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### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### SAN FRANCISCO, CA

- WHEN:** November 29; at 9:00 a.m.
- WHERE:** Room 15138,  
450 Golden Gate Avenue,  
San Francisco, CA.
- RESERVATIONS:** Call Mary Walters at the San Francisco Federal Information Center,  
415-556-6600.

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- WHEN:** November 30; at 1:00 p.m.
- WHERE:** South Auditorium, 4th Floor,  
915 2nd Avenue,  
Seattle, WA.
- RESERVATIONS:** Call Carmen Meler or Peggy Groff at the Portland Federal Information Center on the following numbers:  
Seattle: 206-442-0570,  
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- WHEN:** December 7, at 9:00 a.m.
- WHERE:** Office of the Federal Register,  
First Floor Conference Room,  
1100 L Street NW., Washington, DC.
- RESERVATIONS:** 202-523-5240.



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# Rules and Regulations

Federal Register

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Wednesday, November 8, 1989

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 911

[Docket No. FV-89-046FR]

#### Limes Grown in Florida; Changes in Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule tightens current minimum grade requirements for Florida grown seedless limes and imported seedless limes. Currently, such limes must contain at least 60 percent U.S. No. 1 quality fruit, and the remainder must be U.S. No. 2 quality during the period February 1 through May 31 each season. Shipments and imports during the period June 1 through January 31 each season must contain at least 75 percent U.S. No. 1 quality fruit and the remainder must be at least U.S. No. 2 quality. The change increases the minimum amount of U.S. No. 1 grade fruit required in shipments of Florida grown and imported limes from 60 to 75 percent during the period February 1 through May 31, thus making the 75 percent requirement effective on a year around basis. This action provides fresh markets with higher quality limes, and is designed to increase sales and promote orderly marketing conditions in the interest of both growers and consumers.

**EFFECTIVE DATE:** December 8, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3918.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing

Agreement and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are about 26 handlers of Florida limes subject to regulation under the marketing order for limes grown in Florida and about 20 importers who import limes into the United States. In addition, there are about 280 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and agricultural services firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers, importers, and growers may be classified as small entities.

A proposed rule regarding tightening the grade requirements for Florida and imported seedless limes was issued on July 6, 1989 and published in the Federal Register (54 FR 29338, July 12, 1989). That rule provided that interested persons could file written comments through September 11, 1989. No comments were received.

Section 911.344 (7 CFR 911.344) of the rules and regulations under the marketing order specifies continuous minimum grade and size requirements

for fresh shipments of all varieties of fresh limes grown in Florida. Two different groups of limes are grown in Florida, and different grade regulations apply to each group. One group is known as seeded or true limes, which are referred to as Mexican, West Indian, and Key limes. The other group is known as seedless, large-fruited, or Persian limes and includes the Tahiti, Bearss, and similar varieties.

This final rule applies to the group known as seedless, large-fruited, or Persian limes and tightens minimum grade requirements for such limes. Currently, seedless limes must grade at least U.S. Combination, Mixed Color, except for stem length, during the period February 1 through May 31 each season. Under the U.S. Combination grade at least 60 percent, by count, of the limes must be U.S. No. 1 quality fruit, and the remainder must be at least U.S. No. 2 quality. However, the current grade regulation increases the minimum amount of U.S. No. 1 quality fruit required to 75 percent during the period June 1 through January 31 each season. This change increases the minimum amount of U.S. No. 1 grade fruit required in shipments of Florida grown and imported limes from 60 to 75 percent during the period February 1 through May 31, thus making the 75 percent requirement effective on a year around basis.

The current minimum grade requirements for fresh Florida limes have been in effect on a continuous basis for several seasons. These grade requirements are designed to ensure that all fresh lime shipments are of good quality, thereby providing consumer satisfaction essential for the successful marketing of the crop. These grade requirements are intended to improve buyer confidence and increase consumption of limes, while continuing to provide the trade and consumers with an adequate supply of quality limes. Florida lime growers and handlers have found such requirements beneficial in the successful marketing of their lime crops in the past. Recent marketing research studies indicate that consumers prefer higher quality seedless limes. Moreover, a recent Department inspection data study indicates that handlers' lime shipments are currently averaging well above 75 percent U.S. No. 1 grade fruit even though only 60 percent is required. The application of



tighter grade requirements for the entire season is intended to ensure that fresh markets are provided with higher quality fruit which consumers prefer on a year around basis. Providing fresh markets with the quality of fruit desired is an important aspect of creating consumer satisfaction and increasing sales opportunities. Ample supplies of higher quality limes are available to meet consumer demand.

Fresh Florida lime shipments are projected at 1,500,000 bushels (55 pounds net weight) for the 1989-90 season, compared with fresh shipments of 1,492,893 bushels in 1988-89, 1,352,780 bushels in 1987-88, and 1,334,997 bushels in 1986-87. Florida limes are harvested and shipped to market every month of the year, beginning with new season shipments in April and with peak shipments during the May through October period. Florida limes compete in the marketplace primarily with Mexican grown limes imported into the United States, with such imports estimated at 2,016,775 bushels for 1989-90. California fresh lime shipments are estimated at 292,590 bushels for the 1988-89 season crop.

The tighter grade requirements for Florida limes were unanimously recommended by the Florida Lime Administrative Committee (committee) at its meeting of April 12, 1989. The committee works with the Department in administering the marketing agreement and order program. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida limes. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida lime shipments are exempt from grade requirements. Handlers may ship up to 55 pounds of limes during any one day under a minimum quantity exemption and may make gift shipments in individually addressed containers of up to 20 pounds of limes each. Also, limes utilized in commercial processing are not covered by the grade requirements.

This action also changes the section heading for the purpose of clarity and deletes unnecessary language from the introductory text of paragraph (a) of

§ 911.344. In addition, this action amends paragraph (b) of § 911.344 to update language pertaining to the United States Standards for Grades of Persian (Tahiti) Limes.

Section 8e of the Act (7 U.S.C. 608e-1) requires that whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Lime import grade requirements are specified in § 944.209 (7 CFR 944.209), issued under section 8e of the Act. Section 944.209 provides that fresh limes imported into the United States must meet the same minimum grade and size requirements specified in § 911.344 for limes grown in Florida. Since this action changes the grade requirements for Florida grown limes, the same changes also apply to imported limes. However, no change to the text of § 944.209 is needed by this action. An exemption provision in the lime import regulation permits persons to import up to 55 pounds of limes at one time exempt from such import requirements.

This action reflects the Department's appraisal of the need to tighten the grade requirements for fresh seedless limes. The Department's view is that the tighter requirements would not adversely impact lime growers, handlers, and importers. Although compliance with handling requirements affects costs to handlers and importers, these costs will be significantly offset when compared to the potential benefits of assuring the trade and consumers of good quality limes. The application of grade requirements to Florida limes over the past several years have helped to assure shipments of good quality limes to fresh markets. The committee considers that the tighter grade requirements for Florida limes are necessary to improve grower returns.

After consideration of the information and recommendation submitted by the committee, it is found that this action will tend to effectuate the declared policy of the Act.

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

#### List of Subjects in 7 CFR Part 911

Florida, limes, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 911 is amended as follows:

#### PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

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

2. Section 911.344 is amended by revising the section heading, the introductory text in paragraph (a), and paragraphs (a)(2) and (b) to read as follows:

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

#### § 911.344 