office assignment occupied by the personnel working in the space. This is called the Primary office area and is the part of the office space that has the best potential for utilization improvement. The Primary area in most GSA space is similar in use and configuration and its size is dictated by similar factors. This is because most activities occupying GSA space perform similar administrative and managerial tasks. Therefore, greater consistency and uniformity can be attained in assigning this space.

The 125 square feet reflects the amount of space occupied by the employees housed in GSA office space—clerical, administrative, paraprofessional, professional, managerial, and executive—using either conventional furniture or furniture systems. The 125 square feet per person is the threshold utilization rate for the primary area for new assignments made under this regulation. Utilization rates exceeding 125 for primary area may be subject to further review. New

assignments with fewer than eight employees are exempt from the numerical requirements of this regulation and shall be made at the most efficient utilization rate consistent with sound principles of space planning and layout.

(c) Section 101-17.201 (h) and (i) require that space needs in the Primary office area be based on the number of personnel to be housed and that personnel also be used for calculating UR. The use of personnel provides a visible and readily verifiable indicator of space needs. This method is more accurate and reliable than previous methods using workstations. Space for Secondary or shared workstations is provided in the Support area. In addition to secondary/shared workstations, the Support area consists of reception areas, conference rooms, storage areas, processing areas, libraries, file areas, and extraordinary circulation (see § 101-17.600 for descriptions of Support areas).

Support area needs are based on a survey of client agency use of such space and the 22 percent reflects the inventory-wide average for GSA space. Support area is a component of office space and does not include space classified as storage or special as defined in appendix A of this regulation.

Support area requirements have the greatest variation among agencies since they are primarily mission driven. Support space needs will be developed using professional methods and techniques and generally should not exceed 22 percent of the primary space. Twenty-two percent is the threshold beyond which further evaluation will be made. Therefore, if a request exceeds 22 percent, an agency will be required to provide supporting documentation that explains mission related activities that generate the additional needs.

(d) The division of office space into Primary and Support areas is a useful way for agencies and GSA to analyze office space requirements. It provides a method for agencies to check their own estimates and also provides the flexibility to recognize agency mission differences in the requirements development process.

(e) Section 101-17.201(m) endorses the use of Space Allocation Standards (SAS) to formally recognize agency space needs.

Requests for space where there is an approved SAS that establishes standards different from those contained in this regulation shall refer to the approved SAS as supporting documentation. All SAS' in effect on or after January 1, 1987, remain in effect.

(2) Move Policy

Objections to the move policy centered around the proposal to have agencies share the costs of moves with GSA. Move costs usually involve standard alterations, above standard alterations, moving, and telecommunications. Agency objections were strongest regarding the requirement that they pay for above standard alterations and telecommunications when a move occurs at lease expiration. Agencies also strongly objected to the proposed policy for paying for moves caused by another agency's expansion. These objections were addressed in GSA's revised proposed rule published on December 5, 1989.

However, some objections still remain as agencies continue to resist the idea of paying the above standard alterations and telecommunications costs that occur at lease expiration. Agencies maintain they do not have the resources to budget for moves at lease expiration; that they would not be able to anticipate precisely which expiring leases would generate a move and which would involve a new lease at the same location; and that GSA should pay for the costs of these moves since GSA is responsible for the leasing process. Agencies also maintained that because they had already paid for above standard alterations at the existing location, they should not have to pay to replace them at the new location.

It is GSA's goal to reduce the costs associated with moves that occur at lease expiration and consequently the costs of such moves. GSA procedures require the use of long term leases to the extent they are consistent with agency requirements. In addition, GSA is proposing legislation to ease the rules for justifying a succeeding lease. This proposal will remove the requirement that GSA test the market prior to making a decision to enter into a succeeding lease and will also ease the burden on realtors doing business with the Government.

With regard to agencies paying for above standard alterations, the Federal Property and Administrative Services Act of 1949, as amended, requires that GSA provide a commercially comparable level of service to tenants occupying GSA space and GSA will always pay the cost of these standard alterations. In fact, GSA has revised the standard alterations to provide upgraded electrical service and to include other features that were previously reimbursable.

In the case of above standard alterations, however, GSA's position is that these are costs for items that agencies require beyond the standard or commercially comparable level and agencies should pay these costs for moves occurring at lease expiration. The fact that agencies paid for these alterations in the existing space does not change this since these costs have been amortized over the lease term. This is no different from GSA paying for replacing standard alterations for moves occurring at lease expiration.

GSA will analyze the cost effectiveness of moving to a new location including the cost of replacing above standard alterations. GSA's decision will be based on selecting the alternative that is in the overall best interest of the Government, all factors considered.

GSA is committed to providing agencies with 18-24 months prior notice of lease expiration to allow time to plan and budget for possible moves (§ 101-17.206(a)). GSA will also include a list of expiring leases for the next 4 years with the annual Rent budget sent to agencies and will provide technical assistance to help agencies prepare budget data for potential moves at lease expiration. A new § 101-17.206(f) is added to this effect.

Section 101-17.206(f) Preparation of agency budget estimates. GSA will give agencies sufficient advance notice of lease expiration (18-24 months) to allow them time to budget for the costs of potential moves. GSA will provide technical support to assist agencies in the techniques of preparing budget estimates.

With regard to telecommunications costs, GSA's policy since February 1988 has been that these costs will be borne by the agency. This position is consistent with the changes in the telecommunications industry brought about by deregulation. The December 5, 1989, Federal Register changes to the proposed FPMR, however, provide additional relief to agencies forced to relocate because of another agency's expansion. In these cases, the expanding agency will pay for moving, above-standard alterations, and telecommunications costs for the displaced agency. The discussion of telecommunications in § 101-17.101(i)(2) has been expanded to elaborate on the payment responsibility for telecommunications costs in different move situations. § 101-17.206 (a) and (c) have been similarly expanded. A definition of "telecommunications" has been added at § 101-17.102(jj).

(3) Location Policy

The location policy gives agencies the responsibility for determining the geographic area and the delineated area where their facilities will be located. It also requires that GSA review agency decisions for compliance with laws and executive orders governing location of space. Agencies asked for the definition of "adequate justification" for non-Central Business Areas (CBA) locations and several wanted to know the extent to which compliance with the Competition in Contracting Act (CICA) will have to be documented. Agencies also objected to making determinations about CICA and CBA compliance.

Section 101-17.205(a) has been revised to delete the certification and documentation requirements associated with CICA and CBA compliance. In order to execute their decision-making responsibility, however, agencies will need to be familiar with the laws and executive orders governing the location of space. GSA will oversee and review agency decisions to monitor compliance with applicable authorities and may request agencies to explain and support their decisions.

The General Services Administration has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Before issuing a final rule, GSA will make all necessary evaluations of economical effects, major costs to consumers or others, and significant adverse effects.

List of Subjects in 41 CFR Part 101-17

Administrative practices and procedures, Federal buildings and facilities, Government property management.

(Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c))

Appendix to Subchapter D [Amended]

Accordingly, 41 CFR chapter 101 is amended by removing FPMR Temporary Regulation D-73 and FPMR Temporary Regulation D-73, Supp. 2, and adding

FPMR Temporary Regulation D-76 to the appendix to subchapter D as follows:

[FPMR Temp. Reg. D-76]

August 2, 1991.

Assignment and Utilization of Space

1. *Philosophy.* These regulations on the assignment and utilization of space, emphasize a customer service approach to space delivery. A central goal is to improve the process for delivering the space to the client and thereby improve the relationship between GSA and the client. The regulations target requirements development as the area where there is greatest potential for significant improvement in the timeliness of the delivery process and the quality of the space delivered. The key to this improvement is a cooperative relationship between GSA and the client agency in the development of requirements. Since the agency knows its program and mission needs, it is responsible for providing information about functional program requirements. On the other hand, GSA has the professional expertise to translate these needs into technical contract language and GSA will provide this assistance to agencies early in the requirements development process. The customer service orientation assumes that both GSA and client agency have the same goal—the timely delivery of space—and that the best way to achieve this goal is through a cooperative process. This means that both GSA and the client need to fulfill their responsibilities in order for the process to work effectively.

2. *Purpose.* This regulation supersedes FPMR Temporary Regulation D-73. Its purpose is to refine GSA's space assignment criteria and to modify and/or clarify certain space-related policies and requirements. It provides a revised space assignment process for determining agency requirements; revised and updated definitions of GSA space classifications and standard alterations; a new move policy; a revised locational policy, and a general updating of the FPMR to reflect current ways of doing business, such as the inclusion of procedures for assigning space for child care centers and wellness/physical fitness facilities.

3. *Effective date.* August 26, 1991.

4. *Expiration date.* August 26, 1992.

5. *Background.* On November 1, 1989 (54 FR 46206), GSA published in the Federal Register a proposed rule which contained revised procedures governing the assignment and utilization of space in Federal facilities under the custody and control of GSA. On December 5, 1989 (54 FR 50251), GSA published a revision to the proposed rule that addressed agency concerns about paying for telecommunications costs associated with moves in GSA space. Comments were received on each rule and incorporated into the final document where appropriate. The significant changes are outlined below.

6. *Outline of revision.* Changes from the previous regulation (D-73) include:
—Modification of the strict numeric criteria for assignment of space; emphasis on professional space analysis, programming and planning.

- Redefinition of office space to recognize its essential components: Primary (personnel-occupied) area and support area.
- Focus on primary area utilization rate (square footage primary area divided by personnel).
- Clarification of the policy on the location of Federal facilities and space.
- Revision of the GSA policy on agency moves.
- Revision of the space classifications for GSA-controlled space.
- Changes to the standard alterations in GSA-controlled space.
- Revision of the Standard Form 81 and 81A, and inclusion of a Space Requirements Questionnaire to assist in the space planning process.
- Inclusion of criteria on physical fitness facilities and child care centers.
- Modification of telecommunications policy.

7. *Comments.* Comments concerning the effect or impact of this regulation may be submitted to the General Services Administration, Office of Real Property Development (PQ), Washington, DC 20405.

8. *Effect on other directives.* The provisions of Federal Property Management Regulation Temporary Regulation D-73 relating to the assignment and utilization of space are superseded by this regulation.

Richard G. Austin,
Administrator of General Services.

PART 101-17—ASSIGNMENT AND UTILIZATION OF SPACE

Sec.

- 101-17.000 Scope of part.
- 101-17.001 Authority.

Subpart 101-17.1—Basic Policy

- 101-17.100 Scope of subpart.
- 101-17.101 Policies.
- 101-17.102 Definition of terms.

Subpart 101-17.2—Assignment of Space

- 101-17.200 Scope of subpart.
- 101-17.201 The space assignment process—agency development of need and GSA determination of requirements.
- 101-17.202 Exception to submitting requests for space.
- 101-17.202-1 General exceptions.
- 101-17.202-2 Delegation of authority.
- 101-17.202-3 Action when existing space is not available.
- 101-17.203 Space for short-term use.
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- 101-17.205 Location of space.
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- 101-17.207 Applications of socioeconomic considerations.
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- 101-17.211 Centralized services in Federal buildings.
- 101-17.212 Reviews and appeals of space assignments.
- 101-17.212-1 Formal review.
- 101-17.212-2 Initial appeal.
- 101-17.212-3 Final appeal.

Subpart 101-17.3—Utilization of Space

- 101-17.300 Responsibility of GSA.
- 101-17.301 Responsibility of agencies.
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Subpart 101-17.4—Space Programming, Layout, and Design Services

- 101-17.400 Initial layout services.
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- 101-17.600 Illustration of office support space.
- 101-17.601 Space classifications and standard alterations.
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Subparts 101-17.7—101-17.46—[Reserved]

Subpart 101-17.47—Exhibits

- 101-17.4700 Scope of subpart.
- 101-17.4701 Memorandum of understanding between U.S. Department of Agriculture and the General Services Administration concerning the location of Federal facilities.
- 101-17.4702 Memorandum of agreement between the General Services Administration and the U.S. Postal Service for implementing the President's urban policy.

Subpart 101-17.48—GSA Regional Offices

- 101-17.4800 Scope of subpart.
- 101-17.4801 GSA regional offices.

Subpart 101-17.49—Forms

- 101-17.4900 Scope of subpart.
- 101-17.4901 Standard forms.
- 101-17.4901-81 Standard Form 81, Request for Space.
- 101-17.4901-81A Standard Form 81A, Space Requirements Worksheet.
- 101-17.4902 GSA forms.
- 101-17.4902-144 GSA Form 144, Net Space Requirements for Future Federal Building Construction.

Appendix A—Space Classification and Standard Alterations

Appendix B—Wellness/Physical Fitness Facilities

Appendix C—Child Care Centers

§ 101-17.000 Scope of part.

This part prescribes policies and procedures for the assignment and utilization of space in GSA controlled facilities. The term "United States" as used in this subchapter, means the 50 States of the United States, the District of Columbia and the Commonwealths, territories, and possessions of the United States.

Space acquired and/or managed under a delegation of authority from GSA is subject to the provisions of this part.

See part 101-16 for policies and procedures governing the management of all Federal space.

§ 101-17.001 Authority.

This part implements the applicable provisions of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377); the Act of July 1, 1898 (40 U.S.C. 285); the Act of April 28, 1902 (40 U.S.C. 19); the Act of August 27, 1935 (40 U.S.C. 304c); the Public Buildings Act of 1959, as amended (40 U.S.C. 601-619); Public Buildings Amendments of 1972 (86 Stat. 219), as amended; the Rural Development Act of 1972 (86 Stat. 674); Reorganization Plan No. 18 of 1950 (40 U.S.C. 490, note); the Federal Urban Land Use Act (40 U.S.C. 531-535); Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321); Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201-4244, 40 U.S.C. 531-535); Public Buildings Cooperative Use Act of 1976, as amended (90 Stat. 2505); Executive Order 12072 of August 16, 1978 (43 FR 36869); Executive Order 12411 of March 29, 1983 (48 FR 13391); and Executive Order 12512 of April 29, 1985 (50 FR 18453); and the Public Buildings Amendments of 1986 (102 Stat. 4049).

Subpart 101-17.1—Basic Policy

§ 101-17.100 Scope of subpart.

This subpart describes the basic policies that govern the assignment and utilization of GSA space, and defines terms used in part 101-17.

§ 101-17.101 Policies.

(a) Federal real property is an asset that has a value to the Government. This asset shall be managed and maintained in a manner that enhances its value.

(b) Federal workspace is a costly resource and should be acquired and used in the essential minimum amounts needed to support agency mission requirements.

(c) Federal workspace should support and improve the productivity of the workers and programs that are housed. Professional standards and practices for space planning and programming, requirements development, furniture use, design and layout shall be used to achieve this goal.

(d) It is GSA policy to provide agencies a quality workplace environment that supports program operations; preserves the value of real property assets; and reduces Federal workspace to essential minimum requirements. This includes the provision of child care and physical fitness facilities in the workplace when adequately justified.

(e) Federal space needs will be satisfied in existing Government-controlled space to the maximum extent practical. Available space in buildings under the custody and control of the U.S. Postal Service will also be given priority consideration.

(f) In establishing new offices and other facilities agencies should comply with the requirements of the Rural Development Act of 1972, 86 Stat. 674.

(g) Agencies requiring space in an urban area must comply with Executive Order 12072, August 16, 1978, 3 CFR 213.

(h) Each agency shall determine the appropriate delineated area for its space and

facilities and certify that its location decision is in compliance with the requirements of all laws and Executive Orders governing the location of space including the Rural Development Act of 1972, 86 Stat. 674, and Executive Order 12072, August 16, 1978, 3 CFR 213. In making these location decisions agencies shall give consideration to the requirements of the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. 252-280. See also § 101-17.4701 (the GSA-USDA Memorandum of Understanding), and § 101-17.4702 (the GSA-USPS Memorandum of Agreement.)

(i) The GSA move policy is implemented to identify the situations that cause a move in GSA space; the costs associated with these moves; and the responsibility for paying for the various costs of a move. See § 101-17.206.

(1) GSA will fund standard alterations and agencies will reimburse GSA for the cost of above-standard requirements. See § 101-17.206.

(2) For telecommunications relocations caused by physical relocation of organizations occupying space controlled by GSA, the organization causing the relocation will reimburse the organization being relocated for an amount up to, but exceeding the value of like telecommunications service. "Like telecommunications service" is defined as the value or amount, as determined by a GSA telecommunications technical service contractor (TTSC), equal to the cost of providing an equivalent level of service at the new location. In cases where the cost of installing a new system is less than the cost of relocating the existing system, the reimbursement will be for the lesser amount. Use of the TTSC contractor is not mandatory if an estimated value can otherwise be agreed upon in writing by the agencies involved. Funding responsibilities for telecommunications relocations will include the cost of the TTSC contractor. See matrix at the end of § 101-17.206 which outlines all funding responsibilities. This telecommunications policy will be effective October 1, 1991. However, for those agencies being relocated as a result of a GSA directed move occurring between the date of the issuance of this regulation and October 1, 1991, GSA will pay for the telecommunications relocation costs in those instances where the agency can demonstrate that its budget requests for telecommunications relocations, pursuant to the telecommunications policy issued on February 25, 1988, were denied.

(j) Agencies will be assigned space by GSA based on a detailed analysis of workspace and support space requirements. The purpose will be to achieve the optimum use of space for each assignment at the minimum cost to the Government. The best opportunity for space efficiency occurs with new assignments. Therefore, GSA will employ professional methods and techniques of space analysis, planning, and programming in developing space requirements. Utilization rates will be held to the minimum square footage per person for the particular activity. Any utilization rate goal(s) established for new space assignments will apply to all actions involving more than eight personnel. New assignments for eight or fewer personnel

will be housed as efficiently as possible. GSA will implement policies and procedures to ensure that assignment of workstation and support space is consistent throughout its regional offices. (See § 101-17.20, The space assignment process—agency development of need and GSA determination of requirements.)

(k) Officials of GSA client agencies shall be familiar with the policies governing the acquisition, use, assignment, and management of GSA space. These officials shall cooperate with and support GSA in implementing and furthering these policies.

(l) Federal workspace shall be acquired and occupied in a timely and expeditious manner. GSA shall use professional planning techniques to assist agencies in preparing the Standard Form 81 (SF-81), Request for Space, and supporting documentation and shall provide technical assistance at an early stage in the requirements development process. This will ensure the acquisition and use of space that supports mission needs at a minimum cost.

(m) GSA will make full and efficient use of Government-controlled space for housing Federal agencies. Space for which there is no current foreseeable Federal need will be disposed of when practicable and prudent to do so. GSA will make every effort to maximize the productive use of an otherwise unused resource through out-granting (i.e., outlease, permit, license).

(n) Space requests for the U.S. Postal Service will be processed in accordance with the "Agreement between GSA and the U.S. Postal Service covering Real Property Relationships."

(o) Section 3 of the Public Buildings Amendments of 1988, Public Law 100-678 (102 Stat. 4049) places certain restrictions on leasing special purpose facilities for computer and telecommunications operations; secured areas for national security or defense purposes; or permanent court space for the judiciary. These restrictions apply to any lease of such space that will exceed an average annual rental of \$1,500,000. In these cases, the GSA Administrator must make a determination in writing that leasing such space is necessary to meet requirements which cannot be met in public buildings and must submit such reasons to the appropriate congressional committees.

§ 101-17.102 Definition of terms.

(a) *Acceptance of space* means a certification from and commitment from an agency to occupy space. Based on agency acceptance GSA may commit to the use of Government funds to award a lease, make a commitment for initial alterations, and/or establish a date of occupancy. Agencies are financially responsible for losses incurred by the Government caused by any failure by the agency to fulfill a commitment to accept space.

(b) *Acquisition of workspace* means the process of obtaining workspace by purchase, lease, donation, exchange, eminent domain, construction, or by any other means permissible by law.

(c) *Agency-controlled space* means federally owned, leased, or controlled space acquired or used by Federal agencies under

any authority other than the Federal Property and Administrative Services Act of 1949, as amended. It also includes space for which authorities for acquisition, use, or disposal have been delegated to other agencies by GSA.

(d) *Cost-effective* means justified by an analysis which evaluates alternatives in terms of expenses incurred by the Government.

(e) *Delineated area* means the specific boundaries within which space will be obtained to satisfy an agency space requirement.

(f) *Excess holdings* means any workspace or related furnishings which are not essential to a Federal agency's existing or planned programs.

(g) *Federal agency* means any department, agency, or independent establishment in the Government, including any wholly owned corporation.

(h) *Federally owned, leased, or controlled space*:

(1) *Federally owned* means space, the title to which is vested, or will become vested pursuant to existing agreement, in the United States Government.

(2) *Federally leased* means space for which the United States Government has a right of occupancy by virtue of having acquired a leasehold interest.

(3) *Federally controlled or Government-controlled* means work space for which the United States Government has a right of occupancy by ownership, by lease, or by any other means, such as by contract, barter, license, easement, permit, requisition, or condemnation, whether or not paid for. This does not include space owned or leased by private sector entities performing work on Government contracts.

(i) *General purpose space* means space which is determined by GSA to be suitable for the general use of agencies. General purpose space is categorized as office, storage or special. The physical characteristics are the basis for determining the proper space category.

(j) *GSA-controlled space* means space assigned to an agency by GSA by authority of the Federal Property and Administrative Services Act of 1949, as amended, or by authority of any other statute. It includes any space for which an agency pays GSA directly.

(k) *GSA-directed move* means any relocation action which occurs as result of an emergency, a GSA initiated repair/alteration project, or GSA initiated consolidation. GSA will be responsible for paying standard alterations, replication of the current above-standard alterations, moving and like telecommunication service for the relocated agency.

(l) *Initial space layout* means the specific placement of workstations, furniture and equipment for new space assignments. These initial services are provided by GSA at no cost to agencies, upon agency request.

(m) *Inventory* means a summary, survey, or itemized list of the space, assets, or materials under the control of a Federal agency.

(n) *Joint-use space* means occupiable space, such as cafeterias, conference rooms,

credit unions, snack bars, and certain wellness/physical fitness facilities and child care centers, which is available for common use by personnel of any Federal agency.

(o) *Measurement of space;*

(1) *Gross square footage* means all floor area (including all openings in floor slabs) measured to the outer surfaces of exterior or enclosing walls, and includes all floors, mezzanines, halls, vestibules, stairwells, service and equipment rooms, penthouses, enclosed passages and walks, inside parking, finished usable space with sloping ceilings (such as attic space) having 5 feet or more headroom, and appended covered shipping or receiving platforms at truck or railroad car height. Also included in gross floor area, but calculated on one-half of actual floor area, are covered open porches, passages and walks, with appended uncovered receiving and shipping platforms at truck or railroad car height.

(2) *Net usable space* means the area to be leased for occupancy by personnel and/or equipment. It is determined as follows:

(i) If space is on a single tenancy floor, compute the inside gross area by measuring between the inside finish of the permanent exterior building walls from the face of the convectors (pipes or other wall-hung fixtures) if the convector occupies at least 50 percent of the length of exterior walls.

(ii) If the space is on a multiple tenancy floor, measure from the exterior building walls, as in (i) above, to the room side finish of fixed corridor and shaft walls and/or the center of tenant-separating partitions.

(iii) In all measurements, make no deductions for columns and projections enclosing the structural elements of the building and deduct the following from the gross area including their enclosing walls.

(A) Toilets and lounges

(B) Stairwells

(C) Elevators and escalator shafts

(D) Building equipment and service areas

(E) Entrance and elevator lobbies

(F) Stacks and shafts

(G) Corridors in place or required by local codes and ordinances.

(3) *Occupiable area* means that portion of the gross area which is available for use by an occupant's personnel or furnishings, as well as space which is available jointly to the various occupants of the buildings, such as auditoriums, health units, and snack bars. Occupiable area includes that space available for an occupant's personnel and furnishings which is used to provide circulation, whether or not defined by ceiling high partitions. Occupiable area does not include that space in the building which is devoted to its operations and maintenance, including craft shops, gear rooms, and building supply storage and issue rooms. Occupiable area is computed by measuring from the occupant's side of ceiling-high corridor partitions or partitions enclosing mechanical, toilet, and/or custodial space to the inside finish of permanent exterior building walls or to the face of the convector if the convector occupies at least 50 percent of the length of the exterior wall. When computing occupiable area separated by partitions, measurements are taken from the center line of the partitions.

(p) *Non-Federal organizations* means organizations such as credit unions, concessions operated by the blind and handicapped, and organizations under the direct sponsorship of a Federal agency such as grantees or contractors.

(q) *Office support area* means all secondary/shared workstations, extraordinary circulation space, and those specific and discrete areas constructed as office space and used to meet mission needs outside the agency's requirements for housing personnel. This includes space for mission needs such as reception/waiting areas; hearing, meeting, and interview areas; file areas; central storage areas; processing areas; and library and reference areas. Such space is most cost-effectively collocated with normal office space. Illustrations are contained in § 101-17.6.

(r) *Office support area allowance* is the percentage of office space, over and above the primary office area requirement, allocated for office support functions.

(s) *Persannell* means the peak number of persons to be housed during a single 8-hour shift, regardless of how many workstations are provided for them. In addition to permanent employees of the agency, personnel includes temporaries, part-time, seasonal, and contractual employees and budgeted vacancies. Employees of other agencies and organizations who are housed in the space assignment are also included in the personnel total.

(t) *Primary office area* is the personnel-occupied area in which an activity's normal operational functions are performed. See Section 101-17.102(g) above for "office support area" definition.

(u) *Primary office area utilization rate* is an indicator of the efficiency with which the primary office area is used. It is calculated by dividing the total occupied primary office area square footage by the total number of people in that area.

(v) *Request for space or space request* means a written document upon which an agency provides GSA with the information necessary to assign space. A request for space shall be submitted on Standard Form 81 and Standard Form 81-A, and the Space Requirements Questionnaire. (See §§ 101-17.4901-81 and 101-17.4901-81A, Standard forms.) The request shall, at a minimum, contain descriptions of the amount of space, personnel to be housed, geographic area, time period required and funding availability.

(w) *Rural area* means any area that (a) is within a city or town if the city or town has a population of less than 10,000 or (b) is not within the outer boundaries of a city or town if the city or town has a population of 50,000 or more and if the adjacent urbanized and urbanizing areas have a population density of more than 100 per square mile.

(x) *Secondary/shared workstations* are nondedicated workstations used more than 50 percent of the time by two or more persons occupying a space assignment during an 8-hour shift. They function in support of the occupant agency's mission and are distinct from the primary personnel-occupied workstations.

(y) *Space* means space in buildings, and land incidental to the use thereof, which is

under the custody and control of a Federal agency.

(z) *Space Allocation Standard* means an agreement between GSA and an agency, written in terms which permit nationwide application, used as a basis for establishing that agency's space requirements. These standards identify the specific amount of space an agency will be allocated, and establish exceptions to general guidelines for GSA and agency responsibility in initial tenant funding.

(aa) *Space assigned by GSA* means space in buildings, and land incidental to its use, which is under the custody and control of GSA; space made available by the U.S. Postal Service; or space for which a permit for use has been issued to GSA by another agency.

(bb) *Space assignment* means an administrative action by GSA which authorizes the occupancy and use of space by a Federal agency or other eligible entity.

(cc) *Space inspection* means a reconnaissance-type evaluation of the manner in which assignments are being utilized to determine whether a utilization survey is warranted.

(dd) *Space planning* means the process of using recognized professional techniques of space programming, planning, layout and interior design to determine the best location and the most efficient configuration for agency facilities.

(ee) *Space requirements program* means the statement of an agency's space needs as expressed on Standard Form 81-A, Space Requirements Worksheet, Space Requirements Questionnaire and additional supporting documentation such as adjacency diagrams, and summarized on Standard Form 81, Request for Space. (See Section 101-17.4901-81 and 101-17.4901-81A, Standard Forms.)

(ff) *Space typical* means examples of workspace and support space allocations based on functional analysis.

(gg) *Space utilization survey* means the process of employing recognized professional techniques to determine how efficiently an agency is utilizing its workspace, and to verify that space is being used in accordance with this regulation.

(hh) *Special purpose space* means workspace which is or has been constructed and predominantly utilized for the special purpose of an agency and is not generally suitable for the use of other agencies. This includes, but not limited to, schools, hospitals, mints, embassies, and consulates.

(ii) *Standard alterations (SA's)* are those alterations necessary to prepare an agency's space to meet a particular classification, i.e., office, storage, or special, and permit occupancy of the space. (See § 101-17.208.)

(jj) *Telecommunications* means electronic processing of information, either voice or data or both, over a wide variety of media, e.g., copper wire, microwave, fiber optics, radio frequencies, between individuals, offices within a building (e.g., local area networks), between buildings, between cities, etc.

(kk) *Unique agency space* means any general purpose space which either consists of more than 50 percent special-type space

not likely to be needed by another agency, or space of any type located in an area where it would be impractical to house another agency. (See § 101-17.302(d).)

(ll) *Urban area* means any Metropolitan Area (MA) as defined by the Office of Management and Budget (OMB) and any non-MA that meets one of the following criteria:

(1) A geographical area within the jurisdiction of any incorporated city, town, borough, village, or other unit of general local government, except county or parish, having a population of 10,000 or more inhabitants.

(2) That portion of the geographical area within the jurisdiction of any county, town, township, or similar governmental entity which contains no incorporated unit of general local government, but has a population density equal to or exceeding 1,500 inhabitants per square mile; or

(3) That portion of any geographical area having a population density equal to or exceeding 1,500 inhabitants per square mile and situated adjacent to the boundary of any incorporated unit of general local government which has a population of 10,000 or more inhabitants. (Reference: The Intergovernmental Cooperation Act of 1968, 40 U.S.C. 535.)

(mm) *Workspace* means federally controlled space in buildings and structures (permanent, semipermanent, or temporary) which provides an acceptable environment for the performance of agency mission requirements by employees or by other persons occupying it. It is further classified as "office space", "storage space", or "special space". (Also, see § 101-17.601, Space classifications and standard alterations.)

(1) *Office space* means space which provides an environment suitable in its present state for an office operation.

(2) *Storage space* means space generally consisting of concrete, woodblock, or unfinished floors; bare block or brick interior walls; unfinished ceilings; and similar construction containing minimal lighting and heating. It includes attics, basements, sheds, parking structures and other unfinished building areas.

(3) *Special space* means space which has unique architectural/construction features, requires the installation of special equipment or requires varying sums to construct, maintain and/or operate as compared to office and storage space.

(nn) *Workstation* means a location within an office space assignment that provides a working area for one or more persons during a single 8-hour shift. Secondary or shared workstations are part of office support area.

Subpart 101-17.2 Assignment of Space

§ 101-17.200 Scope of subpart.

(a) This subpart describes the process for the determination of requirements and the assignment of space to GSA client agencies. The space assignment process described in this section is designed to expedite space delivery and ensure that quality workspace is delivered to client agencies in a timely manner. Section 101-17.201(g) below states that GSA will assist agencies early in the space delivery process by providing technical assistance in the development of space requirements. This will ensure that technical

information is accurate and complete and that unnecessary delays are minimized.

(b) A method for calculating utilization rates is established in § 101-17.201(h) below. The method focuses on the portion of the office assignment occupied by the personnel working in the space. This is called the Primary office area and is the part of the office space that has the best potential for utilization improvement. The Primary area in most GSA space is similar in use and configuration and its size is dictated by very similar factors. This is because most activities occupying GSA space perform similar administrative and managerial tasks. Therefore, greater consistency and uniformity can be attained in assigning this space.

The 125 square feet represents the amount of space occupied by employees housed in GSA office space—clerical, administrative, paraprofessional, professional, managerial, and executive—using either conventional furniture or furniture systems. The revised UR method develops a review threshold for assignments exceeding 125 square feet per person in the primary area. Assignments exceeding this threshold may be subject to further evaluation. When a request comes in at or below the threshold, GSA will expedite the request.

New assignments with fewer than eight employees are to be made at the most efficient utilization rate consistent with this regulation and sound principles of space planning and layout.

(c) Section 101-17.201 (h) and (i) require that space needs in Primary office area be based on the number of personnel to be housed and that personnel also be used for calculating UR. The use of personnel provides a visible and readily verifiable indicator of space needs. This method is more accurate and reliable than methods using workstations. Space for secondary or shared workstations is provided in the Support area. In addition to secondary/shared workstations, the Support area consists of reception areas, conference rooms, storage areas, processing areas, libraries, file areas, and extraordinary circulation (see § 101-17.600 for descriptions of Support areas). Support area needs are based on GSA client agency use of such space and the 22 percent reflects the inventory-wide average for GSA space. Support space does not include space classified as storage or special in appendix A of this regulation.

Support area requirements have the greatest variation among agencies since these requirements are primarily mission driven. Support space needs will be developed using professional methods and techniques. Twenty-two percent is the threshold beyond which further evaluation may be required.

(d) The division of office space into Primary and Support areas is a useful way for agencies and GSA to analyze office space requirements. It provides agencies with a way to check their own estimates and also provides the flexibility to recognize agency mission differences in the requirements development process.

(e) Section 101-17.201(m) describes the use of Space Allocation Standards (SAS) to formally recognize agency space needs. Requests for space where there is an

approved SAS that establishes standards different from those contained in this regulation shall refer to the approved SAS as supporting documentation. All SAS' in effect on or after January 1, 1987, will remain in effect.

§ 101-17.201 The space assignment process—agency development of need and GSA determination of requirements.

(a) This section describes the process for determining and documenting an agency's space needs and identifying the technical requirements and specifications that describe this need. These requirements are included in the Solicitation for Offers (SFO) and/or Request for Proposals for the lease and/or construction/alteration contract to ensure that all offerors are responding to the same need and to place the Government in the best possible competitive position.

(b) Requirements development is a joint GSA-agency responsibility. The agency is knowledgeable of its mission and program needs. GSA has the professional and technical knowledge and abilities to translate these needs into technical real estate requirements and deliver space that supports the agency's ability to execute its mission. It is the agency's responsibility to ensure that GSA has the information necessary to develop requirements in a timely manner. It is GSA's responsibility to provide the technical expertise necessary for timely requirements development.

(c) The space assignment process is designed to shorten and simplify space delivery; to promote a positive working relationship between GSA and client agencies, based on early joint planning; and deliver the optimum amount of space at the minimum cost to the Government. In this process, GSA assumes an early active role in the development of client agency requirements, and provides assistance in the preparation of the Request for Space (SF-81). The goal is to minimize and reduce the need for changes to requirements once the acquisition or alteration process has begun. This is accomplished by ensuring that requirements are developed accurately, using professional space planning standards and techniques; reflect the true needs of the client agency; and are agreed to by GSA and the client agency early in the process.

(d) GSA has the responsibility to assign and reassign space in an efficient manner using professional space management techniques. In making its space assignments, each GSA regional office will consider the prudent and judicious use of Government funds and resources and will base its decision on local market conditions, available vacant space, restrictions imposed by furniture and equipment, professional space management principles, and agency mission needs. Whenever possible, GSA will satisfy new space requests through the reassignment of vacant available space in the inventory. GSA will advise agencies when the space requested has been determined to be unique agency space.

(e) Agencies requiring space shall contact the appropriate GSA regional office. Within 2 weeks of the initial contact, GSA will

formally acknowledge the initial contact via letter, and will identify a GSA point of contact.

(f) Agencies will be asked to assemble preliminary information and to notify the GSA contact when the information is available.

(g) GSA and the agency will jointly develop space requirements through the completion of the Space Requirements Worksheet (SF-81A), a Space Requirements Questionnaire and a Request for Space (SF-81). (See §§ 101-17.4901 and 101-17.4901-81A, Standard Forms). In the requirement development process, GSA will place major emphasis on planning and programming to assure that the final space request accurately reflects the need of the agency.

(h) In developing space requirements, the analysis will center on the two components of general purpose office space: the primary (or personnel-occupied) area, and the office support area. The requirements development process will define the functions of the space to be designed; identify special agency requirements; review existing conditions; analyze spatial relationships and adjacency requirements; and, through application of the accumulated data, formulate the optimum solution for meeting the total space need. Emphasis will be placed on agency documentation of support area requirements including secondary/shared workstations. The resultant office space will reflect the optimum square footage required for the activity involved at the least possible cost to the Government.

(i) Since the primary personnel-occupied areas in most GSA-controlled offices are similar in use and configuration, uniformity and consistency of space assignments within these areas should be readily attainable. Therefore, in assessing utilization rates for its space assignments, GSA will focus on the square footage per person within the primary office area.

(j) The space allowance for the support area will be developed on the basis of professional standards and practices, and normally should not exceed 22 percent of the primary office requirement. (The specific amount of support space will be established during the analysis and planning process.) Support space requirements exceeding the 22 percent allowance will be subject to further analysis, and, possibly, higher level review within the GSA regional office. The support area will be comprised of the areas described in § 101-17.600, and will include secondary (or shared) workstation areas. Space requests within 125 square feet per person for primary office space plus 22 percent for support space will be subject to minimal review.

(k) Utilization targets for new space assignments will not apply to actions involving eight and fewer personnel. New assignments for eight and fewer personnel will be housed as efficiently as possible. The purpose of the exemption is to recognize that smaller assignments are sometimes more difficult to lay out efficiently. Therefore, they are not required to meet the same standard as large assignments. However, every effort shall be made to achieve the most efficient utilization rate possible in these assignments.

(l) Use of Standard Forms 81 and 81A, the forms identified in § 101-17.201(g) above, is

mandatory for all space requests to GSA. The Space Requirements Questionnaire must also be used, except in those cases where GSA determines that the size and complexity of the requirement does not demand the level of detail the form provides. Agencies may prepare the forms themselves (i.e., without GSA assistance) if they desire. Those so submitted will still be analyzed by GSA to verify requirements. Agencies are encouraged to obtain GSA assistance in preparation of the GSA Space Requirements Questionnaire.

(m) To assure uniform action on the part of GSA regional offices, GSA will use the data developed in the requirements development process to establish workstation typicals, support space typicals, test-case precedents, and Space Allocation Standards. These will all be used in developing subsequent space requirements in conjunction with the agencies or in reviewing requirements prepared by the agencies. Agencies interested in developing a space allocation standard should contact GSA's Office of Real Property Development (PQ), Washington, DC 20405. All standards negotiated since January 1, 1987, will remain in effect.

Note: Normal horizontal circulation is included in the space typicals developed by GSA. If, in GSA's judgment, there is an extraordinary circulation requirement (e.g., for safety, code, or security purposes) which exceeds the normal allowance, the excess amount will be regarded as support space.

(n) Upon completing assembly of all preliminary documentation including the SF-81A, the Space Requirements Questionnaire and all support data, the client agency and GSA shall complete the SF-81. This is a summary document that incorporates and summarizes all information gathered. In signing the SF-81 the client agency certifies: The need for the space requested; that funds are available to pay for the space and alterations; that the delineated area was designated in accordance with appropriate laws and executive orders and meets agency mission needs; and that an agency representative (by name) is available to accompany GSA on the market survey.

(o) Even though the SF-81 formally identifies an agency's space requirement, the space process starts when an agency informs GSA it has a need for space. The purpose of the new requirements development process is to facilitate the delivery of space. It is GSA's aim that both formal and informal processes be completed as quickly as possible and both the requirements development and acquisition phases will be monitored for timeliness throughout the effort. GSA and the agency will jointly develop a space delivery schedule for each project.

(p) When appropriate, GSA will request agencies to submit GSA Form 144, Net Space Requirements for Future Federal Building Construction (see § 101-17.4902-144).

(q) Agencies will be financially responsible for losses incurred by the Government as a result of any failure on their part to fulfill a commitment to accept space. Agencies are also financially responsible for any additional costs resulting from changes to space requirements made by the agency after a lease or alteration contract has been awarded.

§ 101-17.202 Exception to submitting requests for space.

§ 101-17.202-1 General exceptions.

Standard Form 81 need not be filed by Federal agencies when the space desired or to be acquired is:

(a) General purpose office space of 2,500 square feet or less falling within the geographical area where leasing authority has been delegated to the agency (see § 101-18.1 et. seq.).

(b) Special purpose space (see §§ 101-17.102(hh) and 101-18.104) of 2,500 square feet or less irrespective of geographical location.

(c) Space acquired by the U.S. Postal Service.

(d) Space for short-term conference and meetings (see § 101-17.203).

Note: Agencies are reminded of the need to maximize the use of vacant available Government-controlled space to meet their space requirements.

§ 101-17.202-2 Delegation of authority.

(a) Upon written request from an agency head, the Administrator may delegate authority to acquire space by lease when, in GSA's opinion, the delegation is in the best interests of the Government. GSA will specify the terms and conditions of any delegation in writing at the time the delegation is made. See § 101-18.104.

Note: Agencies having a need for parking shall utilize available Government-owned or leased facilities. Agencies shall make inquiries regarding availability of Government-controlled space to GSA regional offices and document such inquiries. If no suitable Government-controlled facilities are available, an agency may use its own procurement authority to acquire parking by service contract. This determination can be made at the regional level and does not require the authorization of the Administrator of General Services.

(b) Agencies acting under delegation shall make every reasonable effort to utilize existing Government-controlled facilities before acquiring new space. Agencies shall make inquiries to GSA regional offices regarding the availability of Government-controlled space, and the agencies shall document their lease files if such space is not available. This documentation may be submitted on an SF-81 and shall include the date of contact and the name and position of the GSA individual contacted.

(c) Agencies acting under delegation from GSA are required to comply with the relevant sections of this part 101-17, other pertinent portions of Subchapter D—Public Buildings and Space, and the General Services Administration Acquisition Regulations.

§ 101-17.202-3 Action when existing space is not available.

(a) If no suitable federally controlled space is available, GSA will advise the requesting agency by returning a signed copy of the Standard Form 81, showing the action to be taken.

(b) When the agency has acquisition authority or has been delegated such

authority by GSA, it may proceed to acquire the requested space consistent with existing laws and regulations. The signed copy of the Standard Form 61, if required, shall be attached to the leasing or related instrument made available to the General Accounting Office (GAO).

(c) At the agency's option, GSA may take necessary action to acquire space for agencies having acquisition authority when the latter so requests.

§ 101-17.203 Space for short-term use.

Agencies having a need for facilities for short-term use (such as conferences and meetings, judicial proceedings, and emergency situations) shall utilize available Government-owned or -leased facilities. Agencies shall make inquiries regarding availability of Government-controlled space to GSA regional offices and document such inquiries as outlined in § 101-17.202-2 (b). If no suitable Government-controlled facilities are available, an agency may arrange for the use of privately owned facilities for a period not to exceed 180 days. Extensions beyond 180 days must be approved by GSA.

§ 101-17.204 Space requirements for ADP, office automation and telecommunications equipment.

Agencies requiring space for the installation of specialized equipment shall provide information as described in § 101-17.602. This information should be forwarded to GSA in sufficient time in advance of equipment delivery so that space can be provided in a timely and efficient manner. This information shall be incorporated into the delivery schedule developed in connection with the preparation of the Standard Form 61. (See § 101-17.200(n).)

§ 101-17.205 Location of space.

(a) Each Federal agency is responsible for identifying the geographic service area; and for determining the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable statutes, regulations and policies, including those identified in § 101-17.101 (e)-(h). Specifically, under the Rural Development Act of 1972, as amended, agencies are required to give first priority to the location of new offices and other facilities in rural areas. The agency shall submit to GSA a supportive statement explaining the basis for the delineated area.

(b) For purposes of determining the requested delineated area for prospectus level space projects, client agencies must consider the impact of the following economic factors in those instances where their mission does not dictate a specific geographic area.

(1) *The availability of local labor pools.* Potential sources for this data are labor unions, city planning or economic development agencies, local chambers of commerce, and the Bureau of Labor Statistics.

(2) *Pay differential for Federal employees in high cost versus low cost areas.* This information may be obtained from the Office of Personnel Management (OPM), or the agency personnel office.

(3) *Real estate costs, including analysis of the cost of space in metropolitan (urban) as well as non-metropolitan (rural) areas.* Client agencies will contact the GSA Central Office to request rental rates for areas under consideration. The regional Real Estate Divisions of GSA will develop the appropriate information when requested by the GSA Central Office. The use of GSA real estate rental rates for agency economic evaluations will ensure consistency with the rates used in GSA prospectuses.

(4) *The value of the local incentives offered by communities to attract Federal activities.* This information should be obtained on a jurisdictional, rather than a site-specific basis. Only local incentives offered by Governmental bodies are to be considered.

(5) *Agency relocation costs for personnel and equipment.* GSA will provide typical moving costs for work stations and common office equipment to assist client agencies in developing this information. OPM may be consulted by client agencies to obtain information related to relocation of personnel.

Note: The client agency will be required to provide GSA a summary of its analysis under paragraph (b). The summary should be of sufficient depth to enable GSA to clearly understand the agency's mission needs and the data developed for each economic factor, including the source for the data. It should identify locations considered, state the level of importance of each factor and the impact of each factor upon the conclusions drawn by the agency in reaching its location decision. If required by GSA, the client agency shall provide more detailed documentation of its evaluation for OMB and Members of Congress.

(c) GSA shall survey agencies' mission, housing, and location requirements in a community and include these considerations in community-based policies and plans. These plans shall provide for the location of federally-owned and leased facilities, and other interests in real property including purchases, at locations which represent the best overall value to the Government consistent with agency requirements.

(d) Whenever practicable and cost-effective, GSA will consolidate elements of the same agency or multiple agencies in order to achieve the economic and programmatic benefits of consolidation.

(e) GSA will consult with local officials and other appropriate Government officials and consider their recommendations for, and review of, general areas of possible space or site acquisition. GSA will advise local officials of the availability of data on GSA plans and programs, and will agree upon the exchange of planning information with local officials.

(f) In satisfying agency requirements in an urban area, GSA will review agency requested delineated areas to ensure that the areas are within the centralized community business areas (CBAs) and adjacent areas of similar character, including other specific areas which may be recommended by local officials in accordance with Executive Order 12072. When developing the requested delineated area, the client agency shall comply with the requirements of Executive

Order 12072 which requires that first consideration be given to CBAs and other designated areas. If the delineated area requested is outside the CBA, in whole or part, the client agencies must provide GSA with adequate justification to support the delineated area. GSA will consult with local officials to identify CBAs. Each GSA regional office will provide, upon agency request, a description of the identified CBA for the community in which the agency requires space.

(g) GSA is responsible for reviewing an agency's delineated area to confirm that, where appropriate, there is maximum use of existing Government-controlled space and that established boundaries provide competition when acquiring leased space.

(h) The presence of the Federal Government in the National Capital Region (NCR) is such that the distribution of Federal installations will continue to be a major influence in the extent and character of development. These policies shall be applied in the GSA National Capital Region on the most cost-effective basis, in conjunction with regional policies established by the National Capital Planning Commission and consistent with the general purposes of the National Capital Planning Act of 1959 (66 Stat. 781), as amended. These policies shall guide the development of strategic plans for the housing of Federal agencies within the National Capital Region.

(i) Consistent with the policies cited in paragraphs (a), (c), (d) and (e) above, the use of buildings of historic architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505) will be considered as alternative sources for meeting Federal space needs.

§ 101-17.206 Move policy.

The situations which cause an agency to move and the responsibility for the relocation costs are indicated below. GSA is responsible for determining the most beneficial alternative course of action in each situation. (See § 101-17.101(f)(2) for a discussion of the telecommunications policy for GSA moves.)

(a) *Lease expiration.* GSA will determine if it is cost-effective to the Government to seek alternative leased space. Generally, this process will begin 18-24 months prior to lease expiration (or earlier for prospectus level projects) so that agencies have time to budget for expenses associated with above-standard alterations and telecommunications. When suitable federally owned or leased space is available to replace an expiring leased location, such space will be utilized in lieu of seeking alternative replacement leased space and the "lease expiration" funding responsibilities outlined in the matrix under Roman numeral "T" below will apply.

(b) *Agency expansion.* New requirements may generate the need for additional space. This can be provided at the existing location as contiguous expansion space, at a new location by separating the existing assignment from the new requirement, or by relocating the existing assignment and collocating with the expansion requirement

at a new location. Acquisition of expansion space shall be scheduled to coincide with lease expiration to the maximum extent practicable. Responsibility for the costs of providing expansion space is as follows:

- (1) GSA will pay for standard alterations in the expansion space (see § 101-17.208).
- (2) The expanding agency will pay for all of its telecommunications and above-standard requirements.
- (3) When an expanding agency has a justifiable need for contiguous expansion space and has to displace a neighboring agency, the expanding agency shall pay for its own moving costs, the displaced agency's moving cost and replication of the current above-standard alterations and "like telecommunications services".

(c) **Consolidation.** It is Federal Government and GSA policy to continually review the opportunities for consolidating several locations into one location. GSA shall prepare an economic analysis that demonstrates the cost effectiveness of consolidation. To the maximum extent practicable, agency consolidation shall be planned to coincide with lease expiration in order to keep costs to a minimum and reduce

adverse impacts on agencies. When an agency consolidation is GSA-directed, GSA will pay for standard alterations, above-standard alterations, moving costs and like telecommunications service. Consolidations include both single and multiple agency relocations to a single facility. They may involve the backfill of vacant federally owned or leased space, or the construction or acquisition of new federally owned or leased space to house one or more agencies. Where agencies moving to such consolidated facilities are relocating from an expiring leased location, the "Lease Expiration" funding responsibilities outlined in the matrix under Roman numeral "I" below apply. Where a relocation is not related to a lease expiration, GSA will apply the appropriate funding responsibilities as outlined in the matrix, under Roman numeral III.

(d) **Emergency relocation.** An emergency relocation results from an extraordinary event such as a fire, natural disaster, or immediate threat to the health and safety of occupants of the space which renders the current space unusable and requires that it be vacated. In these cases, it is necessary to act swiftly and expeditiously to react to the

emergency. This may require obtaining approvals and funding authorizations from OMB and Congress. It is best to have a central coordinator or such a task and GSA is suited for this role. GSA will be responsible for paying standard alterations, existing above-standard alterations, moving costs and like telecommunications service for emergency relocations. In cases where a significant Rent increase results from an emergency relocation, the agency will be relieved of the new Rent until the beginning of the fiscal year immediately following the first full fiscal year after the relocation occurred.

(e) **Repair and alteration relocations.** When an agency is displaced by construction activities in its assigned space resulting from a GSA repair and alteration project, GSA will be responsible for funding standard alterations, replication of existing above-standard alterations, moving costs and like telecommunications service.

A summary of relocation situations and identification of the responsible party (GASA or agency) is as follows:

Move situations	Standard alterations	Existing above standard	Moving costs	Telecommunications ¹
I. Lease Expiration	GSA.....	Agency.....	GSA	Agency
II. Agency Expansion:				
1. Avail Contiguous.....	GSA.....	Agency.....	GSA	Agency
2. Unavail Contiguous	GSA.....	Agency.....	GSA	Agency
3. Split Assignment.....	GSA.....	Agency.....	GSA	Agency
4. Displaced an Agency:				
A. Expanding Agency.....	GSA.....	ExpAgc.....	ExpAgc.....	ExpAgc
B. Displaced Agency.....	GSA.....	ExpAge.....	ExpAge.....	ExpAge
III. Consolidations:				
Agency Initiated	GSA.....	Agency	GSA	Agency
GSA Initiated	GSA.....	GSA	GSA	GSA
IV. Emergency	GSA.....	GSA	GSA	GSA
V. Repair/Alterations	GSA.....	GSA	GSA	GSA

¹ Effective October 1, 1991.

Note: Agencies shall be responsible for funding all above-standard alterations and telecommunications not currently provided in their existing location.

(f) **Preparation of agency budget estimates.** GSA will give agencies sufficient advance notice of lease expiration (18-24 months) to allow them time to budget for the costs of potential moves. GSA will provide technical support to assist agencies in the techniques of preparing budget estimates.

§ 101-17.207 Applications of socioeconomic considerations.

When actions are proposed to accomplish the reassignment or utilization of space through the relocation of an existing major work force, the impact on employees with low and moderate incomes and minority employees shall be considered. Under these circumstances, the requesting agency shall consult the Department of Housing and Urban Development in accordance with the Memorandum of Understanding between the Department of Housing and Urban Development and the General Services Administration. (See § 101-19.4800 for text).

§ 101-17.208 Standard alterations.

(a) **Standard Alterations (SA's)** are those alterations necessary to prepare an agency's space to meet a particular classification, i.e., office, storage, or special space, and permit occupancy of the space. Consistent with its responsibility to provide commercially comparable space, GSA will fund the cost of SA's. The alterations necessary to provide space at the classification requested by an agency are indicated in Appendix A of this part. Also shown are examples of items that are above-standard for the classification.

(b) There are situations when an agency's requirements exceed the standard level for a particular classification of space. In such cases, the requesting agency shall submit a GSA Form 2957, Reimbursable Work Authorization (RWA), to GSA to pay for the cost of the above-standard items including the cost of necessary design work. GSA will provide technical assistance to agencies in developing these costs. GSA cannot obligate funds for the acquisition or alteration of space without the RWA.

(c) In situations where GSA alteration funds are unavailable within the timeframe

requested by the agency, and the work is funded reimbursably and results in a higher cost space classification, the Rent rate per square foot will not be increased until the beginning of the fiscal year immediately following the first full fiscal year after the start of the alterations project. This will permit the requesting agency to budget for the increased Rent rate. The project start date is defined as the date the alteration request is received by GSA from the agency. If the alterations result in a lower cost space classification, the reduced Rent rate per square foot will be effective upon completion of the alterations.

§ 101-17.209 Wellness/physical fitness facilities.

Appendix B of this part sets forth the standard alterations provided by GSA for wellness/physical fitness facilities, and establishes criteria for the establishment of such facilities in GSA-controlled space.

§ 101-17.210 Child care centers.

Pursuant to 40 U.S.C. 490b, Federal agencies are authorized to allot space in

Federal buildings to individuals or entities who will provide child care services to Federal employees. Federal agencies in GSA-controlled space are responsible for determining their respective child care needs and then requesting the appropriate space from GSA. Upon receipt of such a request, along with the results of a needs assessment survey indicating sufficient employee interest, GSA will provide the standard alterations for the child care center. (See appendix C of this part).

§ 101-17.211 Centralized services in Federal buildings.

See 41 CFR part 101-5, regarding the establishment of centralized services in multi-occupant Federal buildings.

§ 101-17.212 Reviews and appeals of space assignments.

§ 101-17.212-1 Formal review.

A request for a formal review of a space assignment or space acquisition action shall initially be submitted to the appropriate GSA regional office by the agency official authorized to sign the Standard Form 81, Request for Space. A request for a formal review shall be in writing and shall include all pertinent information and supporting documentation. The GSA Real Estate Division will verify the data, perform additional investigations, as necessary, and issue a decision.

§ 101-17.212-2 Initial appeal.

(a) Within 15 calendar days after receiving the decision, the regional agency head or his/her designee may submit an appeal of the decision to the appropriate GSA Regional Administrator. In the appeal, the agency official shall state, in writing, the basis for the request for formal review.

(b) Within 15 calendar days, the GSA Regional Administrator will notify the agency of his/her decision. In cases requiring more detailed analysis than can be accomplished in 15 days, the Regional Administrator will notify the agency and establish a date on which his/her decision will be rendered.

§ 101-17.212-3 Final appeal.

Within 15 calendar days after the agency has been notified of the Regional Administrator's decision, a final appeal may be filed by the agency head with the Administrator of General Services. The Administrator will render GSA's final decision within 30 calendar days of receipt of the appeal whenever possible; if additional time is required, the Administrator shall notify the agency of the date a decision will be made.

Subpart 101-17.3 Utilization of Space

§ 101-17.300 Responsibility of GSA.

(a) GSA shall conduct space inspections and space utilization surveys to promote and ensure efficient utilization, recapturing for release or reassignment any space the agencies do not justify as being required. The agency will be provided with a written summary of significant findings and recommendations, together with data

concerning improvements which are planned by the agency, and those which are planned by GSA.

(b) GSA will maximize the use of vacant space in its inventory. All new requests for space will be carefully screened against vacant available space. GSA, in consultation with the requesting agency, will determine whether the request will be satisfied through the reassignment of suitable vacant space before action is taken to acquire new space.

(c) GSA will be responsible for promptly correcting an agency's assignment records, and for providing the agency a timely record reflecting that the change has been made.

§ 101-17.301 Responsibility of agencies.

Agencies shall cooperate with GSA in the assignment and utilization of space. Agencies shall:

(a) Furnish information regarding the use of assigned space;

(b) Furnish data on personnel consistent with budget submissions to the Office of Management and Budget (OMB) with the existing appropriations;

(c) Continually study and survey space occupied to ensure efficient and economical utilization of space consistent with the minimum amount required to perform the agency mission; and

(d) Promptly report to GSA any space which is excess to their needs for assignment to other agencies.

§ 101-17.302 Procedures for agency-initiated relinquishment of space.

(a) An agency occupying GSA-controlled space shall notify the appropriate GSA regional office as soon as possible, but at least 20 calendar days before vacating, whenever space is no longer needed. Notification shall be in writing, giving a description of the space, a floor plan, and the estimated date of release.

(b) When a portion of space is relinquished, that space shall be consolidated and made accessible and readily assignable or marketable. Expenses required to alter the space to these conditions shall be borne by the agency. Agencies should contact the GSA regional office to determine alteration requirements prior to initiating such alterations under their own authority.

(c) The agency shall be responsible for space charges until the date of release specified in the notification, or until the date space is actually vacated, whichever occurs later. When an agency has not made timely notification to GSA, that agency shall be responsible for space charges for a period of 120 calendar days following the date of notification or until the space has been reassigned, or terminated, whichever occurs first.

(d) When the space relinquished is "unique agency space," the agency shall also be responsible for space charges for a period of 120 days following notification. Further, beyond 120 days the agency shall be responsible for actual expenses incurred by GSA until:

(1) The space is assigned or otherwise disposed of by GSA, or

(2) The expiration of the term specified on the most recent Standard Form 81 applicable to the area in question.

(e) Agencies who commit to occupy space but never occupy that space are responsible for space charges for 120 days from the day they notify GSA that the space is not required. If the space is unique agency space, the provisions of Section 101-17.302(d) shall apply.

(f) When an agency is responsible for the operation, maintenance, and protection of Government-owned space assigned by GSA, and the agency determines that this space is no longer needed, the agency shall notify GSA at least 6 months before relinquishing the space. The operation, maintenance, and protection of the space shall continue to be the responsibility of the agency until the beginning of the next fiscal quarter following the end of the 6-month period.

Subpart 101-17.4 Space Programming, Layout, and Design Services

§ 101-17.400 Initial layout services.

(a) GSA recognizes that professional space programming and layout are necessary preconditions to achieving optimum space usage at a minimum cost to the Government and for the successful accomplishment of standard alterations and modifications to existing space.

(b) GSA will provide space programming and/or layout services for an initial space assignment; for expansion of an existing assignment; or for a GSA directed move at no cost to the agency. All requests shall be made to the appropriate GSA regional office.

(c) Agencies may also request other services in conjunction with initial layouts, such as master planning, macro-level programming, and interior design. GSA will consult with the agency to determine the scope of assistance required. Such services will be provided on a reimbursable basis. Agencies must certify the availability of funding before performance of services.

§ 101-17.401 Other services.

Agencies may request space programming, layout and interior design services for space actions other than initial layouts, such as reconfigurations of existing assignment, alterations, reductions, consolidations, requested relocations, and as-built drawings. Such services will be provided on a reimbursable basis. Agencies must certify the availability of funding before performance of services.

§ 101-17.402 Provision of services.

(a) No Federal agency occupying GSA-controlled space shall contract for these services without first consulting GSA. GSA may provide requested services through use of in-house professional staff or contracted professional space planning firms. In order to meet contractual commitments, avoid duplicated services and/or ensure cost-effectiveness, GSA may require agencies to use GSA space planning contracts.

(b) In the event that GSA is unable to provide requested services, either in-house or by contract, agencies may request a project waiver from the provisions of § 101-17.402(a) above to procure such services on their own authority. The request should be made to the

GSA regional Public Buildings Service and should document the unavailability of GSA-provided services, the basic scope of service required, and the name, location, and size of the project. If the request is approved by the regional office, the agency shall consult with GSA on contract scope, tasks, and deliverables.

(c) Regardless of the method used to provide these services, work performed on an agency's behalf in GSA-controlled space will be reviewed and approved by GSA to ensure that no adverse impacts on mechanical or utility systems, structural integrity, fire and safety requirements, or assignment management considerations would result.

(d) Requests for services which apply across GSA regional boundaries, such as development of nationwide bureau-level Space Allocation Standards, shall be made to the GSA Central Office, Office of Real Property Development (PQ), Washington, DC 20405.

(e) GSA will provide services on a reimbursable basis and on request for agency-controlled space as resources permit; however, priority must be given to requests from agencies occupying GSA-controlled space.

Subpart 101-17.5 Annual Census

GSA will conduct an annual census to determine space efficiency. A computer

printout will be distributed for each agency assignment by the GSA regional office. Verification of the data requires an agency representative to provide the peak number of personnel to be housed during the fiscal year. This printout is to be returned to the appropriate GSA regional office within 30 days of receipt.

Subpart 101-17.6 Illustrations

§ 101-17.600 Illustrations of office support space.

The following list describes the types of space included in the support area component of general purpose office space:

Support area	Description
Reception/waiting area	Identifiable (i.e., individually distinct) area of the office used for walk-in patron/clientele traffic and/or specific waiting area associated with conference room.
Hearing/meeting/interview areas	Identifiable area(s)/room(s) established specifically for one or more of the listed purposes.
File areas	Centralized files of material primarily from outside the operational unit (e.g., job applications, mortgage applications, etc.); official personnel files maintained by a central personnel office; active files of cases under adjudication that must be maintained in compliance with legal requirements or mission demands. All such files must be housed in a distinct area separated from other files.
Central storage areas	Separate areas used for central storage of supplies (may be physically secured with restricted access). Limited to one such space per operational unit site.
Processing area	Space dedicated to a machine or process, including copier rooms, mail rooms, microfiche areas, computer terminal areas, dry labs.
Library/reference area	Areas dedicated to functions normally associated with libraries; library/reference areas required by statutes, regulation, or mission. Libraries with no special features.
Secondary/shared workspace	Nondedicated workstations used more than 50 percent of the time by two or more persons occupying a space assignment during an 8-hour shift. It functions in support of the occupant agency's mission and is housed outside primary personnel-occupied office area.
Extraordinary circulation space	Horizontal circulation space which GSA determines must be provided to meet such needs as safety, security, and code requirements, and which exceeds the normal circulation included in GSA's space typicals.

§ 101-17.601 Space classifications and standard alterations.

Appendix A outlines the various classifications of general purpose office and related space and their associated standard alterations. Also shown are examples of items that are above-standard for the classification.

§ 101-17.602 Space for data processing, office automation, and telecommunications equipment.

This section contains the information required on space requests for these specialized functions.

(a) Agencies requiring space for the installation of such equipment must provide the following information in addition to the requirements of § 101-17.203:

- (1) Type of equipment (including make, model number, manufacturer, and number of units of each);
- (2) Space and environmental requirements, including:
 - (i) Floor weight (lbs.);
 - (ii) Machine dimensions (width, depth, and height in inches);
 - (iii) Services clearance (front, rear, right and left sides);
 - (iv) Power in voltage and kv.-a. (starting loads and operating loads);

- (v) Heat dissipation in B.T.U./hr. and air flow (c.f.m.); and
 - (vi) Need for raised floor, acoustic ceiling, and air-conditioning.
- (3) Related requirements, such as storage space for supplies, tapes, and disks; workspace, including desk and aisle space; and future expansion needs;
- (4) Agency responsibility for funding; and
- (5) Required occupancy date.

(b) The above information should be provided as separate supplemental data to Standard Form 81, Request for Space, and forwarded to the GSA regional office. The space requirements indicated on Standard Form 81 must include the space requirements for all components of Automated Data Processing, Office Automation and Telecommunications Equipment. The supplier should be consulted prior to establishing space needs in order to ascertain any specific or peculiar space requirements of the equipment involved.

(c) It is essential that this information regarding the requirement for such space be transmitted to GSA as far as possible in advance of delivery of equipment (preferably 18 months or more) so that space can be provided in a timely and economical manner.

Subparts 101-17.7 Thru 101-17.46 [Reserved]

Subpart 101-17.47 Exhibits

§ 101-17.4700 Scope of subpart.

This subpart 101-17.47 illustrates information referred to in the text of part 101-17 but not suitable for inclusion elsewhere in that part.

§ 101-17.4701 Memorandum of Understanding between the U.S. Department of Agriculture and the General Services Administration concerning the location of Federal facilities.

Memorandum of Understanding Between the U.S. Department of Agriculture and the General Services Administration concerning the location of Federal facilities.

Purpose. The purpose of this Memorandum of Understanding is to provide an effective arrangement whereby the Department of Agriculture and the General Services Administration will cooperate to implement the National Urban Policy. This memorandum requires that in urban communities, offices and facilities of the Department will be located in central business areas wherever such location is consistent with program requirements.

1. The President's March 27, 1978, message on urban policy included a directive to the General Services Administration to retain

Federal facilities in urban areas and to put new ones there.

2. On August 16, 1978, the President signed Executive Order 12072, "Federal Space Management," which requires the location of Federal facilities in such a manner as to strengthen the Nation's cities, and mandates that in urban areas first consideration be given to locating Federal facilities in the central business area or adjacent areas of similar character.

3. The Secretary of Agriculture recognizes the significant role the Department can play and the need to assist the Administrator of General Services in carrying out the requirements of Executive Order 12072.

4. The Rural Development Act of 1972, as amended, requires that consideration be given to locating Federal facilities in rural areas, and Executive Order 12072 on Federal Space Management is consistent with the requirements of the Rural Development Act in that it concerns the location of agencies subsequent to considering the requirements of the Act.

5. It is the policy of the Department of Agriculture to house within the same building (colocate) the county level offices of the Agricultural Stabilization and Conservation Service, Cooperative Extension Service, Federal Crop Insurance Corporation, Farmers Home Administration, and Soil Conservation Service, as well as local offices of other Agriculture agencies delivering services at that level. The General Services Administration supports this policy.

6. The Department of Agriculture and the General Services Administration agree that:

a. The program and mission requirements of the agencies of the Department permit most of their offices and facilities above the county level to function suitably in the central business area of the urban areas where they are located. This includes all regional and state offices, certain research facilities, and all agencies whose operations are not affected in the delivery of services by location.

b. First consideration will be given to housing county level field offices in federally controlled space in the central business area of urban areas and incorporated rural communities. However, in cases where federally controlled space is available it must be economically adaptable to meet Agriculture needs in a timely manner (including the total needs for collocated facilities). Otherwise, the primary locational consideration shall be the program requirements of the agencies and accessibility for their clientele. In such instances, the outskirts of the cities and towns are more appropriate for these activities. Additionally, central business district locations are often not suitable for Forest Service District Ranger offices and other offices with special program needs for specific locations, such as plant, grain, animal, meat inspectors, and certain research facilities, or cooperative functions with State and local governments.

7. Therefore, this agreement will govern the acquisition of space by the General Services Administration for the Department of Agriculture, and the Department using its own or delegated leasing authority.

When a variance from this agreement is requested by either agency it shall be the responsibility of the requesting agency to present a compelling and fully substantiated case.

8. The term "urban area" and "central business area" are used in accordance with the definitions in the Federal Property Management Regulations.

9. This agreement and guidelines shall remain in effect until canceled by one or both parties on 90 days notice.

10. The parties to this Memorandum of Understanding agree to meet and review this agreement for effectiveness after the conclusion of 1 year.

Dated: October 25, 1979.

Jim Williams,

Acting Secretary of Agriculture.

Dated: December 29, 1979.

R. G. Freeman III,

Administrator of General Services.

Guidelines in Support of Memorandum of Understanding Between the U.S. Department of Agriculture and the General Services Administration Concerning the Location of Federal Facilities

The Memorandum of Understanding will permit the Department to support GSA in implementing Executive Order 12072, particularly the requirement to locate Federal facilities in the central business area of communities, while at the same time recognizing the location requirements of certain special facilities and the county level field service offices. This will assist the Department in its collocation policy for county level offices and other local offices of Agriculture agencies delivering service at that level. The objectives of this policy are to:

Provide better service to clients through one stop access and improved office coverage;

Increase public participation in conservation and stabilization through increased exposure to the full range of available programs;

Disseminate information to more prospective users by directing the clients of one agency to the services of another;

Improve the cooperation of Federal, State, and county program administration;

Achieve administrative economies;

Enable closer coordination of Agriculture county level programs at the delivery point;

To achieve these goals, the support of GSA is required by treating these offices as a single unit leasing action when requested by the Department.

Because of the differences in the ways in which the involved agencies are required by statute to procure and manage space, accommodations in leasing arrangements and charges are necessary to permit maximum collocation. For example, space of Cooperative Extension Service (CES) is provided or funded by the county government. In cases where CES cannot locate in Federal space, and the Department does not have delegated leasing authority, GSA should, consistent with the Federal Procurement Regulations and the Federal Property Management Regulations, lease space from or through the county in order to permit collocation.

For similar cases in which Agriculture county offices are working through cooperative efforts with State and county counterparts (e.g. Conservation Districts, State Forestry Offices, County Planning Boards, Representative Committees), and the Department does not have delegated leasing authority, GSA should, consistent with the Federal Procurement Regulations and the Federal Property Management Regulations, acquire space to permit the Agriculture offices to be located with these State and local groups.

Agriculture county level office programs are largely service oriented and depend on voluntary public participation for their effectiveness in achieving key national objectives of resource conservation, economic stabilization, and rural development. It is necessary that GSA recognize that location, provision, maintenance, and accessibility of county office facilities have a direct and significant impact on achieving this mission and must be administered accordingly.

Consistent with the Rural Development Act of 1972, as amended, the new Executive Order on Federal Space Management will not be used as a basis for moving Agriculture offices from rural to urban communities.

All Agriculture regional offices, State offices, and certain research facilities, and all agencies whose operations are not affected by location will be located in the central business area of the community in which they are located whenever such location is consistent with program requirements. Exceptions will be considered only on a case-by-case basis where application of this policy represents clearly demonstrable and quantifiable inhibitions to the delivery of program services.

First consideration will be given to housing county level field offices in federally controlled space in the central business district of the community. Exceptions, in addition to lack of sufficient economically adaptable space, must be based on clearly demonstrable inadequacies, such as inadequate parking for clientele, prohibition of trucks and other commercial vehicles on the streets leading to the building, location of the building in a community outside the area being served, failure to meet the handicapped requirements, unsafe or unhealthy working conditions.

§ 101-17.4702 Memorandum of agreement between the General Services Administration and the U.S. Postal Service for implementing the President's urban policy.

Agreement Between the General Services Administration and the U.S. Postal Service for Implementing the President's Urban Policy.

GSA—USPS Urban Policy Memorandum of Agreement

Whereas the United States Postal Service, hereafter called USPS, and the General Services Administration, hereafter called GSA, share common goals and common needs in carrying out their missions and in implementing the President's urban policy by

locating facilities in Central Business Areas (CBA) of Urban Areas (UA), and.

Whereas for the purpose of this agreement a UA means any Standard Metropolitan Statistical Area (SMSA) as defined by the Department of Commerce. An area which is not an SMSA is classified as an urban area if it is one of the following:

(1) A geographical area within the jurisdiction of any incorporated city, town, borough, village or other unit of general local government, except county or parish, having a population of 10,000 or more inhabitants; (2) that portion of the geographical area within the jurisdiction of any county, town, township, or similar governmental entity which contains no incorporated unit of general local government but has a population density equal to or exceeding 1,500 inhabitants per square mile; and (3) that portion of any geographical area having a population density equal to or exceeding 1,500 inhabitants per square mile, situated adjacent to the boundary of any incorporated unit of general local government which has a population of 10,000 or more inhabitants; and CBA means those areas within a central city in an SMSA or those areas within any non-SMSA urban area which encompass the community's principal business and commercial activities, and the immediate fringes thereof, as geographically defined in consultation with local officials. A central city means any city whose name appears in the title of an SMSA, and.

Whereas GSA and USPS believe that the public welfare can be better served by increased cooperation between the two agencies, and.

Whereas the existing agreement does not cover all areas of agreement and cooperation necessary to promote those goals and needs which are desirable between the two agencies.

Now therefore, USPS and GSA agree to the following principles:

I. In order to better attain the goals of Executive Order 12072, Federal Space Management, and the President's Urban Policy, USPS and GSA agree to take steps to improve coordination of planning activities for new facilities in urban areas, including the following:

A. In planning to construct a facility in a community, USPS and GSA will give preference to locating such facilities in the CBA unless the program requirements of the activities to be housed dictate that the facility be located elsewhere in the urban area.

B. As early as possible in the planning of a project to be satisfied by new construction in a CBA, the planning agency shall notify the other agency of the proposed project. If both USPS and GSA agree that a joint project is economically beneficial, then a determination will immediately be made as to which agency will be responsible for the planning; the basis for this determination will be occupancy in excess of 55 percent of the proposed space, i.e., unless USPS will occupy over 55 percent of the net Rental area, GSA will be the owner agency. Regardless of which agency is the owner agency, the tenant agency will guarantee occupancy of the space planned for that agency for a minimum period of 10 years, unless period of time is mutually agreed upon by both agencies.

(1) General Services Administration.

(a) Projects requiring congressional approval.

(Note: Prospectus levels discussed in this section have been changed by the Public Buildings Amendments of 1988. See Public Law 100-678, 40 U.S.C. 606.) Lease construction projects having an annual net Rent of \$1,500,000 or more or Federal construction and repair and alteration projects having a total project cost of \$1,500,000 or more require approval of a prospectus or a Report of Building Project Survey by the Public Works Committees of the Congress.

When such a project is in the preparation stage, GSA's regional office will notify the appropriate USPS regional office that it is contemplating a project in the CBA. If USPS has a long-range space requirement that could be satisfied in the CBA, it will advise GSA's regional office so that space may be included in planning the proposed project. When GSA's Central Office submits the prospectus for the proposed project to the Office of Management and Budget for approval and subsequently to the Public Works committees of the Congress for authorization, copies of the prospectus will be furnished to the USPS Headquarters office and the appropriate USPS regional office. At any time during the planning and approval process that USPS determines it does not have a requirement for space, the USPS Headquarters office will advise the GSA Central Office of this requirement change. Prior to commencing with the design of the building, the GSA regional office will obtain the final space requirements from the USPS regional office along with a firm commitment to occupy the space for a minimum period of 10 years, or any other time that is mutually agreed upon between the two agencies.

(b) Projects not requiring congressional approval. When GSA plans a project not requiring Congressional approval and to be located in the CBA, GSA's regional office will notify the appropriate USPS regional office. If USPS has a long-range space need that could be satisfied in the CBA, it will advise GSA's regional office so that space may be included in the proposed project. Prior to GSA soliciting offers requesting firm proposals to lease the required space, the GSA regional office will obtain the final space requirements from the USPS regional office along with a firm commitment to occupy the space for a minimum period of 10 years or as may be mutually agreed upon between the appropriate regional offices of the USPS and GSA.

(2) United States Postal Service.

(a) Within 7 days after approval of the USPS 5 year budget plan, the Postal Service will provide GSA with a list of approved projects. If GSA wishes to participate in any of the planned projects, GSA will advise USPS of its interest in participation within 90 days after notification by USPS, give an estimate of the amount and type of space required, and will commence necessary studies to develop firm space needs.

When GSA indicates an interest in participation, the USPS responsibility for planning activities shall then coordinate space planning activities with the appropriate

GSA region so that an adequately sized site is acquired for the facility. Prior to commencement of design of the building, GSA shall furnish final space requirements to the USPS and a firm commitment to occupy the space for a minimum period of 10 years or any other term that may be mutually agreed upon by both agencies.

(b) During the USPS planning phase of the project, the contact point for GSA within the Postal Service will be the Director, Real Estate and Buildings Department, for the USPS region responsible for the planning.

After approval and authorization of funding by the USPS for the project, the USPS point of contact shall remain the same, unless the project has been determined to be a major USPS facility. In such cases, the GSA Commissioner, Public Buildings Service, will be notified that the new point of contact will be the Assistant Postmaster General, Real Estate and Buildings.

C. Both agencies recognize that decisions to occupy space are based on an expected period of occupancy. Delays in the planning, approval, funding and start of design phases of a project could alter these decisions. It is therefore agreed that both parties will provide an expected date that space will be available at the time of initial project notifications. Project delays occurring at any time of initial project notifications. Project delays occurring at any time from initial notification through start of design will be reported to the tenant agency and may be cause for cancellation of any commitment to occupy space.

D. When USPS or GSA has control over a site in the UA which is needed by the other agency for a project, the agencies agree to make such sites available to each other to the maximum extent practicable and possible under laws and regulations governing each agency, i.e., one agency acquiring a site by transfer from the other through the land bank or GSA obtaining an assignable option from USPS for a lease construction project.

II. When GSA or USPS seeks leased space, available space in both agencies' inventories shall be considered before any advertisement for privately owned space. If the available space is not acceptable to the acquiring agency then the acquiring agency shall advise the holding agency and allow the holding agency sufficient time to accommodate the acquiring agency's objection, provided the mission need of the tenant agency will not be adversely affected by the delay. If the space would be suitable with alterations which would normally be the responsibility of the owner agency, but the owner agency does not have funds to make those alterations, then the tenant agency may fund the alterations. In such cases, the Rent charged the tenant shall be based upon the condition of the space prior to the alterations and the space will not be subject to preemption by the owner agency for a period of 10 years or such other time to which the two agencies shall agree. In any case, the period shall not be less than 3 years.

In the case of Renting, the acquiring agency shall guarantee to the holding agency continued occupancy of a period sufficient to amortize construction costs whenever

extensive repairs and remodeling are required. Repairs and alterations shall be made in accordance with existing agreements.

III. It is recognized that both agencies have a vested interest in conserving energy; therefore, to ensure that both agency benefit from the experience and technology of the other, it is agreed that each agency will furnish to the other reports, studies, research, and development data in the field of energy conservation once this information is accepted by the contracting agency. Additionally, internal policies and procedures relating to energy conservation shall be exchanged as they are issued.

IV. Both agencies recognize the national interest in preserving historic buildings, each having several hundred designated historic properties in its inventory. In order to conserve our Nation's cultural heritage, it is agreed that, as early as possible, in the planning process each agency will notify the other as to its need to vacate an historic building so that the other may give proper consideration to acquiring and utilizing such property.

V. It is recognized by both agencies that improved communications between USPS and GSA will benefit not only both agencies, but also all Federal agencies, local jurisdictions, and the general welfare. Many of the misunderstandings result from problems and situations which are not covered in the present agreement between the two agencies (dated August 1974).

Therefore, it is agreed that the existing agreement shall be amended and approved by both agencies no later than June 30, 1979. It is also agreed that the Commissioner of the Public Buildings Service of GSA and the Assistant Postmaster General, Real Estate and Buildings Department of the United States Postal Service, shall meet annually in September to review the continuing working relationship of the agencies. Such meetings will commence in September 1979.

It is also agreed that the terms of the agreement between GSA and USPS shall be equally binding on both agencies, internal regulations of either agency notwithstanding. In order to maintain continuity and coordination with respect to this agreement, there will be a single point of contact within each agency for all matters pertaining to the relationship between GSA and USPS. That contact shall, in turn, be responsible for coordinating within his respective agency. At GSA, the point of contact will be the

Assistant Commissioner for Real Property Development, Public Buildings Service. At USPS, the point of contact shall be the Director, Office of Real Estate. The point of contact for exchange of project requirements, as specified by sections I and II of this agreement, at the regional level are as follows: The GSA contact shall be the Director, Real Estate Division, Public Buildings Service and USPS contact shall be the General Manager, Real Estate Division.

VI. Upon signing this memorandum of cooperation agreement, GSAS and USPS shall issue appropriate instructions to the field implementing this agreement. The agreement will become effective 90 days after it is signed to allow each agency time to issue the proper implementing instruction.

Jay Solomon,

Administrator.

Dated: March 21, 1979.

William F. Bolger,

Postmaster General.

Dated: March 23, 1979.

Subpart 101-17.48 GSA Regional Offices

§ 101-17.4800 Scope of subpart.

This subpart identifies the regional offices of GSA, describes the geographical areas of jurisdiction, and lists the office address.

§ 101-17.4801 GSA regional offices.

GSA region	Area served	Mailing address
2	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey (Bergen, Passaic, Morris, Essex, Hudson; Union, Middlesex and Monmouth), New York, Rhode Island, Vermont, Puerto Rico, U.S. Virgin Islands.	General Services Administration, 26 Federal Plaza, New York, NY 10278.
3	Delaware; Maryland (except NCR area), Pennsylvania, Virginia (except NCR area), West Virginia, all other counties of New Jersey.	General Services Administration, Ninth and Market Streets, Philadelphia, PA 19107.

GSA region	Area served	Mailing address
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	General Services Administration, 401 West Peachtree Street, NW, Atlanta, GA 30365-2550.
5	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	General Services Administration, 230 South Dearborn Street, Chicago, IL 60604.
6	Iowa, Kansas, Missouri, Nebraska.	General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131.
7	Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, South Dakota, Oklahoma, Texas, Utah, Wyoming.	General Services Administration, North 819 Taylor Street, Fort Worth, TX 76102.
9	Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington; Guam, Trust Territory of the Pacific Islands, American Samoa, NCR Washington, DC and nearby metropolitan area of Maryland and Virginia.	General Services Administration, 525 Market Street, San Francisco, CA 94105. General Services Administration, 7th and D Streets, SW., Washington, DC 20407.

Subpart 101-17.49 Forms

§ 101-17.4900 Scope of subpart.

This subpart contains information on forms that pertain to the assignment and utilization of space and instructions in their use.

§ 101-17.4901 Standard forms.

(a) Forms referenced to this § 101-17.4901 are Government standard forms. The subsection numbers in this section correspond with the standard form numbers.

(b) Supplies of standard forms can be obtained from the nearest GSA supply distribution facility.

BILLING CODE 6820-23-M

Section 101-17.4901--81 Request for Space

REQUEST FOR SPACE (See instructions on reverse)			1. DATE	2. AGENCY REQUEST NUMBER	3. LOCAL AGENCY CONTACT
5. TO: GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE			6. FROM:		
NO. STREET ▶			AGENCY ▶		
CITY & STATE ▶			NO. STREET ▶		
ZIP CODE			CITY & STATE ▶		
8. TYPE OF REQUEST			9a. GEOGRAPHIC SERVICE AREA		
<input type="checkbox"/> INITIAL <input type="checkbox"/> CONTINUING REQUIREMENTS <input type="checkbox"/> EXPANSION <input type="checkbox"/> REDUCTION					
10. TERM OF OCCUPANCY			NO. OF YEARS FIRM TERM		
FROM (mo. & yd)			TO (mo. & yd)		
12. SPACE REQUIREMENTS					13. SPECIAL
					<input type="checkbox"/> ATTACH
OFFICE	TYPE OF SPACE	NO. OF PERSONNEL	SQ. FT. PER PERSON	SQ. FT.	TOTALS
	1. PRIMARY OFFICE AREA				
	2. OFFICE SUPPORT AREA				
	3. OFFICE SPACE SUBTOTAL				
STORAGE	b. ST 1 GENERAL STORAGE				
	c. ST 3 WAREHOUSE STORAGE				
	d. STORAGE SUBTOTAL (lines b, c)				
SPECIAL	e. SP 1 LABORATORY & CLINIC				
	f. SP 2 FOOD SERVICE AREA				
	g. SP 3 STRUCTURALLY CHANGED				
	h. SP 4 AUTOMATED DATA PROCESSING				
	i. SP 5 CONFERENCE & TRAINING				
	j. SP 6 LIGHT INDUSTRIAL				
	k. SP 7 QUARTERS/RESIDENTIAL HOUSING				
l. SPECIAL SUBTOTAL (lines e-k)					
m. TOTAL SPACE REQUIRED (lines a, d, & l)					
n. OPEN LAND (Total acres)					
o. ST 2 INSIDE PARKING (No. of spaces)					
p. OUTSIDE PARKING (No. of spaces)					
q. TOTAL PARKING SPACES (lines o, p)					

CONTACT (Name)	PHONE NO.	4. AGENCY MARKET SURVEY REPRESENTATIVE (Name)	PHONE NO.
		7. FOR: AGENCY ADDRESS ZIP CODE BUREAU CODE	
90. DELINEATED AREA			
11. TOTAL NO. OF PERSONNEL TO BE HOUSED			
SPECIAL REQUIREMENTS AND SERVICES (see attached)			
ATTACHMENT(S)			
14. AGENCY CERTIFICATION			
Certify that this request is accurate and complete; is for the minimum amount of space required; is in compliance with FPMR 101-17, including all laws and executive orders governing the location of space; and that funds are available for payment of rent, moving expenses, telecommunication expenses, and any related reimbursable expenses.			
SIGNATURE	PHONE NO.	DATE	
PRINT NAME AND TITLE			
15. FOR GSA USE ONLY (Action by Authorized GSA Official)			
GOV'T CONTROLLED SPACE TO BE ASSIGNED			
NO GOV'T SPACE AVAILABLE LEASING ACTION PLANNED			
UNIQUE AGENCY SPACE DETERMINED - SEE ATTACHED			
AGENCY AUTHORIZED TO ACQUIRE SPACE UNDER ITS OWN AUTHORITY			
COMMENTS ATTACHED			
SIGNATURE OF AUTHORIZED GSA OFFICIAL		PRINT NAME AND TITLE	
REQUEST NO.	DATE RECEIVED		
NAME OF GSA REGIONAL CONTACT	PHONE NO.		

STANDARD FORM 81 (REV. 2-83)
Prescribed by GSA - FPMR (41 CFR) 101-17

(a) Page 1 of Standard Form 81

INSTRUCTIONS**Submitting the SF-81**

Submit the SF-81 in triplicate, accompanied by a completed SF-81A, Space Requirements Worksheet, Space Requirements Questionnaire and any additional documentation to fully support the agency's space needs. Failure to provide complete and accurate information will delay processing and may result in return of the SF-81 for correction, update, and resubmission.

The SF-81 must be submitted by the office which has authority to obligate funds to reimburse GSA for all applicable costs associated with the delivery of space. Agency fund components which do not have delegated authority to obligate funds must coordinate submission and approval of the SF-81 with offices which have this authority. A GSA Form 2957, Reimbursable Work Authorization, should be submitted when applicable.

Item 1. Date form is prepared.

Item 2. Agency established request number.

Item 3. Name and phone number of the local agency official who is knowledgeable of the request and will serve as the agency's point of contact for this project.

Item 4. Name and phone number of agency representative who will work with GSA if a market survey is conducted. This individual must have the authority to determine acceptability of the building and/or sites and their location.

Item 5. GSA regional office which has jurisdiction for geographical area where space is required.

Item 6. Name and address of organization making the request.

Item 7. Name of agency, and bureau code of the organization which will occupy the space (e.g. regional office, district office, field office) if different than information provided in Block G. City and state where the space is requested.

Item 8. Type of request. **Initial:** A request for new space that is not associated with an existing assignment. **Expansion:** A request for additional space associated with an existing assignment. **Continuing requirements:** A space action required for a lease renewal, succeeding lease, lease extension or more. **Reduction:** A space action that requires regional Real Estate Division effort to effect the partial or total termination of an assignment.

Items 9a. and b. Geographic/Delineated area that the agency will service. The geographic area (State, city, county, zip code, etc.) for which an agency/bureau has operational responsibility as well as the specific delineated area as identified and justified by the requesting agency. GSA review of the delineated area shall be limited to ensuring that the delineated area will provide adequate competition and the maximum use of existing Government controlled space (see Item 14 Agency Certification).

Item 10. Period of time the organization will use the space and the suggested number of years for a firm term period. This time period must be representative of the longest period for which the agency can commit. "Indefinite" and "ASAP" are not acceptable responses.

Item 11. Total number of personnel to occupy the requested space. ("Personnel" means the peak number of persons to be housed, regardless of how many workstations are provided for them, in addition to permanent employees of the agency, personnel includes temporaries, part-time, seasonal, contractual employees and budgeted vacancies.)

Item 12. This portion of the SF-81 is used to identify agency's square footage requirements by type of space. All information should be supported by a detailed explanation on the Space Requirements Questionnaire and SF-81A.

Item 12, line a. This line identifies the Office Space Subtotal. The Office Space Subtotal is determined by entering the amount of space required for the primary Office area and adding this to the amount required for the office support area. "Primary Office Area" is the primary people occupied area in which an activity's normal operational functions are performed.

"Office Support Area" refers to the areas constructed as office space and used to meet needs outside the agency's primary work area requirements (e.g. reception, conference, file, libraries, hearing, interview, and secondary work areas). Office support areas should be clearly identified on the attached SF-81A and Space Requirements Questionnaire.

Item 12, lines b, c. Amount of general and warehouse storage space required. (See Item 12, line o for SF 2' inside parking).

Item 12, line d. Total amount of storage space required (add lines b and c).

Item 12, lines e-k. Amount of special space required.

Item 12, line l. Total amount of special space required (add lines e through k).

Item 12, line m. Total amount of Office, Storage and Special space required. (add lines a, d, and l).

Item 12, line n. Total acres needed. For amounts less than 1 acre, 1 acre equals 43,560 square feet.

Item 12, line o, p. Agency's inside and outside parking requirement. Certification that the parking is necessary for the efficient operation of the agency mission is required. One parking space equals 300 square feet. Please indicate the number of spaces.

Item 12, line q. Total parking spaces required. (Add lines o and p).

Item 13. This item refers to the specific architectural, mechanical, electrical, structural, and other special requirements related to each of the types of space requested in Item 12. These include security; electrical HVAC; floor loading; sound conditioning; fire and safety; and the need for after hours building access, utilities, and cleaning services. Such requirements must be fully defined by area, including computer rooms, laboratories, conference rooms, etc.. These requirements must be specified in detail on the Space Requirements Questionnaire and SF-81A. Check box in Item 13 to indicate if this information is attached.

Agency Certification

Item 14. The certification must be signed by an authorized agency official.

Item 15. GSA will evaluate the request in terms of the space available in its inventory and determine the appropriate action. If GSA determines that space requested is unique agency space, GSA will take no action until the agency has concurred with that designation. GSA will assign a space request number which will be used to track the request until it is satisfied.

Name and phone number of the GSA regional official who is knowledgeable of the request and will serve as GSA's point of contact.

STANDARD FORM 81 BACK (REV. 2-89)

STANDARD WORKSPACE DESIGN NO. 													
WORKSPACE DESCRIPTION ▼	GRADE	SPACE TYPE	ENCLOSURE	SQUARE FEET	DESKS	CREDENZAS	CHAIRS	TABLES	FILES	RC	ST	SS OR LS	MISC.
WORKSPACE DESIGN: (SCALE 1/4" = 1'0")													

GPO: 1984-429-909

STANDARD FORM 81-A PART 2 (10-83)

§ 101-17.4902 GSA forms.

(a) Forms referenced to this § 101-17.4902 are GSA forms. The subsection numbers in this section correspond to the GSA form number.

(b) Agencies may obtain their initial supply of GSA forms from GSA National Forms and Publications Center, Box 17550, 819 Taylor Street, Fort Worth, TX 76102-0550. Agency field offices should submit all future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (CAR), Washington, DC 20405.

BILLING CODE 6820-23-M

I N S T R U C T I O N S

This report is to provide information as a basis for the design of the Federal building specified on the face of this form.

Additional copies of the form, or attachments on plain paper with appropriate headings, should be used if necessary to furnish complete information. If space is not desired in the proposed building, enter a statement to that effect at the bottom of Part II of this form.

PART I

A and B: NET SPACE NOW OCCUPIED. Enter complete information for each kind of occupancy. Use a separate column for each building. Enter the building name in the space provided, and give the aggregate of each kind of space occupied in the building. The dimensions for computing net space are taken from the inside faces of exterior walls to faces of corridor walls, and from center to center of cross partitions for the faces of partitions separating net assignable areas from other areas).

PART II

NET SPACE REQUIREMENTS. The entries here should indicate the net space requirements based on staffing permitted by current appropriations or authorizations. Space allowances for additional staffing based on future programs will be shown by GSA only if such programs have Bureau of the Budget approval. Space ultimately will be assigned in accordance with GSA Reg. 2-8, with due regard to the allowances set forth in section 502.00 of that Chapter. Agencies should be guided accordingly in stating estimated net space requirements. Exclude estimated space requirements for temporary or emergency expansion.

PROPOSED USE OF ROOMS: List the types of occupants such as "Executives", "Junior Executives", "Secretaries", and "Clerks" in the order of planning arrangement, or in the order of preferred arrangement if no plan has been made. If any of the following types of rooms or facilities are needed, give the additional information required for each:

Conference or meeting room	- Number of persons to be seated.
Counters	- Length and location.
File Room	- Number and type (letter, legal or special) of file cases.
Laboratory	- Quantity and dimensions of fixed equipment.
Library	- Number of volumes and readers.
Service platform and yard	- Number and size of vehicles and extent of shipping activities.
Storage and supply room	- Quantity and type of material stored and extent of activity.
Vaults	- Size and purpose.

A special justification is required, explaining the need in detail, for any unusual requests for space.

Complete and accurate data must be entered in Part II; the size and cost of the contemplated building will depend upon these data.

GSA FORM 144 (BACK) (2-85)

(b) Page 2 of GSA Form 144

APPENDIX A.—CLASSIFICATION AND STANDARD ALTERATIONS

Classification	Standard alterations (SA's)
<p>A. <i>Office Space</i> (Space which provides a suitable environment in its present state for an office operation, and which includes, among other features, adequate lighting, heating and ventilation, floor covering, finished walls, and accessibility.) The following represent uses of office space:</p> <ol style="list-style-type: none"> (1) General purpose office space, (2) Private corridors, (3) Meeting rooms (without special equipment and additional heating, ventilation, and air-conditioning (HVAC)), (4) Training rooms (without special equipment and HVAC), (5) Libraries (without extensive built-in stacks and special floor loading), (6) Dry laboratories, (7) Storage in office space, (8) Credit unions (without fixed equipment), (9) Lounges (other than toilet areas), (10) Reception areas, (11) Hearing rooms (without special equipment and HVAC), (12) Mail rooms, (13) Health rooms (without special equipment), (14) Table areas in cafeterias (without supplementary HVAC or other special features), (15) File areas (without increased floorload), (16) Wellness/physical fitness facilities (exercise and/or locker areas finished to office standards), (17) Child care facilities (except toilets and kitchen areas), and (18) Judiciary chambers and jury rooms authorized prior to fiscal year 1992. 	<p>SA's are those alterations necessary to prepare an agency's space to meet the basic requirements for the particular classification of space:</p> <p>A. Office Space.</p> <p>Floors—Either resilient flooring or carpeting of a grade and type specified in the Standard Solicitation for Offers (SFO) or by the most recent Federal Supply Service (FSS) standard commercial grade carpet used for schedule purchases.</p> <p>Ceilings—Must be structurally sound, and be at least 8'0", and no more than 11'0" clear from finished floor to the lowest obstruction. Sound Transmission Coefficient (STC) rating of 40.</p> <p>Partitions—New and/or existing ceiling high interior partitions shall be provided to a maximum and one linear foot for each 10 square feet of occupiable office type space. STC rating of 40.</p> <p>Wall Treatment—Paint or vinyl wall covering as is the building standard. Vinyl will not be less than 13 oz. per square yard. Government approved wood, rubber, vinyl, or carpet base will be provided as part of the initial tenant buildout (per building standard).</p> <p>Window Treatment—Building standard. Any deviation will be considered reimbursable.</p> <p>HVAC—Heating, ventilation, and air-conditioning (HVAC) system capable of maintaining an <i>acceptable</i> operating environment. HVAC services including equipment startup and shutdown will be provided for an 11-hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p>Lighting—Must provide a minimum of 50 foot-candles at work surface.</p> <p>Electrical Outlets—Electrical outlets will be provided to a maximum of two duplex or one quadruplex electrical outlet for each 100 sq. ft., or in the case of systems furniture, 1 base feed for every 100 sq. ft. of occupiable office type space. Workstation outlets shall be wired so that no more than four workstations are on the one 20 AMP circuit. Convenience outlets (outlets mounted on columns or permanent walls or in private offices, conference rooms, libraries, or file/supply rooms) shall be wired to accommodate no more than 8 receptacles to one 20 AMP circuit. Special copier or printer outlets shall be provided at the rate of 1 outlet for every 10,000 sq. ft.</p> <p>Telecommunications—Conduits and ducts will be provided for tenant agency telecommunications based on a standard planning assumption of one telephone and one data instrument for every 100 square feet of occupiable office space.</p> <p>Computer Local Area Network (LAN) System Cable Installation—Conduit and/or raceway to accommodate LAN cable installation on a floor or between floors shall be installed as part of the standard tenant buildout. All LAN cable must be purchased by the tenant agency and furnished to a lessor or a contractor for installation (lessor or contractor will specify amount of cable required based on Government layout). Installation instructions and diagrams must be provided by the tenant agency or its computer vendor to the lessor or contractor along with the approved space (design intent) layout. Cable installation shall be done by the lessor/contractor with the assistance and/or advice of the tenant agency's personnel or computer vendor. The computer vendor must be hired and funded by the tenant agency.</p> <p>Fire & Safety—Buildout shall conform with the criteria cited in FPMR 101-20.105. Typical above-standard office space alterations, which must be justified by the agency, include the following:</p> <ul style="list-style-type: none"> ● Folding partitions and structural support work required to support them. ● Nonstandard lighting (decorative lights, spot lights, etc.). Parabolic light fixtures shall be considered as standard lighting if they are installed as a standard feature of a building. ● Observation windows in private offices, side light glass panels installed for decorative purposes. (Unless specified in an approved space allocation standard). ● Dutch doors (agency to pay the difference in cost between a standard door and a dutch door). ● Glass pass-through windows installed in standard office space. ● Glass doors or double doors except for main (central) reception doors or doors to large supply or forms areas where shipments come in from dock areas. ● Digital security locks, magnetic (Card Key or Kastle System) locks. ● STC ratings greater than 40 in walls and ceilings (unless otherwise indicated in an agency SAS). ● Alarm systems; if not required by GSA risk assessment. ● Single electrical outlets on one 20 AMP circuit, unless specified as standard alterations in an approved GSA/agency Space Allocation Standard. ● Sound masking. ● Interior private or semiprivate office door locks (standard private or semiprivate shall have passage set hardware) conference and supply rooms may have locks. <p>Provision of the above will be on a reimbursable basis.</p>

APPENDIX A.—CLASSIFICATION AND STANDARD ALTERATIONS—Continued

Classification	Standard alterations (SA's)
<p>B. Storage Space (All storage space will be classified under subset of general storage area, inside parking area, or warehouse.)</p> <p>1. General Storage Areas (ST-1). Storage in general purpose buildings generally consisting of unfinished floors, walls, ceilings, and adequate HVAC and lighting, including:</p> <ul style="list-style-type: none"> a. Basements, b. Attics, c. Supply rooms (not finished to office standards), d. Storerooms (not finished to office standards), and e. File rooms (not finished to office standards). <p>2. Inside Parking (ST-2)—Inside parking areas include:</p> <ul style="list-style-type: none"> a. Garage, b. Parking areas (including rooftops and decks), and c. Motor pool parking. <p>3. Warehouse Areas (ST-3)—Space specifically designed for materials storage and handling operations consisting of features which include, but are not limited to, concrete or wood block floors, unfinished ceiling, heavy live floor load capacity (over 200 pounds psf), high ceiling (over 14 feet), and industrial lighting. This classification may apply to entire buildings with warehouse features, including minor amounts of supporting office space.</p>	<p>B. Storage Space</p> <p>1. General Storage Areas</p> <p>Floors—Sealed concrete, wood block, or other material adequate general storage.</p> <p>Ceilings—Unfinished.</p> <p>Partitioning—No additional partitioning or wall finish except for required firewalls and agency separating partitions. Door openings shall be wide enough to allow the passage of hand trucks. Doors and jambs shall be installed with protective plates to prevent damage.</p> <p>Heating and Ventilation—Capable of maintaining an acceptable operating environment with a temperature range between 65° and 85°. HVAC services, including equipment startup and shutdown, will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p>Lighting—Maintain 30 foot-candles at floor level.</p> <p>Fire & Safety—Buildout shall conform to the criteria cited in FPMR 101-20.105.</p> <p>Telecommunication and local area networks—Will be installed as appropriate to the functional requirements of the space.</p> <p>Typical above-standard alterations for general storage areas include:</p> <ul style="list-style-type: none"> ● Deadbolt locks on interior room doors. The entry door can be secured with a deadbolt lock. ● Interior security/safety partitioning. Subdivision of tenant areas by wire mesh partition is adequate when security is not a major consideration. ● Above-standard levels of lighting (above 30-footcandles at floor level). ● Special fire protection features for flammable materials. <p>2. Inside Parking</p> <p>—Adequate identification of parking areas will be provided.</p> <p>—Sprinkler protection (Fire and safety—buildout features shall conform to the criteria specified in FPMR 101-20.105.)</p> <p>3. Warehousing Areas</p> <p>Floors—Sealed concrete, wood block, or other material adequate for warehousing service.</p> <p>Ceilings—Unfinished.</p> <p>Partitioning—No additional partitioning or wall finish except required firewalls and agency separation partitions.</p> <p>Heating and ventilation—Capable of maintaining a minimal operating environment. HVAC services will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p>Lighting—Maintain a minimum of 10-footcandles.</p> <p>Toilet Facilities—On a case-by-case basis.</p> <p>Electrical Service—As required, and including normal hookup to agency warehousing equipment. No telephone outlets will be provided.</p> <p>Exterior Building Features—Features, such as covered loading docks, power operated doors, dock-levelers, and railroad sidings available for use will be provided when justified by agency and approved by GSA.</p> <p>Typical above-standard alterations for warehouse areas include:</p> <ul style="list-style-type: none"> ● Plumbing (excluding toilets) ● Load levelers ● Special fire protection features for flammable materials ● Loading ramp ● Floor drains with sediment trap and sump
<p>C. Special Space—Space that necessitates the expenditure of additional or varying sums to construct, maintain, and/or operate as compared with the amount spent for office and storage space. Determination of the normal level will be made by GSA on a case-by-case basis using both industry and GSA-recognized standards. This space is further defined according to one of the following subsets:</p> <p>1A. Laboratories (SP-1A)—Space containing built-in equipment and utilities required for the qualitative or quantitative analysis of matter, experimentation, the processing of materials, and for photographic development including:</p> <ul style="list-style-type: none"> a. Wet laboratories, b. Clean laboratories, and c. Photographic laboratories. 	<p>C. Special Space</p> <p>1. Laboratories—Alterations will be provided in accordance with the levels specified for office space. In addition, they may include the installation of special building equipment to meet the environmental requirements of the laboratory:</p> <p>Floors—As required, special floors such as quarry tile, grating, etc., will be provided by GSA.</p> <p>Plumbing and sewage—As required, special building equipment such as special piping and associated water treatment equipment, special sewage disposal and floor drainage systems, and water, gas, compressed air, and vacuum systems will be provided by GSA. Normal hookup will be provided to the space perimeter consistent with architectural, mechanical, electrical, and structural requirements and limitations.</p> <p>Electrical distribution—All necessary electrical service, including normal hookup, will be provided consistent with architectural, mechanical, electrical, and structural requirements and limitations.</p> <p>Ceiling and lighting—Where special light fixtures are required to meet the functional needs of a laboratory, they will be included as a standard alteration. Ceiling materials shall be appropriate to the function of the laboratory.</p>

APPENDIX A.—CLASSIFICATION AND STANDARD ALTERATIONS—Continued

Classification	Standard alterations (SA's)
<p>1B. <i>Private toilets, clinics and health facilities</i> (SP-1B). Space for the physical welfare of employees or the public including:</p> <ol style="list-style-type: none"> Clinics, Health units and/or rooms (with special built-in medical equipment and/or plumbing), Private toilets and showers, Wellness/physical fitness shower rooms, Child care facility toilet, and Jury room toilets. 	<p><i>Fire and safety</i>—All new construction shall meet current GSA standards related to fire protection and employee safety.</p> <p><i>Heating, ventilation, and air-conditioning</i>—As required, special building equipment to treat and exhaust to the atmosphere noxious or offensive gases produced by agency program equipment will be provided. In addition, fresh air suitable to meet the special requirements, up to 100 percent fresh air, temperature control ± 2 degrees within the design range, and humidity control ± 5 percent within the design range will be provided. HVAC services, including equipment startup and shutdown, will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300. Fume hoods and/or dust or smoke filtration devices mounted in the ceiling to maintain a safe and clean environment shall also be provided.</p> <p>Typical above-standard alterations for laboratory and clinic space:</p> <ul style="list-style-type: none"> Revolving dark room doors, Laboratory casework is considered to be furniture and will not be provided or installed by GSA. GSA will, however, prepare floors, ceilings, and/or walls as necessary to permit the installation of casework, Backup electrical generators, and Security systems (GSA will provide conduit and cutouts for security systems provided that agencies can clearly identify their special needs during the space requirements development process). <p>1B. <i>Private toilets, clinics and health facilities</i> (SP-1B). Alterations will be provided in accordance with the levels specified for office space. In addition, alterations include, exhaust fans, plumbing rough-ins and fixtures, ceramic tile (where appropriate) structural ceiling support for ceiling-mounted X-ray equipment, lead-lined partitions for X-ray rooms and toilet room fixtures (including towel racks, toilet tissue dispensers, etc.).</p> <p>Note: Private toilets and showers for all judiciary functions shall be finished in accordance with the provisions of the current version of the U.S. Court Facility Standard.</p> <p><i>Floors</i>—May include, carpet, vinyl tile, or ceramic tile (standard for judiciary) depending on the most economical.</p> <p><i>Walls</i>—May include ceramic tile where appropriate.</p> <p><i>Heating, ventilation, and air-conditioning</i>—Capable of providing an acceptable operating environment and/or to remove odors from toilet rooms. HVAC services including equipment startup and shutdown will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p><i>Plumbing</i>—As required, water, gas, waste and floor drain systems, including normal rough-in and hookup of fixtures consistent with the architectural, mechanical, electrical and structural requirements and limitations. Toilet room fixtures (towel and toilet tissue dispensers) shall be standard.</p> <p><i>Ceilings and lighting</i>—Ceiling materials and lighting shall be in accordance with office standards; however, fixtures should be compatible with the function and environmental (moisture levels, etc.) requirements of the space.</p> <p>Typical above-standard alterations for SP-1B space are as follows:</p> <ul style="list-style-type: none"> Clinic or health room cabinets and casework, X-ray equipment, Backup electrical generators, and Security systems to protect pharmacies or medical supplies and equipment.
<p>2. <i>Food Service Areas</i> (SP-2)—Space in buildings devoted to the preparation and dispensing of foodstuffs including:</p> <ol style="list-style-type: none"> Cafeteria (kitchens, related storage and service areas), Snack bars, Mechanical vending areas (where plumbing is provided), and Private kitchens with plumbing (including kitchens in child care facilities). 	<p>2. <i>Food Service Areas</i>—Food service areas will be provided with initial alterations in accordance with the levels specified for office space, with additions or exceptions as follows:</p> <p><i>Floors</i>—With nonslip tile or quarry tile with cove base molding in large commercial type kitchen areas;</p> <p><i>Partitions and ceilings</i>—Smooth surface and washable in food preparation areas;</p> <p><i>Heating, ventilation, and air-conditioning</i>—Capable of maintaining an acceptable operating environment in food preparation areas, vending machine rooms, and other concession areas having heat generating equipment. HVAC services, including equipment startup and shutdown, will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p><i>Electrical service</i>—GSA will provide "all electrical service" including normal hookup, consistent with architectural, mechanical, electrical and structural limitations and the provision and installation of conduit for telephone distribution. Telephone service will not be provided by GSA in concession or blind operated facilities.</p> <p><i>Plumbing</i>—As required, water, gas, and waste systems, including normal hookup, consistent with architectural, mechanical, electrical, and structural limitations.</p> <p><i>Special equipment</i>—As determined by GSA on a case-by-case basis.</p> <p><i>Fire & Safety</i>—Buildout shall be in accordance with the criteria cited in FPMR 101-20.105.</p>

APPENDIX A.—CLASSIFICATION AND STANDARD ALTERATIONS—Continued

Classification	Standard alterations (SA's)
<p>3A. <i>Structurally Changed Areas (SP-3A)</i>—Areas having architectural features differing from normal office or storage areas, such as sloped floors, high ceilings, increased floor loading.</p> <p>a. Auditoriums (when ceiling exceeds 11 feet),</p> <p>b. Gymnasiums (when ceiling exceeds 11 feet),</p> <p>c. Libraries (with special stacks requiring above-standard floor loading),</p> <p>d. Target ranges,</p> <p>e. Security vaults (requiring structural alterations),</p> <p>f. Secured Compartmented Information Facility (SCIF),</p> <p>g. Detention cells (including prisoner toilets and sinks) and related sally ports and attorney/client consultation cubicles within the cell block, and</p> <p>h. Judiciary courtrooms authorized prior to fiscal year 1992 for both prospectus and non-prospectus level projects.</p>	<p>C. <i>Special space (SP-3A)</i>—Structurally changed areas will be provided with initial alterations at levels required to provide standard features normally associated with the type of space being provided. Determination of the normal level will be made by GSA on a case-by-case basis using both industry and GSA-recognized standards. In the case of secured compartmented information facilities (SCIF), GSA will determine the standard level and notify agencies in writing.</p> <p><i>Ceiling</i>—Ceiling systems will be determined on a case-by-case basis depending on existing or proposed architectural features, acoustical requirements, electrical distribution and HVAC systems. However, standard level ceiling materials are limited to those which are readily available in the building supply market and do not involve unusual cost to provide, install, and maintain.</p> <p><i>Walls</i>—Construction in conformance with applicable GSA criteria for auditoriums, vaults, holding cells, etc.</p> <p><i>Lighting</i>—Accepted architectural standards for illumination levels will apply consistent with the types and usage of the space. Lighting fixtures for standard alterations are limited to commercially available units which do not involve unusual cost to provide, install, and maintain.</p> <p><i>Window treatment</i>—Building standard.</p> <p><i>HVAC</i>—Accepted architectural standard for HVAC systems will apply consistent with type and use of the space. HVAC services including equipment startup and shutdown will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p><i>Electrical</i>—Standard electrical service and connections will be supplied as required and will be provided consistent with architectural, mechanical, and structural requirements and limitations of the space.</p> <p>Typical above-standard alterations for SP-3A spaces are as follows:</p> <ul style="list-style-type: none"> ● Above-standard wall coverings (such as padding for gymnasium walls), ● Built-in book (library) or storage (vault room) shelving, ● Lockers, ● Platforms or stages in auditoriums, ● Built-in auditorium or gymnasium seating, and ● Security systems including CCTV's, etc. for cell blocks.
<p>3B. <i>Courtrooms—Judiciary (SP-3B)</i>. Courtrooms for U.S. District Court, Tax Court, United States Claims Court and U.S. Courts of Appeals requiring above-standard ceiling heights (more than 10 feet) column-free widths exceeding 30 feet and similar (large courtroom) features. For judiciary courtrooms authorized prior to FY 1992. See 3A, above.</p>	<p>3B. <i>Courtrooms—Judiciary (SP-3B)</i>. Court facilities for the U.S. District Court and U.S. Court of Appeals shall be designed and constructed in accordance with the provisions of the most current "U.S. Court Facility Standard".</p> <p><i>Courtroom furniture</i>—Standard finishes shall include all courtroom furniture (except chairs for judges, attorneys, witnesses, juries or court staff). Courtroom furniture includes judge's benches, witness and jury boxes, railings, and spectator benches.</p> <p><i>Doors</i>—Doors into courtrooms shall contain view windows mounted at an appropriate height.</p> <p><i>Finishes</i>—Ceilings, walls, wall finishes, floor coverings, window treatments, and lighting shall be designed and constructed in accordance with the standards specified in the current "U.S. Court Facility Standard". Finishes of equal or less cost may be substituted where appropriate. The U.S. Courts must provide funding for finishes which exceed "U.S. Court Facility Standard" or their equivalent. GSA will make a determination on above-standard finishes and advise the Administrative Office of the U.S. Courts prior to design completion.</p> <p><i>Claims Court, Tax Court and Court of International Trade</i>—U.S. Claims Court, Tax Court or Court of International Trade courtrooms which require above-standard ceiling heights and column free widths exceeding 30 feet shall be designed and constructed to a standard equal to that of the U.S. District Court and Court of Appeals.</p> <p><i>Telecommunications requirements</i>—Conduits and ducts will be provided for courts' telecommunications (including television cable) requirements, but not to exceed a standard of one telephone and one data instrument for every 100 square feet of space. Any requirements above this level are above-standard and are to be reimbursed to GSA.</p> <p><i>Sound systems</i>—Only required wiring and related conduits (including built-in speaker enclosures or hangers for court-furnished audio speakers) will be provided.</p> <p>Typical above-standard alterations include:</p> <ul style="list-style-type: none"> ● <i>Security systems</i>—All security measures and systems are considered above-standard alterations; therefore, are reimbursable by the Marshals Service or U.S. Courts. This includes: magnetometers, closed-circuit TV (CCTV), warning signals, X-ray devices and communications systems. GSA will provide conduits, cutouts, mortising, etc., only if clear scopes of work are provided by the Marshals Service or U.S. Courts during the design process. ● Clocks, ● Court seals, ● Audio equipment and its installation, ● Ornamental carvings or figures (such as eagles, stars, etc.) to be mounted on courtroom walls or courtroom furnishings, ● Murals, ● Jury or witness box chairs, ● Chairs and tables for judges, attorneys or court staff, and ● Signaling systems.

APPENDIX A.—CLASSIFICATION AND STANDARD ALTERATIONS—Continued

Classification	Standard alterations (SA's)
<p>4. <i>Automatic Data Processing (ADP) Area (SP-4)</i>—Areas having special features such as humidity and/or temperature control, raised flooring, and ceiling heights exceeding office standard; and extensive power requirements (requiring its own power panels, etc., including):</p> <p>a. Computer rooms, telecommunication (PBX) rooms with special environmental requirements;</p> <p>b. Computer support areas with special flooring and/or wiring and (with humidity and/or temperature control); and</p> <p>c. Computer tape vaults.</p>	<p>Note: New buildings built by GSA for use by court activities shall include elevator service designed to facilitate the secure movement of judicial officials and/or Federal prisoners within the building. Funding for the elevators will be included in the construction cost of the building.</p> <p><i>Fire and Safety</i>—Buildout of facilities shall be in accordance with the provisions cited in FPMR 101-20.105.</p> <p>4. <i>Automatic Data Processing (ADP) Area</i>—Automatic data processing areas will be provided with initial alterations in accordance with levels specified for office space, with additions or exceptions as follows:</p> <p>(a) <i>Raised floors</i>—If required, installed to provide space for electrical and/or HVAC service for ADP equipment;</p> <p>(b) <i>Ceilings</i>—As determined by GSA, acoustically treated and sound conditioned to meet the conditions and environmental requirements of each location. Ceiling STC shall not be less than 40.</p> <p>(c) <i>Heating, ventilation, and air-conditioning</i>—Will be capable of maintaining an operating environment for the ADP equipment compatible with the manufacturer's recommendation; NOTE: HVAC services, including equipment startup and shutdown, will be provided for an 11 hour day, 5 days a week, (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p>(d) <i>Electrical distribution and electrical services</i>—Includes normal hookup to a power panel within the ADP room. NOTE: Electrical services will be provided on a standard 11 hour shift 5 day week, excluding holidays and weekends. Services beyond this standard will be provided on a reimbursable basis.</p> <p>(e) <i>Telecommunications and local area networks</i>—Will be installed as appropriate to the functional requirements of the space.</p> <p>(f) <i>Sprinkler protection</i>—Wet pipe in all electronic equipment and tape storage areas. All Other fire and safety criteria cited in FPMR 101-20.105 shall be met.</p> <p>Typical above-standard alterations for ADP areas includes:</p> <ul style="list-style-type: none"> ● Isolation transformers, ● Emergency shutdown control switches, ● Uninterruptible power supplies, ● Audible and visual alarms, ● Special security locks, and ● Supplemental Halon fire suppression system.
<p>5A. <i>Conference and Classroom/Training Facilities (SP-5A)</i>—Areas used for conferences, training, library, hearings or minicomputer use with supplemental HVAC and/or built-in special equipment such as blackout curtains, lighting controls, projection booths and sounding conditioning, in addition to office finishes:</p> <p>a. Conference rooms with special equipment and/or HVAC,</p> <p>b. Hearing rooms with special equipment and/or HVAC, (does not include U.S. Court hearing rooms),</p> <p>c. Classroom/training rooms with special equipment and/or HVAC,</p> <p>d. Exhibit areas with special equipment and/or HVAC,</p> <p>e. Table areas in cafeterias with supplementary HVAC or other special features,</p> <p>f. Mini-computer/mega frame equipment rooms adjacent to office area requiring supplemental HVAC and minor special buildout such as deadbolt locks, dedicated electrical outlets, LAN cable distribution access, etc., (rooms requiring substantially less than SP-4 buildout),</p> <p>g. Jury rooms (excusing toilets),</p> <p>h. Judiciary hearing rooms authorized prior to fiscal year 1992.</p>	<p>5A. <i>Conference and Classroom/Training Facilities (SP-5A)</i>—Classrooms and training areas will be provided standard alterations in accordance with levels specified for office space, with additions or exceptions as follows:</p> <p>a. <i>Partitions</i>—Structural floor slab to structural ceiling slab walls with a minimum sound transmission class (STC) of 45. Walls shall be constructed to accommodate agency furnished blackboards, projection screens or similar items. Entry/exit doors shall not compromise the STC of 45 requirement. Duct, pipe or other penetrations shall be properly sealed. Duct silencers shall be used as required to ensure the required STC of 45.</p> <p>b. <i>Ceilings</i>—As determined by GSA, ceilings acoustically treated to provide a minimum sound transmission coefficient of 40 (STC 40); (ceiling supports for view screens are included);</p> <p>c. <i>Heating, ventilation, and air-conditioning</i>—Supplemental, separately zoned heating, ventilation, and air-conditioning in conformance with GSA standards; all duct penetrations into the room shall be baffled so as not to compromise the STC requirement of the wall. HVAC services, including equipment startup and shutdown, will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p>d. <i>Special features</i>—Special features normally associated with the subcategories of space under this classification are determined by GSA on a case-by-case basis. These include such features as electrical service and normal hookup to agency equipment, blackout curtains, lighting controls, telephone and data lines and projection booths.</p> <p>e. <i>Fire & safety</i>—Buildout shall be done in accordance with the criteria cited in FPMR 101-20.105.</p> <p>C. <i>Special Space (CONT'D)</i></p> <p>f. <i>Telecommunications and local area networks</i>—Will be installed as appropriate to the functional requirements of the space.</p> <p>Typical above—standard finishes include:</p> <ul style="list-style-type: none"> ● Chair rails and paneling, ● Sound absorbing material mounted on wall surfaces such as "Armstrong Soundsoak" panels, and ● Blackboards and projection screens.
<p>5B. <i>Hearing Room—Judiciary (SP-5B)</i>—Small court facilities for the use of senior district court judges, bankruptcy court judges and magistrate judges. The hearing room typically has a clear column-free width of less than 30 feet. A ceiling height of less than 10 feet and smaller scale judges benches, jury and witness boxes and less spectator seating than large (SP-3B) courtrooms.</p>	<p>5B. <i>Hearing room (Judiciary) (SP-5B)</i>—Hearing rooms will be designed in accordance with "U.S. Court Facility Standard" standards for such facilities.</p> <p><i>Doors, walls, and ceilings</i>—Wall and ceiling construction shall be the same as conference and training space. Doors into the hearing room shall have a glass view panel installed at the appropriate height.</p> <p><i>Lighting</i>—Lighting levels and the fixtures used shall be as specified in the "U.S. Court Facility Standard". Light switch location shall not compromise security.</p>

APPENDIX A.—CLASSIFICATION AND STANDARD ALTERATIONS—Continued

Classification	Standard alterations (SA's)
	<p><i>Hearing room furniture</i>—Hearing room furniture, including judge's bench, jury and witness boxes, spectator seating and railings are included. Jury seating, judge, attorney, staff and witness chairs and attorney tables are not included and must be provided by the courts. See "U.S. Court Facility Standard" for furniture details.</p> <p><i>Heating, ventilation and air-conditioning</i>—Shall be separately zoned and controlled and designed to operate in accordance with the current "U.S. Court Facility Standard" criteria. HVAC services including equipment startup and shutdown will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p><i>Electrical</i>—As specified in the "U.S. Court Facility Standard".</p> <p><i>Floor covering</i>—As specified in the "U.S. Court Facility Standard".</p> <p>Typical above—standard alterations include:</p> <ul style="list-style-type: none"> ● Security devices, including alarm systems, signaling systems CCTV equipment, etc., (conduit, cutouts and mortising of doors required will be considered standard alterations). ● Jury, witness, judge and attorney chairs and tables, and ● Audio systems (GSA will furnish conduit, speaker boxes and/or hangers and electrical service required to power the equipment.) <p>Note: Executive agency (or Commission) hearing facilities for Administrative Law Judges which require a judges bench shall be classified SP-5A. The judge's bench is reimbursable.</p>
<p>5C. <i>Judicial Chambers—U.S. Courts (SP-5C)</i>. Chambers for all Article III Federal Judges, Bankruptcy Court Judges, Claims Court Judges and Tax Court Judges, and Magistrate Judges. Chambers typically have finishes that exceed office space standards. Included in the chambers space is the judge's private office, secretarial and law clerk spaces (judicial toilets are classified SP-1B).</p>	<p>5C. <i>Judicial Chambers—U.S. Courts (SP-5C)</i>. Design Standard Article III Judges, Bankruptcy Judges and Magistrate Judges are covered in the "U.S. Court Design Guide". Standards for the others should be designed with similar finishes.</p>
	<p><i>Doors, walls and ceiling and lighting</i>—Walls shall be constructed to meet a minimum STC of 45. All entry doors shall be solid core wood. Ceilings, lighting and interior finishes shall be in accordance with the U.S. Court Design Guide. Built-in bookcases shall be considered standard alterations.</p> <p><i>Heating, ventilation and air-conditioning</i>—Separately zoned and controlled HVAC designed to operate in accordance with the current "U.S. Court Design Guide" criteria. HVAC services including equipment startup and shutdown will be provided for an 11 hour day, 5 days a week (excluding holidays). Service required beyond normal HVAC equipment operating hours or on weekends or holidays are reimbursable. For further information see FPMR 101-21.300.</p> <p><i>Electrical</i>—As provided in office quality space. Electrical work shall also include conduit and related cutouts, etc., to allow security devices to be installed by the U.S. Marshals Service or Courts.</p> <p><i>Floor covering</i>—As specified in the "U.S. Court Design Guide".</p> <p>Typical above-standard alterations include:</p> <ul style="list-style-type: none"> ● Decorative ceiling work, and ● Decorative light fixtures.
<p>6. <i>Light Industrial Areas (SP-6)</i>—Areas which may have some or all of the characteristics of warehouse space but, in addition, may be provided with one or more of the following features: air-conditioning, humidity control; special power, and a light level equal to or slightly less than that provided for office space including:</p> <ol style="list-style-type: none"> a. Records storage with humidity control; b. Storage type space with air-conditioning; c. Printing plants; d. Product classifying laboratories; e. Motor pool service areas; f. Postal workrooms, swingrooms, (including swingroom toilets), locker rooms, mailing vestibules and platforms, lock box lobbies, and unsuspended lookout areas; g. Shop (other than PBS); h. Loading docks and shipping platforms; i. Canopy areas if included in occupiable area; j. Vertical improved mail system areas; and k. Telephone frame rooms and unattended switchboards (for specific agency use). 	<p>6. <i>Light Industrial Areas</i></p> <p><i>Doors, walls and ceiling and lighting</i>—Light industrial areas will be provided with initial alterations at levels required to provide standard architectural, mechanical, electrical, telecommunications, and structural features normally associated with this type of space. Determination of the normal level will be made by GSA on a case-by-case basis using commercial standards.</p>
<p>7. <i>Quarters and Residential Housing</i>—Quarters and residential housing areas (housing and quarters that do not logically fall in the other categories).</p>	<p>7. <i>Quarters and Residential Housing</i>—Initial alterations will place quarters and residential housing in an occupiable and satisfactory condition.</p>

* New buildings means buildings to be constructed for courts use or existing buildings undergoing major repairs, modernization or where new courtrooms and related space are to be provided. Secure elevators required by the Courts and/or Marshals Service in existing Courthouse buildings where no major repair, modernization or new courtroom construction are planned shall be reimbursable.

Appendix B. Wellness/Physical Fitness Facilities

1. *Space for wellness/fitness facilities.* Exercise equipment, lockers, and nonstandard interior finishes (purchase a lines installation) are the responsibility of the tenant agencies. In a multiple tenancy

building, a lead agency should be identified to be the focus of actions relating to a fitness facility and to request its establishment. Normally, the lead agency would be the major occupant in the building. Physical fitness facilities in multiple tenant buildings will be assigned as joint-use space.

a. *Exercise rooms*—Exercise rooms will be treated the same as conventional office space and provided building standard features as follows:

(1) Floor covering such as vinyl tile or equivalent or acceptable grades of commercial carpet.

- (2) Ceilings structurally sound and finished
- (3) Ceiling-high interior partitions.

(4) Heating, ventilation, and air-conditioning (HVAC) capable of maintaining the temperature as specified in FPMR 101-20.107.

(5) Sound attenuation to provide a minimum sound transmission coefficient of 40 (STC 40).

(6) Adequate lighting to maintain acceptable levels of illumination.

b. *Locker rooms*—Locker rooms will be treated as conventional office space and provided building standard features as follows:

(1) Ceilings that are structurally sound and finished.

(2) Floors that are concrete or finished with other non-slip material.

(3) Heating, ventilation, and air-conditioning (HVAC) capable of maintaining the temperature as specified in FPMR 101-20.107.

(4) Sound attenuation to provide a minimum sound transmission coefficient of 40 (STC 40).

(5) Adequate lighting to maintain acceptable levels of illumination.

(6) Walls that are wallboard or moisture resistant wallboard, as appropriate, and finished and painted or equivalent.

c. *Shower rooms*—Shower rooms will be treated as private toilets, clinics and health facilities space (SP-1B) and provide building standard features as follows:

(1) Ceilings that are moisture resistant wallboard or equivalent.

(2) Floors with non-slip finishes.

(3) Plumbing and fixtures as required, including water and waste, shower stalls, toilets, and sinks in such numbers as is consistent with the number of facility users and square footage available in the shower rooms.

(4) Adequate lighting to maintaining acceptable levels of illumination.

(5) Heating, ventilation, and air-conditioning (HVAC) capable of maintaining the temperature as specified in FPMR 101-20.107.

(6) Walls that are moisture resistant wallboard and finished and painted, or equivalent.

2. *Criteria for establishing fitness programs.*

Agencies shall submit to the appropriate GSA regional office a Standard Form 61, Request for Space, and a plan for the proposed fitness program. Agencies may contact the President's Council on Physical Fitness and Sports for assistance in developing their plan. The plan should set forth the scope and goals of the proposed program and include the following elements as outlined by the President's Council on Physical Fitness and Sports:

(1) A survey indicating employee interest in the program;

(2) A 3 to 5 year implementation plan demonstrating long-term commitment to physical fitness/health for employees;

(3) A health related orientation, including screening procedures, individualized exercise programs, identification of high-risk individuals, and appropriate follow-up activities;

(4) Identification of a person skilled in prescribing exercise to direct the fitness program;

(5) An approach which will consider key health behavior related to degenerative disease, including smoking and nutrition;

(6) A modest facility that includes only the essentials necessary to conduct a program involving cardiovascular and muscular endurance, strength activities, and flexibility;

(7) Provision for equal opportunities for men and women, and all employees, regardless of grade level.

Depending on the scope and goals of the proposed program, one or more of the above elements may not apply or may apply only partially or indirectly. However, every attempt should be made to show that each of the above has been considered in the planning effort or are already provided under existing programs and activities sponsored by the agency personnel office, Public Health Service (PHS) health unit, employee association, or other official organization within the agency. For guidance on the development of health service programs, agencies may consult the PHS, Department of Health and Human Services.

Appendix C. Child Care Centers

A. *Basic policy.* Pursuant to 40 U.S.C. 490b, Federal agencies are authorized to allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees. Federal agencies in GSA-controlled space are responsible for determining their respective child care needs and then requesting the appropriate space from GSA. Upon receipt of such a request, along with the result of a needs assessment survey indicating sufficient agency interest, GSA will provide the standard alterations for the child care center as defined in appendix A. The cost of any other features not specified in appendix A will be fully reimbursed to GSA by the user/tenant agency(ies) except as noted in paragraph (f) below.

Agency(ies) will sponsor child centers for their employees, submit space requests for their requirements, allocate space under license or other appropriate authorization document to either the provider of child care services for an employee user group, and pay Rent to GSA for the assigned space.

The provider will occupy the designated space pursuant to an assignment authorizing the sponsoring agency or lead agency (the agency which issues the Standard Form 61, Request for Space, in cases involving a joint-use assignment) to allocate the space to the provider of child care services or an employee user group.

B. *Leasing space for a child care center.* When necessary, GSA will acquire leased space to house a child care center or to relocate agency activities displaced by a child care facility established in GSA-controlled space. When leasing space specifically for a child care center, the lease term should not exceed 5 years unless otherwise determined by the contracting officer to be in the best interest of the Government. In the event the space for a child care center is part of a larger space acquisition for an agency or agencies, the

lease term for the center should be coterminous with the other space leased by the Government in the building.

C. *Developing a child care facility out of existing assigned space.* When a portion of an agency's existing assigned space is made available by the agency for child care center use, the cost of alterations to the space will be fully reimbursable to GSA. However, if any of the alterations result in a higher space classification, GSA will fund the alterations for the upgrading of the space to be classified.

D. *New construction or use of modular buildings for child care.* Space solely for the purpose of providing a child care center normally will not be made available by GSA through new construction nor through the purchase or lease of modular buildings. However, in special circumstances, where no other space can be economically developed and made available for child care use, modular buildings can be considered. In such circumstances, GSA shall be responsible for all expenses associated with site preparation and the purchase or lease of modular buildings including design services and water, sewer, and utility service installation costs.

E. *Space classification.* Space in child care centers will be classified in accordance with the standards specified in Appendix A.

F. *Special buildout considerations.* In addition to the standard alterations (SA's) specified in Appendix A, child care center space will have all built-in features such as kitchen counters, shelves, cabinets, bookcases, closets, mailboxes, sinks and basins required throughout the center furnished and installed as part of the normal buildout. All rest rooms which will be utilized by children from the center should contain child-size toilets, handicapped accessible toilets and child accessible drinking fountains.

Floors in child care centers shall be covered with an acceptable grade of anti-static carpet or tile as appropriate.

All landscaping required to prepare outdoor play areas will be covered by GSA as a part of the standard alterations for a child care center. The purchase and installation of playground equipment will be the responsibility of the sponsoring agency(ies).

G. *Special cleaning provisions.* For reasons of safety and health, the entire child care center will be cleaned in the same manner as clinical space (i.e., Health Unit), regardless of the space classification.

H. *Compliance with State and local requirements.* To the maximum extent practical, GSA will comply with State and local laws and regulations relating to the development of facilities for use as child care centers.

I. *Special safety and environmental considerations.* Every effort shall be made to minimize safety and environmental hazards in the child care center space and play areas as well as in adjacent areas of a building frequented by children. Construction work on a center shall be done in a manner which will minimize sharp corners, tripping hazards, or

other problems which may increase the potential for injury to children.

All lead base paint, even lead base paint in layers below existing coats, shall be removed from all surfaces in space to be utilized as a child care center. All other applicable Federal safety and environmental regulations or requirements; including those outlined in FPMR 101-20, must also be met.

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed
Frameworks for Late-Season Migratory
Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1991-92 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed late-season frameworks will end on September 6, 1991.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION:**Regulations Schedule for 1991**

On March 6, 1991, the Service published for public comment in the Federal Register (56 FR 9462) a proposal to amend 50 CFR part 20, with comment periods ending July 25, 1991, for early-season proposals, and September 2, 1991, for late-season proposals. A supplemental proposed rulemaking for both early and late hunting season frameworks appeared in the Federal Register dated May 31, 1991 (56 FR 24984). On June 20, 1991, a public hearing was held in Washington, DC, as announced in the Federal Register of March 6 (56 FR 9462) and May 31 (56 FR 24984), 1991, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other

early seasons. On July 15, 1991, the Service published in the Federal Register (56 FR 32264) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1991-92 season. On August 2, 1991, a public hearing was held in Washington, DC, as announced in the Federal Register of March 6 (56 FR 9462), May 31 (56 FR 24984), and July 15 (56 FR 32275), 1991, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 21, 1991, the Service published a fourth document (56 FR 41608) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1991-92.

This document is the fifth in the series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for the 1991-92 late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1991-92 season. All pertinent comments on the March 6 proposals received through July 29, 1991, have been considered in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. Final regulatory frameworks for late-season migratory game bird hunting are scheduled for publication in the Federal Register on or about September 20, 1991.

Presentations at Public Hearing

A number of reports were given on the status of waterfowl. These reports are briefly reviewed as a matter of public information. These presentations are summaries of information contained in the "Status of Waterfowl and Fall Flight Forecast" report. Unless otherwise noted, persons making the presentations are Service employees.

Mr. Robert Trost reported that, in general, information available suggests that most North American goose populations should enjoy average to above average production this year. A notable exception is for the Southern James Bay (formerly the Tennessee Valley) Canada goose population. This population was reported to have experienced another poor year of production on Akimiski Island and

another reduced fall flight is anticipated. Some caution was also advised for the dusky Canada goose population, for which conflicting databases have made reliable determinations of population status difficult. A fall flight lower than or similar to last year is expected. Greater white-fronted geese and Canada geese from western Alaska experienced another year of favorable spring weather conditions and increases are again expected for these populations, continuing their recent upward trend. With the exception of a cholera outbreak on Banks Island, snow geese throughout North America experienced favorable nesting conditions and larger fall flights are expected for these populations. Both Eastern and Western Populations of tundra swans are also expected to increase again this year.

Mr. Fred Johnson reported on habitat conditions and the status of duck populations as of May 1991. During the fall and winter of 1990-91, extremely dry conditions existed throughout the prairies and parklands of central North America, raising concerns that drought would prevail in most important breeding areas. However, during late April and early May of this year, several low-pressure weather systems delivered above-normal amounts of snow and rain, which improved habitat conditions significantly. This precipitation maintained the total number of May ponds at levels comparable to last year, although May pond counts were still well below the long-term average. In the Canadian Provinces, May pond numbers decreased 11 percent from 1990 but were above the levels observed in 1989 and 1988. In the northcentral U.S., May pond numbers were up only slightly (+5 percent) from last year.

Habitat conditions in other surveyed areas were generally good. Throughout much of interior Alaska, spring break-up came early and there was extensive flooding in some areas. Much of northern Alberta and the Northwest Territories was drier than normal prior to the survey, but spring precipitation helped improve water levels throughout most of this survey unit. Habitat conditions in the northern portions of Saskatchewan and Manitoba were favorable for nesting ducks. In western Ontario, water levels in larger lakes and rivers tended to be lower than normal, but small ponds and streams appeared to be in better shape. Experimental surveys in eastern Ontario, Quebec, and New York revealed favorable habitat conditions for breeding ducks, particularly in the southernmost survey strata.

In 1991, the estimated breeding population of ducks (excluding scoters, eiders, oldsquaws, and mergansers) was 26.5 million, representing a 6 percent increase from 1990, but remains 19 percent below the 1955-90 average. Duck numbers increased significantly in Alaska and South Dakota, and decreased in southern Alberta and southern Manitoba. The distribution of ducks within the surveyed area was similar to that of recent years, with about 45 percent tallied in southern Canada and the northcentral U.S. Of the 10 major species monitored each spring, only blue-winged teal, scaup (lesser and greater combined), and northern pintail exhibited a significant change in population size from last year. Blue-winged teal numbers increased from a record low of 2.8 million in 1990 to 3.8 million in 1991. Most of this increase occurred in South Dakota, probably in response to improved wetland and upland habitat conditions. Scaup numbers also increased from a record low in 1990 to 5.2 million birds this year. Despite a steadily declining scaup population during 1986-90, the increase this year brings scaup numbers back up to the long-term average. The estimated population of pintails fell 20 percent to a record low of 1.8 million this year. The decrease occurred primarily in the Canadian prairies, Montana, and North Dakota, traditionally important areas for breeding pintails. Overall, breeding populations of most prairie-nesting species continue to be depressed due to extended drought and intensive agricultural practices in the prairie-pothole region.

Mr. Brad Bortner presented information on habitat conditions since the May surveys, results of the July production survey, and the fall flight forecast. In general, most areas of Prairie Canada and the northcentral U.S. received average to above-average amounts of precipitation during late May, June, and July, which helped replenish depleted soil-moisture, encouraged vegetative growth, and improved wetlands numbers. In many areas, these months were the wettest ever recorded for this time of year. However, improvements in habitat conditions and pond numbers were not uniformly distributed.

The 1991 July pond index in Prairie Canada was 2.6 million, up 98 percent from the 1990 estimate and 64 percent above the 1961-90 average. In the northcentral U.S., numbers of July ponds increased 30 percent from 1990 and were 15 percent above the 1974-90 average. Mr. Bortner reported on habitat

conditions in other surveyed areas as well.

Brood indices increased in southern Alberta, North Dakota, and South Dakota; and decreased in southern Saskatchewan, southern Manitoba, and Montana. Although brood indices have improved in some survey units, most were below the long-term averages. Late-nesting indices were significantly below the long-time averages in all units of Prairie Canada and in North Dakota, above average in South Dakota, and unchanged in Montana.

The size of the mallard breeding population was unchanged from 1990, and the prospects for recruitment and an increased fall flight are reasonably good. Northern pintail numbers fell 20 percent this year to a record low of 1.8 million. Pintails are early-nesters and most of the improvement in water conditions and upland cover came late in spring and summer. As a result, pintail production may be little better than last year.

In summary, weather patterns following the May survey continued to favor prairie and parkland breeding areas. Brood and late-nesting indices increased overall but remained well below long-term averages in important production areas. Apparently, much of the improvement in habitat came too late to benefit duck production. Because the breeding population was only slightly higher than in 1990, and because there appears to be only limited improvements in production, the fall-flight index is expected to be similar to last year.

Review of Comments Received at Public Hearing

Eleven individuals presented statements at the August 2, 1991, public hearing. Each statement is summarized below and was considered in the development of these proposed late-season frameworks. Responses to the public-hearing comments are deferred and will be incorporated into responses to written comments. Responses will be published with the final frameworks for late seasons.

Mr. Bobby G. Alexander, representing the Central Flyway Council and the Texas Parks and Wildlife Department, indicated that Central Flyway States have experienced recent increases in several Eastern Tier Canada goose populations and increases in harvest opportunity are justified. The mixing of the Central Flyway's Canada goose populations and efforts to minimize the impact on the Tall Grass Prairie Population of Canada Geese and the Western Segment of the Mid-Continent White-fronted Goose Population were

made in their proposal. The recommended changes reflect increased hunting opportunity directed at large Canada geese in the Western Prairie and Great Plains Populations. Western-Tier goose populations are above objective levels and would support an extension of the framework dates to January 31. The proposed boundary change in western Oklahoma is also appropriate, as the proposed boundary corresponds with the boundary in Texas and largely follows county boundaries, shifting several counties into the Short Grass Prairie Population of Canada Geese. The Council also supports an increase in the possession limit (three times the daily bag) of light geese to accommodate hunters that travel long distances to hunt. Finally, the Council seeks an additional drake mallard in the bag—an increase to three from the current limit of two. In this regard, hunters from throughout the Flyway have been unduly and unfairly limited in their opportunity to harvest an additional drake. The Council asked the Service to again carefully review the biological justification for changes in duck bag-limit regulations. They requested that framework dates be established at October 1 through January 20 and not be used annually to regulate harvest.

Mr. Douglas B. Inkley, representing the National Wildlife Federation, said that the status of ducks is a barometer to North America's wetlands and graphically showed relationships between numbers of ducks and acres of wetlands. He noted a downward trend in the fall-flight index since 1970, that pintails are at a record-low index, that canvasbacks are at disastrously low levels, and most other species are well below long-term averages. He supported the Service's harvest strategy, recommended that most frameworks be similar to those of last year, opposed extending the season later into January as well as earlier into October. He urged a complete closure on pintails, noting both the marked decline and poor recruitment to the population, and he supported retaining the closure until the population sufficiently recovered. He urged the Service, by next year, to complete a study to identify specific and scientifically-based population objectives by which season openings and closures on pintails could be implemented. Dismayed by an absence of recovery for canvasbacks, he recommended retention of the closure in the three eastern flyways and, for the Pacific Flyway, frameworks no more liberal than those of last year. As a measure to benefit the status of

waterfowl, he urged retaining wetland protective measures as provided by section 404 of the Clean Water Act, noting that certain legislative efforts were directed at weakening the protection.

Mr. Jim Phillips presented information he had reviewed concerning relationships between hunter numbers and mallard populations. He stated that what we have been doing has not worked, and with present numbers of hunters, mallard populations cannot rebuild. To reduce both hunter numbers and harvest, he proposed that hunters be required to apply for a duck stamp or permit only between January 1 and March 31 of each year. Those who apply later would not be eligible. Hunters who received a stamp or permit would be issued tags which would limit mallard harvest to no more than two per season.

Mr. John M. Anderson, representing the National Audubon Society, indicated that most goose populations are currently above long-term averages, with many at all-time high levels. He agreed with the Service that management of goose populations should, wherever possible, be done on a population basis. In addition, these population definitions should be based on breeding-ground distributions, and the status of these populations should be monitored. Furthermore, these populations should be managed under plans cooperatively developed with the various States and Flyway Councils. In contrast, duck populations remain well below objective levels identified in the North American Waterfowl Management Plan, and essentially the same restrictive regulations as were in place last year should be adopted this year. The northern pintail is of special concern and a significant reduction in shooting pressure is needed. Conversely, experience has taught us that the loss of habitat can be even more damaging than shooting pressure. Therefore, he recommended a daily bag limit of 1 pintail per day, and a season length of 16 days which could include 3 weekends in the Pacific Flyway and 9 days which could include 2 weekends in the Central, Mississippi, and Atlantic Flyways. For the blue-winged and green-winged teal, we should consider the possible benefit to fall and winter habitat that could result from a short, early teal season. Finally, mallard and teal breeding efforts outside the surveyed area can and do make significant contributions to the continental production rate. He commended the Service for expanding survey efforts in the Northeast and urged the same expansion in the Pacific and Central Flyways.

Mr. John Grandy, representing the Humane Society of the U.S., expressed concern that the Service's process for establishing late-season migratory bird hunting regulations, including the Waterfowl Status Meetings held in Denver, Colorado, precluded significant input from the nonhunting public. He noted that the process had not changed from a year ago. He asked the Service to develop a system that would allow for non-hunting public involvement in duck management. He recommended a closed season on northern pintails and on all ducks wherever northern pintails occurred in significant numbers. He believed that limits on mergansers should be within the regular duck limit in all flyways and that limits of coots and common moorhens should be reduced because the current limits encouraged wanton waste. He said that while minor regulation changes have apparently stopped the decrease in black duck numbers, he asked when regulatory measures would be imposed to allow the population to increase. He was opposed to special sea duck seasons and special Canada goose seasons, especially the goose season being proposed for Back Bay, Virginia. He noted that the Service reported on the status of 10 species of ducks but not the status of other duck species and coots.

Mr. Richard Elden, representing the Michigan Department of Natural Resources, made several comments concerning the lack of partnership between the Service and the States in the regulations development process. Mr. Elden suggested that perhaps the Service was giving too much weight to the recommendations that were made by the Office of Migratory Bird Management and not enough consideration to information generated by the Technical Sections and Flyway Councils. He described the actions taken by his Department to reduce the harvest of Southern James Bay Canada geese in Michigan and noted the considerable commitment in both time and resources that his and other State organizations make to waterfowl management. He indicated that this commitment would be difficult to maintain if the partnership was perceived as one-sided. He asked the Service to reconsider its decision to continue the Southern James Bay harvest zone in the Upper Peninsula of Michigan. He also indicated that Michigan was convinced that such action would not increase the harvest of Southern James Bay Canada geese.

Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of

Massachusetts, the Andover Sportman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, commented on several regulatory items. He requested a 35-day duck season with the same limits as last year and a 50-day brant season with a 4-bird bag limit. He supported the Service's proposal for shooting hours and for zone criteria. He supported the expansion of the special season for resident Canada geese in Massachusetts. He requested that the Service consider special green-winged teal and scaup seasons in the future. He also requested that Atlantic Flyway States be compensated for hunting days lost due to Sunday-hunting prohibitions. He indicated that hunters have been unsuccessful in resolving the issue at the State level. He further requested that the Service conduct a study to assess the impact of mergansers and cormorants on fish populations.

Mr. Jeff Nelson, representing Ducks Unlimited, noted that significant rainfall had returned to the prairies and parklands in 1991, but cautioned that much more precipitation was needed to compensate for the drought of the last decade. He cited preliminary results of recent Ducks Unlimited studies in Alberta, indicating a strong breeding effort and high brood survival. He commended the Service for improvements to the breeding-grounds survey and encouraged continued progress in survey and banding programs. He expressed particular concern for the pintail and recognized that continental survey estimates for this species declined significantly from last year. However, he suggested that many pintails moved north where they settled in areas outside current survey boundaries or in areas not sampled well. Citing harvest-survey data, he indicated that restrictive harvest regulations already in place have effectively reduced the take of pintails. He reviewed the importance of critical wetland habitats during the fall and winter and stated that the decision to flood these areas by hunters is based on hunting opportunity. Regulations, therefore, that discourage winter flooding should be carefully evaluated, especially when harvest rates are already low for species dependent on these habitats. He questioned any significant deviation from last year's late-season duck regulations and cautioned against regulatory overreaction to short-term population fluctuations. Finally, he expressed reasons for optimism because of the progress of North American Waterfowl

Management Plan efforts and their impact on waterfowl habitat.

Mr. Wayne Pachelle, representing the Fund For Animals, indicated that he echoed the presentation made by John Grandy. He indicated that he did not believe that past waterfowl regulations had been conservative in nature, rather that past limits were all that the populations could stand. He indicated concern over the annual "tinkering" of regulations just to appease hunters. He opposes presunrise shooting hours and the use of zones and split seasons. He suggested a complete closure for the hunting of black ducks and pintails. He indicated that swan and sandhill crane hunting should be discontinued. He believes large bag limits for coots and mergansers are not justified. In closing, he suggested that all duck seasons should be closed.

Mr. Dale Caswell, representing the Canadian Wildlife Service, reviewed the changes in hunting regulations in Canada for the 1991-92 season, indicating that the regulations-setting process in Canada occurs somewhat earlier in the year than in the United States. He briefly reviewed the tundra swan hunting program and the distribution of hunting permits among breeding, migration, and wintering areas contained in the hunting plan. He cautioned that when reallocation of permits is considered, the potential impacts not only on the entire population but also on population segments should be considered.

Dr. Rollin Sparowe, representing the Wildlife Management Institute, observed that the process by which migratory bird hunting regulations are developed and finalized was established by the Service in 1981 in response to criticism by non- and anti-hunting organizations for increased opportunity in that process. He observed that by choice certain groups only involve themselves at one stage in the regulatory process, i.e., the public hearing, and are conspicuously absent at other times and in other activities related to the conservation of migratory birds, such as the Farm Bill, Clean Water Act, and the North American Waterfowl Management Plan. He supported the regulations-setting process and indicated the many opportunities for public comment. He also stated that if the process merits reevaluation, his organization would want to participate in that effort. He supported the Service's proposed frameworks but requested that the Service plan early for what they would do next year should the status of pintails become either worse or better.

Written Comments Received

The preliminary proposed rulemaking which appeared in the *Federal Register* dated March 6, 1991, (56 FR 9462), opened the public comment period for late-season migratory game bird hunting regulations. As of July 29, 1991, the Service had received 39 comments, 20 of these specifically addressed late-season related issues. These late-season comments are summarized in the order used in the March 6, 1991, *Federal Register*. Only the numbered items pertaining to late seasons for which written comments were received are included.

General

Council Recommendations: The Pacific Flyway Council recommended no change in shooting hours.

Written Comments: A local organization from Massachusetts supported the proposed shooting hours of one-half hour before sunrise to sunset for all seasons, unless otherwise specified. An individual from Louisiana supported shooting hours beginning at one-half hour before sunrise, but suggested eliminating afternoon hunting to reduce "double-tripping".

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special/Species Management. Only those categories for which substantial recommendations or comments have been received are included below.

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council and the Upper and Lower Region Regulations Committees of the Mississippi Flyway Council recommended frameworks dates of October 1 through January 20, and that these dates remain fixed and not be used for management purposes on an annual basis.

The Central Flyway Council recommended that framework dates be the Saturday nearest October 1 to the Sunday nearest January 20. The Council does not favor using framework dates as a means of regulating duck harvest.

The Pacific Flyway Council recommended that the framework dates for the upcoming season be October 5 through January 5, essentially no change from last year.

Written Comments: A local organization from Mississippi and two

individuals requested that the framework closing date for ducks be January 20 and that frameworks not be treated as annual regulations. An individual from Louisiana requested that both framework opening and closing dates be liberalized.

C. Season Length

Council Recommendations: The Atlantic Flyway Council recommended a 35-day season for most ducks but recommended a 30-day season for pintails and an 11-day season for canvasback. The Upper and Lower Region Regulations Committee of the Mississippi Flyway Council recommended a 30-day season.

The Pacific Flyway Council recommended increasing the season length from 59 to 60 days, so as to accommodate a majority of Pacific Flyway States with 2-way splits to open on a Saturday and close on a Sunday during both segments.

Written Comments: A local organization from Tennessee requested a 40-day season, while an individual from Washington requested an extended season on diving ducks.

E. Bag Limits

Council Recommendations: The Atlantic Flyway Council and the Upper and Lower Region Regulations Committee of the Mississippi Flyway Council recommended continuation of a 3-duck daily bag limit.

The Central Flyway Council recommended that another drake mallard be allowed in the conventional and point system bag limits. They remarked that, in 1985, the Central Flyway received a disproportionate reduction in bag limits and request that this inequity be rectified.

The Pacific Flyway Council recommended no change in the daily bag limit and no change in the within-bag restrictions.

Written Comments: The California Department of Fish and Game requested that the bag limit be increased to include 2 male pintails during the last 36 days of the season. Two individuals from Colorado requested the bag limit for drake mallards in the Central Flyway return to 3, as in previous years.

F. Zones and Split Seasons

All zone and split-season combinations for ducks are subject to the criteria published in the September 21, 1990, *Federal Register* (at 55 FR 38915). In addition to the published criteria, the Service provided the States with an interpretation of the criteria on

June 6, 1991. This notification included the following:

(1) States will have the option to either split or not split their seasons in one or both zones each year of the 5-year period.

(2) When invoking the grandfather clause only minor changes are allowed. Although the Service hesitates to define a "minor" change, it is clear that moving counties from one zone to another is a major change and will not be allowed.

(3) Zone boundaries must be contiguous, unless there is strong justification to warrant an exception. Such justification must be in terms of physiography, climate, or biology.

(4) Seasons may not be concurrent among zones. If a State chooses to zone, there must be at least a 1-day difference in season dates between zones.

Zoning proposals for duck seasons that differ from the zone descriptions published in the September 21 document are described in a later portion of this document. A complete set of zone and area descriptions for waterfowl seasons will be published in the final frameworks document.

Council Recommendations: The Atlantic Flyway Council recommended that the Service approve the zoning proposal from Pennsylvania.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended a temporary exception for the establishment of a separate zone for Catahoula Lake in Louisiana to help reduce lead-poisoning losses on the lake. This zone would have a continuous season while the East and West Zones would be allowed to continue with split seasons. Under the current water-management plan for the lake, water levels are raised immediately following the close of the duck hunting season. The closed periods between split seasons have allowed waterfowl, unmolested by hunting activity, to more actively feed on the lake and increase the potential for lead-poisoning die-offs. The Committee believes that a continuous season for Catahoula Lake would reduce the probability of lead-poisoning mortality and would not significantly increase annual harvest.

The Pacific Flyway Council recommended that the Service approve the requests from Idaho, Arizona, and California.

Written Comments: As of August 2, 1991, the Service had received written proposals from 38 States. The Service assumes that the remaining States do not wish to make any modification to their existing zone/split-season configurations. Most of the zoning proposals either grandfathered existing

configurations or selected new configurations according to the published criteria. However, Pennsylvania, Indiana, Ohio, Nebraska, and California presented proposals that did not completely conform to the criteria. In Pennsylvania, Indiana, and Ohio, the proposal to grandfather existing zones included moving entire counties from one zone to another. In Nebraska, the proposed zones were not contiguous. In California, the proposal to grandfather existing zones was accompanied by a proposal to create two new zones.

An individual from Louisiana requested that additional season splits be allowed.

G. Special/Species Management

i. Canvasback Harvest Management

Council Recommendations: In the March 1991 meeting, the Atlantic Flyway Council recommended that canvasbacks be managed as a single continental population with a threshold level for harvest management to be a 3-year average breeding population index of 500,000 birds. The Council stated that the proper management of the canvasback resource requires a continental approach with harvest divided equitably among all flyways, in accordance with approved hunt plans, when the 3-year average breeding population index reaches the 500,000 threshold. Later, as a result of their summer meetings, the Atlantic Flyway Council recommended an 11-day season on canvasbacks to be held within the regular duck season with a daily bag limit of 2 drakes, and that this season continue until the 3-year running average breeding population index falls below 450,000.

The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that canvasback populations should continue to be separated into a Western and an Eastern Population based on breeding population survey strata as documented in the current canvasback harvest guidelines. Delineation of the boundaries between the populations should be reevaluated as new information becomes available. Canvasback harvest guidelines should be based on specific breeding population index levels as contained in the current canvasback harvest guidelines, and current threshold levels are appropriate, pending further review of information.

The Central Flyway Council recommended that States in the Central Flyway be allowed to hunt canvasbacks when the 3-year running average for the

continental breeding population index exceeds 500,000 and the breeding habitat in survey strata 1-50 is capable of production such that an age ratio of at least 1.0 young per adult would be expected in the harvest. The Council remarked that annual recruitment can be estimated based on water levels, that harvest in the Central Flyway averaged only 10,000 per year during the period of 1980 through 1985, that research indicates no conclusive evidence that a restricted hunting season would result in significantly lower survival rates beyond those occurring during a closed season, and finally that the focus of harvest regulation should be one of restrictive bag limits rather than area closures.

The Pacific Flyway Council recommended no change for canvasbacks and retention of the two per day bag limit as part of an aggregate bag limit with redheads.

Written Comments: The Wisconsin Department of Natural Resources supported the current canvasback harvest guidelines but asked the Service to reconsider the current breeding areas assigned to the two population units based on banding information through 1990. The Wyoming Department of Fish and Game requested reinstatement of the canvasback season for the Central Flyway.

ii. Other Species

Written Comments: A local organization from Massachusetts requested a bonus bag limit for green-winged teal, while an individual from Washington, requested a bonus bag limit on diving ducks.

3. Mergansers

Council Recommendations: The Central Flyway Council supported the proposed regulations for mergansers. The Pacific Flyway Council recommended no change for mergansers and retention of mergansers as part of the regular duck bag limits in that Flyway.

Written Comments: A local organization from Massachusetts requested liberalization of merganser bag limits.

4. Canada Geese

A. Special Seasons: In the July 15, 1991, Federal Register (at 56 FR 32267), the Service published proposed criteria to govern the use of special Canada goose seasons. Upon closure of this comment period, the Service will consider comments received and develop final criteria which will be

published in the late-season final frameworks document.

Council Recommendations: The Atlantic Flyway Council recommended that South Carolina be permitted a 3-year experimental resident Canada goose season in the Central Piedmont, Western Piedmont, and Mountain Hunt Units of the State. The season would be 4 days in length, occurring after the regular waterfowl season. The bag limit would be 1 goose per season. This proposed season would provide recreational waterfowl hunting opportunity while alleviating nuisance and depredation problems. Historically, migrant goose use of the proposed hunt area has been insignificant. The Council also recommended that Georgia be permitted to enlarge their experimental Canada goose hunting zone to include Hull County except Lake Sidney Lanier. The Council further recommended continuing the late season in Connecticut, continuing the late season in the Coastal Zone of Massachusetts, and expanding the Massachusetts late season into the Central Zone on an experimental basis.

The Mississippi Flyway Council recommended several changes to the proposed criteria. They indicated that more liberal proportions of migrant to resident geese should apply in instances where a nontarget population exceeds stated population objectives, that collection of morphological information to ascertain probable source populations of harvest be required, and that federal harvest surveys should provide adequate monitoring for seasons that completed the experimental period. They further recommended that the Service increase efforts to study migrant populations, further define target populations of nuisance geese to include both resident and nonlocal giant Canada goose populations, and consider the precision of the evaluation techniques and approve seasons if the population percentages would meet the minimum criteria after adjustment for probable error.

The Upper Regulations Committee of the Mississippi Flyway Council recommended operational status for the late special season in one area of Minnesota.

The Pacific Flyway Council supported the Service's criteria for establishing and monitoring these special seasons.

Written Comments: One organization from Massachusetts requested that the special late season for Canada geese be expanded to statewide.

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended

no change for seasons designed to harvest migrant Canada geese. However, they recommended that Pennsylvania use special seasons to harvest increasing resident flocks in eastern and southwestern Pennsylvania; and that the seasons in Crawford, Erie, Mercer, and Butler Counties extend for 70 days with a bag limit of 3 Canada geese in Erie, Mercer, and Butler Counties and 1 Canada goose in Crawford County.

The Upper Region Regulations Committee of the Mississippi Flyway Council recommended extending the framework closing date for dark geese in the northern portion of the flyway to January 31, which is consistent with the southern portion of the flyway. The Committee recommended that Minnesota be allowed to expand the Southeast Goose Zone to include two additional counties, Chisago and Isanti, at the north end of the zone. They also recommended including the eastern part of Michigan's Upper Peninsula in the area that is subject to less restrictive regulations, and expanding the possession limit in Wisconsin to 10 Canada geese statewide.

The Upper and Lower Region Regulations Committees of the Mississippi Flyway Council recommended numerous minor adjustments to bag limits, season lengths, and quotas.

The Central Flyway Council recommended that dark-goose seasons in the Eastern Tier extend for either 72 or 79 days. The bag limit would be no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days under the 79-day option and 37 consecutive days under the 72-day option; and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining days in the season. There were several exceptions to the above recommended frameworks. For the Western Tier, the season length was recommended to be increased from 100 to 107 days with a daily bag limit of 3 dark geese in most areas. The aggregate bag limit of light and dark geese in the Western Tier would be discontinued. The Council recommended extending the framework closing date from January 20 to January 31 for dark geese in the Eastern and Western Tier. The Council further recommended that, in lieu of zoning, statewide goose seasons may be divided into three segments; and that, based on the distribution of Short Grass Prairie Canada geese, a portion of Oklahoma should be governed by Western-Tier regulations.

The Pacific Flyway Council recommended that the possession limits

in Arizona, Clark County of Nevada, Washington County of Utah, and the Colorado River Zone of California be increased from 2 to 4, which would be twice the daily bag limit. They further recommended that the bag and possession limits for southeastern Idaho and the remainder of Nevada be increased from 2 and 4, to 3 and 6, respectively.

Written Comments: The Barton County, Missouri, Soil and Water Conservation District remarked that extending the framework for geese through February would help alleviate crop damage. A local organization in Michigan opposed the restriction of hunting opportunity in that State. Four individuals opposed restrictions in northwestern Pennsylvania.

5. White-fronted Geese

Council Recommendations: The Central Flyway Council recommended that dark-goose seasons in the Eastern Tier extend for either 72 or 79 days. The bag limit would be no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days under the 79-day option and 37 consecutive days under the 72-day option; and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining days in the season. There were several exceptions to the above recommended frameworks. For the Western Tier, the season length was recommended to be 107 days with a daily bag limit of 3 dark geese in most areas. The aggregate bag limit of light and dark geese in the Western Tier would be discontinued. The Council recommended extending the framework closing date from January 20 to January 31 for dark geese in the Eastern and Western Tier. The Council further recommended that, in lieu of zoning, statewide goose seasons may be divided into three segments; and that, based on the distribution of Short Grass Prairie Canada geese, a portion of Oklahoma should be governed by Western-Tier regulations.

The Pacific Flyway Council recommended that the framework opening date be advanced from November 1 to October 26 in Lake and Klamath Counties, Oregon; and that the daily bag limit in the Northeastern Zone of California be increased from 1 to 2 white-fronted geese, within a 2 dark geese daily bag limit.

6. Bryant

Council Recommendations: The Atlantic Flyway Council recommended a 50-day season with a 4-bird daily bag

limit, an increase of 2 birds in the daily bag limit over last year.

The Pacific Flyway Council recommended no change.

7. Snow and Ross's Geese

Council Recommendations: The Atlantic Flyway Council recommended no change in greater snow goose regulations.

The Central Flyway Council recommended that the possession limit for light geese be three times the daily bag limit and that the aggregate bag limit of light and dark geese in the Western Tier be discontinued. They further recommended that the season length in the Western Tier be increased from 100 to 107 days.

The Pacific Flyway Council recommended no change.

8. Tundra Swans

Council Recommendations: The Atlantic Flyway Council recommended no change in permit swan hunts.

The Central Flyway Council recommended that 1,500 of the swan permits allocated to the Mississippi Flyway be redistributed in order to increase the number of permits available in North Dakota by 1,000 permits and South Dakota by 500 permits. The Eastern Population of tundra swans is currently well above the management goal; sportsmen in North and South Dakota continue to request additional hunting opportunity on swans; and the sport hunting plan allows for this redistribution. The Mississippi Flyway Council concurred with this reallocation for the 1991-92 season only.

The Pacific Flyway Council recommended no change.

Written Comments: The Service received 4 letters from individuals during the comment period that opposed swan hunting.

10. Coots

Council Recommendations: The Central and Pacific Flyway Councils recommended no change in coot hunting regulations.

Written Comments: The Wisconsin Department of Natural Resources suggested that the Service reexamine the coot breeding population data as this species probably has also been severely impacted by the prolonged drought in the prairies.

22. Other

A. Compensation for Sunday-Hunting Prohibition

Council Recommendations: The Pacific Flyway Council recommended that additional days of hunting be

allowed to those States that lose Sunday hunting because of State-mandated/legislated requirements, provided that the requirements were not done in order to benefit hunting.

Written Comments: The Service received 9 written comments from Members of Congress during the open comment period urging the Service to consider compensating States that lose days of hunting due to prohibitions on Sunday hunting. A local organization from Pennsylvania also requested compensation for these Sunday closures.

B. Captive-reared Mallards

Council Recommendations: The Atlantic Flyway Council recommended that § 21.13 be modified to apply to only restrictive situations (i.e., tower shoots); when mallards are free-flying, they would be afforded full protection under the Migratory Bird Treaty Act and count toward the daily bag limit.

Written Comments: An individual from California remarked that those people who raise and release mallards provide breeding stock, create waterfowl habitat such as flooded fields, and enhance and protect natural habitat; and that he opposed enforcement of regulations regarding live decoys.

Public Comment Invited

Based on the results of migratory game bird studies now in progress, and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of

specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with EPA on June 9, 1988. Notice of Availability was published in the *Federal Register* on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations, those are developed annually. The annual regulations and options were considered in the Environmental Assessment, Waterfowl Hunting Regulations for 1991.

Endangered Species Act Consideration

On July 31, 1991, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate changes of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultations

under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Order 12291, 12612, and 12630; and the Paperwork Reduction Act

In the Federal Register dated March 6, 1991 (56 FR 9462), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Orders. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive order 12630, and will not have any significant federalism effects, under Executive Order 12612. This determination is detailed in the aforementioned documents, which are available upon request from the Office of Migratory Bird Management. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the Federal Register dated August 21, 1991 (56 FR 41608).

Authorship

The primary authors of this proposed rule are Robert J. Blohm and William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1991-92 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 701-711), and the Fish and Wildlife Improvement Act of November 8, 1978, as amended (16 U.S.C. 712).

Dated: August 19, 1991.

Mike Hayden,
Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 1991-92 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots. States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules, and sea duck seasons in July should do so at the time they make their waterfowl selections. Late-season frameworks are summarized below:

General

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily, for all species and seasons.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Coots, and Mergansers

Hunting Season: Not more than 30 days.

Outside Dates: Between October 5, 1991, and January 5, 1992.

Duck Limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck.

Closures: The seasons on canvasbacks and harlequin ducks are closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may zone and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their statewide seasons into two segments. Zone descriptions that differ from those published in the September 21, 1990, Federal Register (at 55 FR 38915) are described in a later portion of this document.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise, seasons may be split into two segments. Seasons in States, and independently in described goose management units within States, may be as follows:

*Connecticut: North Zone—*90 days between October 1 and January 31, with a daily bag limit of 3.

*South Zone—*a 90-day experimental season between October 1 and February 5, with a daily bag limit of 3 through January 14, and a daily bag limit of 5 thereafter.

Delaware: 60 days between October 31 and January 20, with a daily bag limit of 2.

Florida: Closed season.

Georgia: In specific areas, an 8-day experimental season may be split into 2 segments of 4 days each between November 15 and February 5, with a limit of 1 Canada goose per season.

Maine: 70 days between October 1 and January 20, with a daily bag limit of 3.

Maryland: 60 days between October 31 and January 20, with a daily bag limit of 2.

Massachusetts: 70 days between October 1 and January 20 in the Berkshire and Coastal Zones, and between October 1 and January 31 in the Central Zone, with a daily bag limit of 3. In addition, a special 16-day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with a daily bag limit of 5.

New Hampshire: 70 days between October 1 and January 20, with a daily bag limit of 3.

New Jersey: 90 days between October 1 and January 31, with a daily bag limit of 1 through October 15, and a daily bag limit of 3 thereafter.

New York: 90 days between October 1 and January 31, with a daily bag limit of 1 through October 15 and a daily bag limit of 3 thereafter.

North Carolina: East of I-95—11 days between January 20 and January 31, with a daily bag limit of 1.

West of I-95—Closed.

Pennsylvania: Southeast Zone—90 days between October 1 and January 31, with a daily bag limit of 1 through October 15 and 3 thereafter.

Erie, Mercer, and Butler Counties—50 days between October 1 and January 20, with a daily bag limit of 2.

Crawford County—70 days between October 1 and January 20, with a daily bag limit of 1.

Remainder of State—70 days between October 1 and January 20, with a daily bag limit of 3.

Rhode Island: 90 days between October 1 and January 31, with a daily bag limit of 3.

South Carolina: 11 days between January 20 and January 31, with a daily bag limit of 1. In addition, a special 4-day season for resident Canada geese may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during January 15 to February 15 with a limit of 1 Canada goose per season.

Vermont: 70 days between October 1 and January 20, with a daily bag limit of 3.

Virginia: Back Bay—11 days between January 20 and January 31, with a daily bag limit of 1.

Remainder—60 days between October 31 and January 20, with a daily bag limit of 2.

West Virginia: 70 days between October 1 and January 20, with a daily bag limit of 3.

White Geese

Definition: For purpose of hunting regulations listed below, the collective term "white" geese includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1, 1991, and February 14, 1992, with a daily bag limit of 5. States may split their seasons into two segments.

Atlantic Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day

season between October 1, 1991, and January 20, 1992, with a daily bag limit of 2.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Coots, and Mergansers

Hunting Seasons: Not more than 30 days.

Outside Dates: Between October 5, 1991, and January 5, 1992.

Duck Limits: The daily bag limit is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, black duck, redhead, hooded merganser

50 points—male mallard, wood duck

35 points—all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons for ducks, coots, and mergansers by zones described later in these frameworks. Zones not described herein are described in the September 21, 1990, Federal Register (at 55 FR 38915).

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits, and shooting hours shall be the same as

those selected in the adjacent portion of Pennsylvania.

Lower St. Francis River Area, Missouri: The waterfowl seasons, limits, and shooting hours shall be the same as those selected by Arkansas.

Geese

Definition: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, and brant.

Light geese—lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (September 28, 1991) and January 31, 1992, and 80 days for light geese between the Saturday nearest October 1 (September 28, 1991), and February 14, 1992. The daily bag limit is 7 geese, to include no more than 3 Canada and 2 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 144,800 birds. In the:

(a) **Southern Illinois Quota Zone—**The season for Canada geese will close for 84 days or when 72,400 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 10 in possession. If any of the following conditions exist after December 20, 1991, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 500 birds per day for 10 consecutive days, or a total mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) *Rend Lake Quota Zone*—The season for Canada geese will close after 84 days or when 21,700 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 10 in possession.

(c) *Tri-County Zone*—The season for Canada geese may not exceed 71 days. Limits are 2 Canada geese daily and 10 in possession.

(d) *Remainder of the State*—The season for Canada geese may extend for 90 days in the respective duck-hunting zones. Limits are 3 Canada geese daily and 10 in possession.

Indiana: The total harvest of Canada geese in the State will be limited to 25,500 birds. In:

(a) *Pasey County*—The season for Canada geese will close after 70 days or when 6,000 birds have been harvested, whichever occurs first. The daily bag limit is 4 Canada geese.

(b) *Remainder of the State*—The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese, except in LaGrange and Steuben Counties and on the Kankakee and Jasper-Pulaski Fish and Wildlife Areas, where the daily bag limit is 1.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky: In the:

(a) *Western Zone*—The season for Canada geese may extend for 93 days, and the harvest will be limited to 43,200 birds. Of the 43,200-bird quota, 28,000 birds will be allocated to the Ballard Reporting Area and 8,200 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 93-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 93 days. The season in Fulton County may extend to February 15, 1992. The daily bag limit is 3 Canada geese.

(b) *Remainder of the State*—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: Louisiana may hold 80-day seasons on light geese and 70-day seasons on white-fronted geese and brant between the Saturday nearest October 1 (September 28, 1991), and February 14, 1992, in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese, except as noted below. In the Southwest Zone, an experimental 9-day season for Canada

geese may be held during January 22–30, 1992. During the experimental season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the experimental Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 97,900 birds. In the:

(a) *North Zone:*

(1) *West of Forest Highway 13*—The framework opening date for all geese is September 21 and the season for Canada geese may extend for 71 days. The daily bag limit is 3 Canada geese.

(2) *Remainder of North Zone*—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(b) *Middle Zone*—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) *South Zone:*

(1) *Allegan County GMU*—The season for Canada geese will close after 58 days or when 6,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose through November 14 and 2 Canada geese thereafter.

(2) *Muskegon Wastewater GMU*—The season for Canada geese will close after 50 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) *Saginaw County GMU*—The season for Canada geese will close after 40 days or when 4,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) *Tuscola/Huron GMU*—The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) *Remainder of South Zone:*

(i) *West of U.S. Highway 21/127*—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(ii) *East of U.S. Highway 21/127*—The season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(d) *Southern Michigan GMU*—A late Canada goose season of up to 30 days may be held between January 4 and February 3, 1992. The daily bag limit is 2 Canada geese.

Minnesota: In the:

(a) *West Central Goose Zone*—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Goose Zone the season will close after 40 days or when a harvest of 6,000 birds has

been achieved, whichever occurs first. Throughout the West-Central Zone, the daily bag limit is 1 Canada goose.

(b) *Southeast Goose Zone*—The season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese. In selected areas of the Metro Goose Management Block and in Olmsted County, 10-day late seasons may be held during December to harvest Giant Canada geese. The season in the Metro Goose Management Block is experimental. During these seasons, the daily bag limit is 2 Canada geese.

(c) *Remainder of the State*—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: In the:

(a) *Swan Lake Zone*—The season for Canada geese closes after 50 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) *Schell-Osage Zone*—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) *Remainder of the State*—The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days, with a daily bag limit of 2 Canada geese, except in the counties of Ashtabula, Trumbull, Ottawa, and that portion of Lucas County east of the Maumee River, where the daily bag limit will be 1 Canada goose.

Tennessee: In the:

(a) *Northwest Tennessee Zone*—The season for Canada geese may extend for 72 days, and the harvest will be limited to 22,500 birds. Of the 22,500 bird quota, 15,500 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 72-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Tennessee Zone may continue for an additional 7 days, not to exceed a total of 72 days. The season may extend to February 15, 1992. The daily bag limit is 3 Canada geese.

(b) *Southwest Tennessee Zone*—The season for Canada geese may extend for 55 days, and the harvest will be limited to 2,500 birds. The daily bag limit is 2 Canada geese.

(c) *Kentucky Lake Zone*—The season for Canada geese may extend for 50

days. The daily bag limit is 2 Canada geese.

(d) *Remainder of the State*—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The framework opening date for all geese is September 21. The total harvest of Canada geese in the State will be limited to 190,100 birds. In the:

(a) *Horicon Zone*—The harvest of Canada geese is limited to 135,800 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged and the total number of tags issued will be limited so that the quota of 135,800 birds is not exceeded. Limits are 2 Canada geese daily and 10 in possession.

(b) *Theresa Zone*—The harvest of Canada geese is limited to 6,000 birds. The season may not exceed 93 days. Limits are 1 Canada goose per time period and 10 in possession.

(c) *Pine Island Zone*—The harvest of Canada geese is limited to 800 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. Limits are 2 Canada geese daily and 10 in possession.

(d) *Collins Zone*—The harvest of Canada geese is limited to 3,000 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. Limits are 2 Canada geese daily and 10 in possession.

(e) *Exterior Zone*—The harvest of Canada geese is limited to 40,000 birds. The season may not exceed 93 days, except as noted below. The daily bag limit is 1 Canada goose through October 4, and 2 thereafter, except as noted below. In the Mississippi River Subzone, the season for Canada geese may extend for 93 days. The daily bag limit is 1 Canada goose through October 4, and 2 thereafter. In the Brown County Subzone, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limit during this special season is 3. In the Rock Prairie Subzone, a special late season to harvest giant Canada geese may be held between November 4 and December 15. During this late season, the daily bag limit is 1 Canada goose. The progress of the harvest in the Exterior Zone must be monitored, and the zone's season closed, if necessary, to ensure that the harvest does not exceed the limit stated above. This closure will not apply to the special late-season giant Canada goose seasons in the Mississippi River, Brown County, and Rock Prairie Subzones.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,000 Canada

geese in the Horicon Zone and 500 in the Theresa Zone may be taken under special agricultural permits.

Illinois, Indiana, Kentucky, Missouri, and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Swan Lake Zone in Missouri, and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Shipping restrictions: In Illinois and Missouri, and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle, geese may not be transported, shipped, or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Hunting Seasons: Seasons in the High Plains Mallard Management Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, may include no more than 51 days, provided that the last 12 days may start no earlier than the Saturday closest to December 10 (December 7, 1991). Seasons in the Low Plains Unit may include no more than 39 days.

Outside Dates: October 5, 1991, through January 5, 1992.

Duck Limits: The daily bag limit is 3, including no more than 2 mallards, no

more than 1 of which may be a female, a mottled duck, 1 pintail, 1 redhead, and 2 wood ducks.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck

50 points—male mallard, wood duck

35 points—all other ducks and mergansers

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons for ducks, coots, and mergansers by zones described later in these frameworks. Zones not described herein are described in the September 21, 1990, Federal Register (at 55 FR 38917–18).

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant; "dark geese" includes Canada and white-fronted geese and black brant; and "light geese" includes all others.

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (September 28, 1991), through January 31, 1992, for dark geese and the Saturday nearest October 1 (September 28, 1991), through the Sunday nearest February 15 (February 16, 1992), except in New

Mexico where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Kansas: For dark geese, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For Light Goose Units 1 and 2, no more than 100 days, with a daily bag limit of 5, or no more than 86 days, with a daily bag limit of 7.

Montana: No more than 107 days, with daily bag limits of 2 dark geese and 5 light geese in Sheridan County and 4 dark geese and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese in the North Unit, no more than 79 days, with daily bag limits of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 9, 1991), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the East and West Units, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose for no more than 37 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 100 days, with a daily bag limit of 5, or no more than 86 days with a daily bag of 7.

New Mexico: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

North Dakota: For dark geese, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese until October 19, and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 100 days, with a daily bag limit of 5, or no more than 86 days with a daily bag limit of 7.

Oklahoma: For dark geese, no more than 79 days, with a daily bag limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 100 days, with a daily bag limit of 5, or no more than 86 days with a daily bag limit of 7.

South Dakota: For dark geese in the Missouri River Unit, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 9, 1991), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 100 days, with a daily bag limit of 5, or no more than 86 days with a daily bag limit of 7.

Texas: West of U.S. 81, no more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

For dark geese east of U.S. 81, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose for the first 72 days but only 2 Canada geese for the last 7 days.

For light geese east of U.S. 81, no more than 100 days, with a daily bag limit of 5, or 86 days with a daily bag limit of 7.

Wyoming: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, and Common Moorhens

Hunting Seasons: Concurrent 59-day seasons on ducks (including

mergansers), coots, and common moorhens may be selected except as subsequently noted. In the Columbian Basin Mallard Management Unit the seasons may be an additional 7 days. In those States or zones that split their season on ducks, the season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Outside Dates: Between October 5, 1991, and January 5, 1992.

Duck and Merganser Limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, and either 2 canvasbacks, 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons for ducks (including mergansers), coots, and common moorhens by zones. Zones not described herein are described in the September 21, 1990, Federal Register (at 55 FR 38915).

Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments either statewide or in each zone.

Colorado and Montana may split their duck seasons into three segments.

Colorado River Zone, California: Duck, coot, and common moorhen season dates shall coincide with season dates selected by Arizona.

Geese (including Brant)

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 93-day seasons may be selected, with outside dates between the Saturday closest to October 1 (September 28, 1991), and the Sunday closest to January 20 (January 19, 1992), and the basic daily bag and possession limits are 6 geese, provided that the daily bag limit includes no more than 3 white geese (including snow, blue, and Ross') and 3 dark geese (all other species of geese, including brant). In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or

other circumstances justify such actions. There will be no open season on cackling Canada geese in California, Oregon, and Washington; and those states must include a statement to that effect in their respective regulations leaflet.

Arizona: The daily bag limit for dark geese may not include more than 2 Canada geese.

California:

Northeastern Zone—White-fronted geese may be taken only during the first 23 days of such season. The daily bag limit is 3 geese and may include no more than 2 Canada geese or 1 white-fronted goose, but not 1 of each.

Colorado River Zone—The season must be the same as that selected by Arizona. The daily bag limit for dark geese may not include more than 2 Canada geese.

Southern Zone—The daily bag and possession limits for dark geese may not include more than 2 Canada geese, except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e., Imperial Valley) where daily bag and possession limits for Canada geese are 1 and 2, respectively.

Balance-of-the-State Zone—A 79-day season may be selected, except that white-fronted geese may be taken during only the first days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the counties of *Del Norte* and *Humboldt* there will be no open season for Canada geese.

(2) In the *Sacramento Valley Area*, the season on white-fronted geese must end on or before November 30, 1991, and, except in the *Western Canada Goose Hunt Area*, there will be no open season for Canada geese. In the *Western Canada Goose Hunt Area*, the take of Canada geese other than cackling and Aleutian Canada geese is allowed.

(3) In the *San Joaquin Valley Area*, the hunting season for Canada geese will close no later than November 23, 1991.

Brant Season: A statewide, 30-consecutive-day season to brant may be selected.

Colorado: The season must end on or before the second Sunday in January (January 12, 1992). The daily bag limit for dark geese may not include more than 2 Canada geese.

Idaho:

10 Northern Counties Area—The daily bag limit may not include more than 3 geese.

Southwestern Area—The season must end on or before the first Sunday in January (January 5, 1992) with a daily bag limit of 3 geese, that may not include more than 2 Canada geese.

Southeastern Area, including the *Ft. Hall-American Falls Zone*—The season must end on or before the second Sunday in January (January 12, 1992); the daily bag limit is 3 geese.

Montana:

East of Divide Zone—The season must end on or before the second Sunday in January (January 12, 1992).

West of Divide Zone—The season must end on or before the first Sunday in January (January 5, 1992). The daily bag limit on dark geese may not include more than 2 Canada geese.

Nevada:

Clark County Zone—The daily bag limit of dark geese may not include more than 2 Canada geese.

New Mexico: The daily bag limit for dark geese may not include more than 2 Canada geese.

Oregon:

Eastern Zone—In the *Columbia Basin Goose Area*, the season may be an additional 7 days.

Western Zone—In the *Special Canada Goose Management Area*, except for designated areas, there shall be no open season on Canada geese. In those designated areas, seasons must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Baker and Malheur Counties Zone—The season must end on or before the first Sunday in January (January 5, 1992). The daily bag limit of dark geese may not include more than 2 Canada geese.

Lake and Klamath Counties Zone—White-fronted geese may not be taken before November 1 during the regular goose season.

Brant Season—A 16-consecutive-day season on brant may be selected.

Utah:

Washington County Zone—The season must end on or before the Sunday closest to January 20 (January 19, 1992). The daily bag limit for dark geese may not include more than 2 Canada geese.

Remainder-of-the-State Zone—The season must end on or before the second Sunday in January (January 12, 1992). The daily bag limit for dark geese may not include more than 2 Canada geese. In Cache County, the combined special September Canada goose season and the regular goose season shall not exceed 93 days.

Washington: The daily bag limit is 3 geese.

Eastern Zone—In the *Columbia Basin Goose Area*, the season may be an additional 7 days.

Western Zone—In the *Lower Columbia River Special Canada Goose Management Area*, except for designated areas, there shall be no open season on Canada geese. For designated areas, seasons on Canada geese must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Brant Season—A 16-consecutive-day season on brant may be selected.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose shall not exceed 93 days. The season must end on or before the second Sunday in January (January 12, 1992).

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. These seasons will be subject to the following conditions:

In the Atlantic Flyway

- The season will be experimental.
- The season may be 90 days, must occur during the white goose season, but may not extend beyond January 31.
- The States must obtain harvest and hunter participation data.
- In New Jersey, no more than 200 permits may be issued.
- In North Carolina, no more than 6,000 permits may be issued.
- In Virginia, no more than 600 permits may be issued.

In the Central Flyway

- In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.
 - In North Dakota, no more than 2,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.
 - In South Dakota, no more than 1,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.
- In the Pacific Flyway**
- A 93-day season may be selected between the Saturday closest to October 1 (September 28, 1991), and the Sunday closest to January 20 (January 19, 1992). Seasons may be split into 2 segments.
 - The States must obtain harvest and hunter participation data.
 - In Utah, no more than 2,500 permits may be issued.
 - In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, or Pershing Counties.
 - In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, or Toole Counties.

Special Falconry Frameworks

Frameworks for extended falconry seasons were published in the early-season final frameworks document on August 21, 1991 (56 FR 41608).

Area, Unit and Zone Descriptions**Ducks**

Except for the following descriptions, the Service does not propose any changes to those zone, area, and unit descriptions published in the September 21, 1990, *Federal Register* (at 55 FR 38915). The Service will publish descriptions of all waterfowl zones, areas, and units in the late-season final frameworks.

Atlantic Flyway**Pennsylvania**

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone: That portion of the State north of I-80 from the New Jersey State line west to the western boundaries of Warren, Forest, and Clarion Counties.

Northwest Zone: Erie and Crawford Counties and those portions of Mercer and Venango Counties north of Interstate Highway 80.

South Zone: The remaining portion of Pennsylvania.

Mississippi Flyway**Kentucky**

West Zone: That portion of the State west of a line extending north from the Tennessee border along Interstate Highway 65 to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U.S. Bypass 60 to U.S. Highway 231, then north along U.S. 231 to the Indiana border.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I-55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Lower St. Francis River Area: That part of the St. Francis River south of U.S. Highway 62 that is the boundary between Arkansas and Missouri, and all sloughs and chutes (but not tributaries.) connected to it.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Central Flyway**Montana (Central Flyway Portion)**

Zone 1: The counties of Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Zone 2: The counties of Big Horn, Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska

Zone 1: Those portions of Burt, Dakota, and Thurston Counties north and east of a line starting on NE 51 on the Iowa-Nebraska border to U.S. 75, north on U.S. 20, west on U.S. 75 to NE 12; to include those portions of Dakota, Dixon, Cedar, and Knox Counties north of NE 12; all of Boyd County; Keya Paha County east of U.S. 183. Where the Niobrara River forms the southern boundary of Keya Paha and Boyd Counties, both banks of the river shall be included in Zone 1.

Zone 2: The area bounded by designated highways and political boundaries starting on NE 2 at the State line near Nebraska City; west to U.S. 75; north to U.S. 34; west to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14;

south to U.S. 34; west to NE 2; south to I-80; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northwesterly to NE 91; west to U.S. 281, north to NE 91 Wheeler County; west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler Counties; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to the State line; and south and west along the State line to the point of beginning.

Zone 3: The area, excluding Zone 1, north of Zone 2.

Zone 4: The area south of Zone 2.

South Dakota

High Plains: West of highways and political boundaries starting at the State line north of Herreid; US-83 and US-14 to Blunt, Blunt-Canning Road to SD-34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I-90, and US-183 to the southern State line.

Low Plains:

North Zone: In that portion of northeastern South Dakota bounded by the following highways: starting at the North Dakota-South Dakota border, US 83 south to US 212, US 212 east to I-29, I-29 north to South Dakota Highway 15, South Dakota Highway 15 east to Hartford Beach, due east of Hartford Beach to the Minnesota border.

South Zone: Charles Mix County south of South Dakota Highway 44 to the Douglas County line, south on South Dakota Highway 50 to Geddes, East on Geddes Highway to US 281, south on US 281 and US 18 to South Dakota Highway 50, south and east on South Dakota Highway 50 to the Bon Homme County line, the counties of Bon Homme, Yankton and Clay south of South Dakota Highway 50, and Union County south and west on South Dakota Highway 50 and I-29.

Middle Zone: the remainder of the Low Plains portion.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: That portion of GMU 6A lying south of the General Crook Highway (State Highway 260), those portions of GMUs 6B and 8 in Yavapai County, and GMUs 11, 12B, 13B, and 14-45.

North Zone: GMUs 1-5, that portion of GMU 6A lying north of the General Crook Highway (State Highway 260), those portions of GMUs 6B and 8 in Coconino County, and GMUs 7, 9, 10, 12A, and 13A.

California

Northeastern Zone: In that portion of the State lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to its intersection with Forest Service Road 46N10; south and east along Forest Service Road 46N10 to its junction with Forest Service Road 45N22; west and south along Forest Service Road 45N22 to its junction with Highway 97 at Grass Lake Summit; south and west along Highway 97 to its junction with Interstate 5 at the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to the junction with Highway 49; east and north on Highway 49 to the junction of Highway 70; east on Highway 70 to Highway 395; south and east of Highway 395 to the point of intersection with the California-Nevada State line.

Idaho

Zone 1 (Ft. Hall-American Falls Zone): Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Includes the area not within Zone 1 or Zone 3.

Zone 3: Ada includes the counties of; Blaine between State Highway 75 and U.S. Highway 93 south of U.S. Highway 20 and that additional area between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 within the Silver Creek drainage; Boise; Canyon; Cassia EXCEPT that portion within the Minidoka NWR; Elmore EXCEPT that portion within the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka EXCEPT that portion within the Minidoka National Wildlife Refuge; Owyhee; Payette; Power west of State Highway 37 and State Highway 39 EXCEPT that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Oregon

Zone 1: All counties except Deschutes, Klamath and Lake Counties.

Zone 2: Deschutes, Klamath and Lake Counties.

Columbia Basin Mallard Management Unit: Morrow and Umatilla Counties.

Utah

Zone 1: All of Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Utah, Wasatch, and Weber Counties and that part of Tooele County lying north of I-80.

Zone 2: The remainder of Utah.

Washington

East Zone: Includes all areas lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

West Zone: Includes all areas lying to the west of the East Zone.

Columbia Basin Mallard Management Unit: Same as East Zone.

Geese

Except for the following descriptions, the Service does not propose any changes to those zone, area, and unit descriptions published in the September 21, 1990, Federal Register (at 55 FR 38915). The Service will publish descriptions of all waterfowl zones, areas, and units in the late-season final frameworks.

Atlantic Flyway

Georgia

Special Area for Canada Geese: See State Regulations.

Pennsylvania

Same zones as for ducks but in addition:

Southeast Zone: That portion of the State lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I-81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I-80 to the New Jersey line; and that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river.

South Carolina

Canada Goose Area: The Central Piedmont, Western Piedmont, and Mountain Hunt Units.

Mississippi Flyway

Kentucky

Western Zone: That portion of the state west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east

along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson county line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Michigan

Same zones as for ducks but in addition:

South Zone:

Tuscola/Huron GMU: Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bayport Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township, then easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Early Canada Goose Seasons:
Lower Peninsula—All areas except Huron, Saginaw, and Tuscola Counties, and the Allegan State Game Area in Allegan County.

Minnesota

Southeast Goose Zone: The Counties of Anoka, Carver, Chisago, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Missouri

Same zones as for ducks but in addition:

North Zone:

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone:

Schell-Osage Zone: That portion of the State encompassed by a line running east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

South Zone:

Lower St. Francis River Area: That part of the St. Francis River south of U.S. Highway 62 that is the boundary between Arkansas and Missouri, and all sloughs and chutes (but not tributaries) connected to it.

Central Flyway

No changes in zones.

Pacific Flyway

Idaho

Area 1 Zone:

Includes the following counties: Benewah; Bonner; Boundary; Kootenai; and Shoshone Counties.

Area 2 Zone:

Includes the following counties and portions of counties: Ada; Adams; Blaine north of U.S. Highway 20 and west of State Highway 75; Boise; Camas north of U.S. Highway 20 outside the Camas Creek drainage; Canyon; Clearwater; those portions of Custer west and north of State Highway 75 (Ketchum-Stanley-Challis highway), and

west of U.S. Highway 93 from its junction with State Highway 75 near Challis north to the Custer-Lemhi county line; those portions of Elmore north and east of Interstate 84, and south and west of Interstate 84, west of State Highway 51, EXCEPT that portion within the Camas Creek drainage; Gem; Idaho, Latah; Lemhi west of U.S. Highway 93; Lewis; Nez Perce; Owyhee; and Washington Counties.

Area 3 Zone:

Includes the following counties and portions of counties: those portions of Blaine south and east of U.S. Highway 93, west of U.S. Highway 93 south of U.S. Highway 20, and between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 within the Silver Creek drainage; those portions of Camas south of U.S. Highway 20, and north of U.S. Highway 20 within the Camas Creek drainage; Cassia; those portions of Elmore south of Interstate 84 east of State Highway 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of State Highway 51, and Twin Falls Counties.

Area 4 Zone:

Includes the following counties and portions of counties: Bear Lake; Bingham within the Blackfoot Reservoir drainage; Blaine between State Highway 75 and U.S. Highway 93 north U.S. Highway 20 EXCEPT the Silver Creek drainage; Bonneville, Butte, Caribou EXCEPT the Fort Hall Indian Reservation; Clark; those portions of Custer east and south of State Highway 75 (Ketchum-Stanley-Challis highway), and east of U.S. Highway 93 from its junction with State Highway 75 near Challis north to the Custer-Lemhi county line; Franklin; Fremont; Jefferson; Lemhi east of U.S. Highway 93; Madison; Oneida; Power west of State Highway 37 and State Highway 39; and Teton Counties.

Area 5 Zone:

Includes the following counties and portions of counties: Bannock; Bingham EXCEPT that portion within the Blackfoot drainage; Power County east of State Highway 37 and State Highway 39; and all lands, including private holdings, within the Fort Hall Indian Reservation.

[FR Doc. 91-20413 Filed 8-23-91; 8:45 am]

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Register **Federal**

Monday
August 26 1991

Part VI

Environmental Protection Agency

40 CFR Part 51
**State Implementation Plan Completeness
Criteria; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 51**

[FRL-3988-4]

State Implementation Plan Completeness Criteria**AGENCY:** Environmental Protection Agency.**ACTION:** Final rulemaking.

SUMMARY: The Clean Air Act (Act) Amendments of 1990 (1990 Amendments) require the Administrator of the Environmental Protection Agency (EPA) to promulgate minimum criteria that any plan submission must meet in order to be considered a complete State implementation plan (SIP) submission. The Act requires that such criteria be promulgated by August 15, 1991. This rulemaking notice satisfies the statutory requirements by promulgating an initial set of SIP completeness criteria.

DATES: This action becomes effective September 25, 1991.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket No. A-91-11 by EPA and are available for inspection and copying at the following address between 8 a.m. and 12 noon and 1:30 p.m. and 3:30 p.m., Monday through Friday, at: EPA Air Docket (LE-131), room M-1500, Ground Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The EPA may charge a reasonable fee for copying.

Additionally, the public is advised that Public Docket No. A-88-18 is the docket that was established for the original completeness criteria that were promulgated by EPA on February 16, 1990 (55 FR 5824). The background materials that were placed in that docket may be of interest to the reader.

FOR FURTHER INFORMATION CONTACT: Denise Gerth, Office of Air Quality Planning and Standards (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone (919) 541-5550 or (FTS) 629-5550.

SUPPLEMENTARY INFORMATION:**Proposed Rulemaking**

On May 24, 1991 (56 FR 23826), EPA published the SIP completeness criteria proposed rulemaking. The reader is referred to that document for detailed information on the completeness criteria.

Completeness Criteria Under SIP Reforms

Prior to passage of the 1990 Amendments, EPA adopted completeness criteria under section 301(a) of the Act on its own initiative as part of an overall effort to reform SIP processing within the Agency. On February 16, 1990 (55 FR 5824), EPA promulgated completeness review criteria for SIP submittals. The completeness criteria described the procedures for assessing whether a SIP submittal was adequate to trigger the Act requirement that EPA review and take action on the submittal. The completeness criteria were one of the SIP reform measures that were announced on January 19, 1989 (54 FR 2214) by EPA in the Notice of Procedural Changes. The reader is referred to these notices for detailed information on EPA's SIP processing reform initiatives.

The completeness criteria that are in appendix V of part 51 provide procedure and screening criteria which enable States to prepare adequate SIP submittals and enable EPA reviewers to promptly screen SIP submittals, identify those that are incomplete, and return them to the State for corrective action without having to go through rulemaking.

Statutory Requirements of Clean Air Act

The 1990 Amendments established section 110(k)(1) which requires EPA to establish completeness criteria for State plan submissions. Following are the specific requirements that the 1990 Amendments set forth in requiring completeness criteria.

1. Completeness of Plan Submissions

The 1990 Amendments established section 110(k)(1), which requires EPA to develop and promulgate completeness criteria not later than August 15, 1991. The completeness criteria are to be the minimum criteria that any plan submission must meet before the Administrator is required to take rulemaking action on such submission. The criteria are to be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of the Act.

2. Completeness Finding

The Act requires that within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date by which a State is required to submit the plan or plan revision, the Administrator shall determine whether the completeness criteria have been met. If the Administrator has not made a

completeness determination by 6 months after receipt of the submission, that submission shall on that date be considered to have met the minimum criteria (section 110(k)(1)(B)).

A finding that the State has failed to submit a complete revision may have other effects. A determination that a SIP submission is incomplete may trigger the sanctions provisions of the 1990 Amendments (see section 179(a)(1)).

In the proposal, EPA stated its preliminary interpretation that section 110(k) also required EPA to make a completeness determination within 6 months of the date by which a State was required to submit a plan revision, even if the State never submitted the revision. Upon further reflection in light of the comments received, EPA concludes that it is not required to make a completeness determination with respect to a plan revision that the State failed to submit. Rather, EPA concludes that section 110(k) applies only to submitted plan revisions.

3. Effect of Finding

When a determination has been made that a submittal is complete, the Administrator is required to act on the submittal under section 110(k). When the Administrator determines that a plan submission (or part thereof) does not meet the completeness criteria, the State shall be treated as not having made the submission.

Deadline for Action on Plan Submissions

When it has been determined by the Administrator (or when a determination is made by default) that a State has submitted a plan or plan revision that meets the minimum completeness criteria, the Act requires the Administrator to approve, partially approve, or disapprove the submission within 12 months after a completeness determination is made (or a submission is deemed complete by operation-of-law).

Redesignations

The completeness criteria promulgated on February 16, 1990, applied to redesignation requests as well as SIP revisions. Under the 1990 Amendments, however, redesignations are subject to section 107(d)(3)(D) rather than to section 110(k). The EPA is, therefore, not required to promulgate completeness criteria or make completeness determinations on redesignations.

The EPA has determined, however, that, pursuant to its general rulemaking authority of section 301(a) of the Act

and as necessary to implement the requirements of section 107(d)(3)(D), it is appropriate to continue applying the completeness criteria to redesignation requests. Section 107(d)(3)(D) requires EPA to act on complete redesignation requests within 18 months of receipt, but does not specify how EPA is to determine completeness. Although not mandated by section 107(d)(3)(D), EPA will use the criteria to determine when a State has made a complete redesignation requests to trigger the requirements of that section.

Changes to Present Completeness Criteria

The 1990 Amendments require EPA to promulgate completeness criteria by August 15, 1991. The first step EPA took was to review the existing completeness criteria to determine if these criteria met the requirements of section 110(k)(1) of the Act. The EPA has, therefore, reviewed the February 16, 1990 criteria against the requirements in the Act as amended. The EPA believes that the existing criteria, with minor modifications described below, satisfy the requirements of the 1990 Amendments.

1. Time Frame for Making a Completeness Determination

The February 16, 1990 Federal Register notice promulgating the completeness criteria indicated EPA's intent to make a completeness determination within 45 days of receipt of a submission. The 1990 Amendments, however, require the Administrator to make a completeness determination on a plan submission within 60 days of EPA's receipt of a plan or plan revision, but no later than 6 months after the date by which the State was required to submit the plan or revision. The 1990 Amendments further indicate that should the Administrator fail to make a completeness determination within 6 months of receipt of a plan submission, the submission will automatically be deemed complete by operation of law on that date. Consequently, 40 CFR part 51, appendix V, paragraph 1.2, is being revised to include both the 60-day and 6-month time frames.

2. Paragraph 2.2, Technical Support, Appendix V

Section 175A of the Act is a new section which requires that a State request under section 107(d) of the Act, for redesignation of an area from nonattainment to attainment for any primary national ambient air quality standard (NAAQS), must also include a maintenance plan demonstrating maintenance of the relevant NAAQS for

at least 10 years after redesignation. Although section 110(k)(1), Completeness of Plan Submissions, does not address maintenance plans for section 107(d) redesignations, EPA believes that section 107(d)(3)(D) and (E) provides the Agency authority to prescribe that a redesignation request will not be considered complete (and hence will not trigger required EPA action) if it does not include, among other things, a maintenance plan meeting the requirements of section 175A. Consequently, appendix V of the completeness criteria is being revised by adding language to paragraph 2.2(d) indicating that the States are required to submit a maintenance plan meeting the requirements of section 175A when a request for redesignation to attainment of the primary NAAQS is submitted for approval to EPA.

Response to Comments

Two commenters submitted comments to EPA on the May 24 proposal. In response to a comment on the return of incomplete submittals to a State, EPA is revising paragraph 1.1. Specifically, the change will clarify that upon return of an incomplete submittal to a State, EPA will identify absent or insufficient components of the submission in all cases. In response to the other comments, EPA did not deem it necessary to further revise the completeness criteria. Following is a summary of the comments and EPA's responses to them.

1. 60-Day, 6-Month Time Frames

Comment: Two commenters questioned whether EPA will make completeness determinations within 60 days of receipt of a submission or if EPA will wait 6 months after the date the State was required to submit the plan or revision. Additionally, the commenters asked about the timing in which EPA would make completeness determinations on SIP revisions that are submitted before their due date, and the timing in which EPA would make determinations on SIP revisions that are submitted on their due date. Finally, the commenters asked if the 6-month time frame applied if the State did not submit a required plan.

Response: It is EPA's intent to comport with section 110(k)(1) of the amended Act which states that EPA is required to make completeness determinations 60 days after receipt of a plan or plan revision. Section 110(k)(1) further states that EPA will make completeness determinations no later than 6 months after the date by which a State is required to submit a plan or plan revision. The EPA interprets this

language to mean, e.g., that if a State submits a required plan or plan revision 4-5 months after the due date, EPA is required to make a completeness determination by the 6-month date. If a situation occurs where a State does not submit a required plan or plan revision until close to 6 months after the due date, however, EPA has no other option but to make a completeness finding as soon as possible. The EPA anticipates, however, that such a determination will not exceed 60 days after receipt of a submittal. The EPA does not interpret this part of the statute as allowing the Agency to wait to make completeness determinations until 6 months from receipt of a plan or plan revision. Rather, if a State submits a required plan or plan revision on the due date or earlier, EPA plans to make a completeness determination 60 days after receipt of the revision. Irrespective of when the State submits a plan or plan revision with respect to the required due date, the plan will not be deemed to be complete, by operation-of-law, until 6 months after the receipt date by EPA. Finally, as explained above, EPA now concludes that section 110(k) does not apply at all to revisions that a State fails to submit.

2. Return of Incomplete Submittals to a State

Comment: Two commenters questioned whether paragraph 1.1 of the completeness criteria required EPA to identify absent or insufficient components of the plan or revisions when a submittal was returned to the State. The commenters felt that the wording in paragraph 1.1 could be misinterpreted to imply that EPA would provide that information only when corrective action has been requested.

Response: The meaning of the wording in paragraph 1.1 of the completeness criteria is that upon return of an incomplete submittal to a State, EPA will identify the deficiencies in all cases. In order to clarify EPA's intent, the wording in 1.1 is being revised to read as follows:

The EPA shall return to the submitting official any plan or revision thereof which fails to meet the criteria set forth in this appendix V, and request corrective action, identifying the component(s) absent or insufficient to perform a review of the submitted plan.

3. Relationship of the SIP to the Operating Permit

Comment: Two commenters stated that the level of detail required in the completeness criteria would undermine the implementation of the operating

permit program, and that EPA should eliminate as much detail from SIP's as possible. The commenters quoted from the operating permit proposed rule, specifically comparing future SIP submissions to policy and planning documents. The commenters felt that EPA should revise the completeness criteria to remove specific detailed requirements, e.g., paragraph 2.2 (b), (c), (e), (g), and (h).

Additionally, one commenter stated that paragraph 2.1(b) requires the State to submit evidence that the State has adopted the plan, or issued the permit in final form. The commenter went on to say that if individual permits are incorporated into the SIP, every minor change to a permit would require a SIP revision.

Response: The EPA is in the process of looking at what should be approved through the SIP process vs. what should be approved under the operating permit program. The operating permit rule that was published on May 10, 1991 was a proposed rule, in which the Agency asked for public comment on that and other issues. Until the EPA, however, promulgates a final operating permit rule, the SIP completeness criteria will stand as the criteria that States will have to meet when submitting plans or plan revisions to EPA for approval. After the operating permit rule is promulgated, EPA may re-examine the SIP completeness criteria and revise them as necessary to be consistent with the permit rule. Finally, the Agency must promulgate a final completeness rule now because the 1990 Amendments require EPA to promulgate minimum completeness criteria by August 15, 1991.

The language in paragraph 2.1(b) that requires the State to include evidence that the State has issued a permit refers to permits not issued under an approved permitting program like the title V operating permit program. Approved permitting programs would include title V operating permit programs, section 165 prevention of significant deterioration permit programs, section 173 nonattainment new source review permit programs, and operating permit programs approved as meeting the requirements for Federal enforceability outlined at 54 FR 27285, 27299 (June 28, 1989). Individual permits that a State wants incorporated into its SIP that are not part of an approved permit program must be submitted to EPA as a SIP revision. Once EPA has approved a permitting program, individual permits issued under such programs do not have to be incorporated into the SIP.

4. Continuous Emission Reduction Technology

Comment: One commenter requested that EPA clarify the term "continuous emission reduction technology" which is in paragraph 2.2(f) of the completeness criteria.

Response: Generally, a requirement for EPA approval of a rule developed to reduce pollution is that controls required by that rule be in place throughout the calendar year (or relevant control period), e.g., volatile organic compounds (VOC) reasonably available control technology rules. It is not the purpose of this rulemaking to qualify the requirements for continuous emission reduction requirements. Such requirements are imposed elsewhere in the statute, e.g., section 123 (stationary source controls), section 211(m) (oxygenated fuels). Paragraph 2.2(f), therefore, merely requires the State to submit evidence, where necessary by virtue of separate statutory requirements as interpreted by EPA, that emission limits are based on continuous emission reduction technology (that the emission controls or reduction practices operate continuously).

5. EPA Policies vs. Regulations

Comment: One commenter suggested that the word "policies" referenced in paragraph 2.2(i) be replaced with the word "regulations" since the commenter felt that not all EPA policies are widely known and applied.

Response: The EPA Regional Offices are responsible for ensuring that Agency policies and regulations are distributed to the State and local air pollution control agencies for their use as they are developed. The Regional Offices work closely with their counterparts in the State and local agencies to ensure that SIP submittals are consistent with Agency policies and regulations. Consequently, since EPA policies often clarify regulatory and statutory requirements, the EPA intends to retain the language in paragraph 2.2(i). Upon reviewing section 2.2(i), however, EPA has concluded that the section could be read as requiring, in a regulatory sense, technical justifications that EPA has requested only as a matter of policy. The EPA has, therefore, amended the section to require, for purposes of completeness, that the State either submit the requested justification or an explanation of why such justification would not be appropriate in the specific circumstances and therefore should not be required under the policy.

Legal Authority

The EPA is promulgating these completeness criteria as they apply to plan submissions under the authority of section 110(k)(1)(A), which specifically requires EPA to promulgate such criteria. Additionally, EPA is promulgating the completeness criteria as they apply to section 107 redesignation requests under sections 107(d)(3) and 301(a) of the Act.

The EPA originally had promulgated the existing completeness criteria on February 16, 1990 under the general authority of section 301(a)(1) of the pre-amended Act. That section authorized the Administrator to promulgate such regulations as are necessary to carry out his functions under the Act. The EPA concluded that it was necessary to promulgate completeness criteria to enable the Agency to carry out its responsibilities to process SIP submissions in a timely fashion.

The amended Act includes specific authority in section 110(k)(1) that mandates EPA to promulgate minimum criteria for determining completeness of plan submissions. The EPA believes that this action satisfies the requirement of section 110(k)(1) of the 1990 Amendments at this time.

Conclusion

The EPA is promulgating these amendments to the completeness criteria that were published on February 16, 1990 as required by section 110(k)(1)(A) of the Act. The EPA believes that the completeness criteria that were published on February 16, 1990, with some minor changes that are described above, meet the requirements of the Act at this time. The EPA intends to continue to review the basic provisions of the Act and, if appropriate, will amend these minimum criteria. Because of the myriad of Act requirements imposed on EPA and the States, upon detailed analyses of the Act and development of the title V operating permit program, EPA may publish a subsequent rule(s) outlining additional completeness requirements.

Administrative Requirements

The docket is an organized and complete file of all the information considered by EPA in the development of these completeness criteria. The docket is a dynamic file because material is added throughout the notice preparation and comment process. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the process. The public

docket number for this rulemaking action is A-91-11. Additionally, the docket for the completeness criteria that EPA promulgated on February 16, 1990 (55 FR 5824) may also be of interest to the reader; that docket number is A-88-18.

Section 317(a) of the Act, 42 U.S.C. 7617(a), states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. The changes described today do not change the substantive requirements for preparing and submitting an adequate SIP package. The completeness criteria merely itemize those components of a SIP submittal that must be included to enable EPA to determine that a submittal meets the requirements imposed by various other provisions in the Act. No increase in cost as a result of complying with the changes described today is expected; moreover, the monitoring, recordkeeping, and reporting requirements have been determined to be insubstantial. Because the expected economic effect of the changes is not substantial, no detailed economic impact assessment has been prepared.

Under Executive Order (E.O.) 12291, EPA is required to judge whether an action is "major" and, therefore, subject to the requirement of a regulatory impact analysis. The Agency has determined that the changes to the SIP completeness criteria being announced today would result in none of the significant adverse economic effects set forth in section 1(b) of the E.O. as grounds for a finding of "major." The Agency has, therefore, concluded that this action is not a "major" action under E.O. 12291. This rule was submitted to

the Office of Management and Budget (OMB) for review under E.O. 12291. A copy of the draft rule as submitted to OMB, any documents accompanying the draft, any written comment received from other agencies (including OMB), and any written responses to those comments have been included in the docket.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, requires the identification of potentially adverse impacts of Federal actions upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every action unless the Administrator certifies that the action will not have a significant economic impact on a substantial number of small entities. For the reasons described above relating to the impact of this rule, I hereby certify that the final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure; Air pollution control; Reporting and recordkeeping requirements.

Dated: August 19, 1991.
 F. Henry Habicht,
Acting Administrator.

Title 40 Code of Federal Regulations, part 51, is amended as follows:

1. The authority citation for part 51 is revised to read as follows:

PART 51—[AMENDED]

Authority: 42 U.S.C. 7401(b)(1), 7407(d), 7410(k)(1), 7470-79, 7501-7508, and 7601(a).

2. Part 51, appendix V, is amended by revising paragraphs 1.1, 1.2, and 2.2 (d) and (i) to read as follows:

Appendix V, Criteria for Determining the Completeness of Plan Submissions

* * * * *

1.1 The EPA shall return to the submitting official any plan or revision thereof which fails to meet the criteria set forth in this appendix V, and request corrective action, identifying the component(s) absent or insufficient to perform a review of the submitted plan.

1.2 The EPA shall inform the submitting official whether or not a plan submission meets the requirements of this appendix V within 60 days of EPA's receipt of the submittal, but no later than 6 months after the date by which the State was required to submit the plan or revision. If a completeness determination is not made by 6 months from receipt of a submittal, the submittal shall be deemed complete by operation of law on the date 6 months from receipt. A determination of completeness under this paragraph means that the submission is an official submission for purposes of § 51.103.

* * * * *

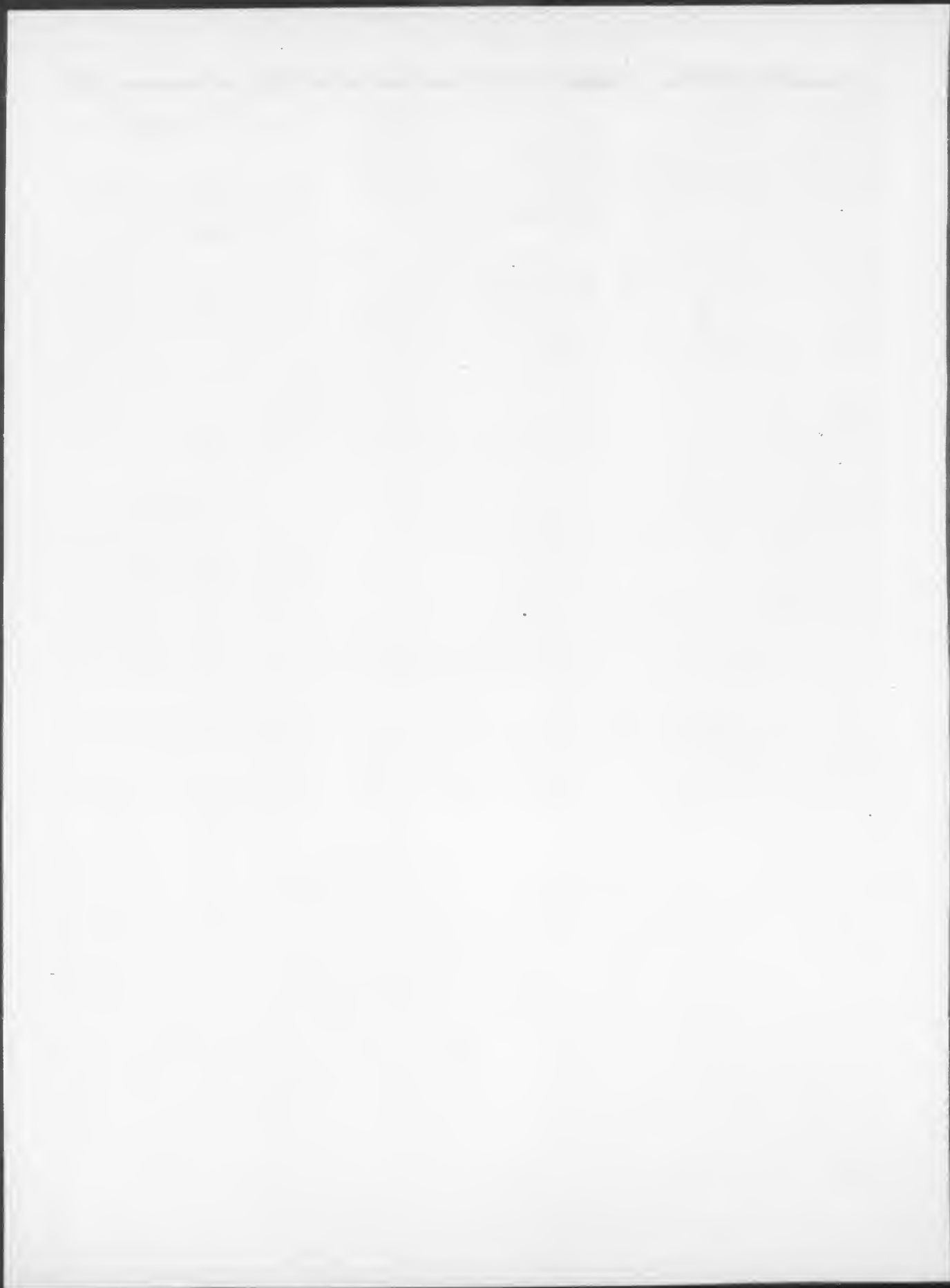
2.2 * * * (d) The State's demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented. For all requests to redesignate an area to attainment for a national primary ambient air quality standard, under section 107 of the Act, a revision must be submitted to provide for the maintenance of the national primary ambient air quality standards for at least 10 years as required by section 175A of the Act.

* * * * *

(i) Special economic and technological justifications required by any applicable EPA policies, or explanation why such justifications are necessary.

* * * * *

[FR Doc. 91-20399 Filed 8-23-91; 8:45 am]
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³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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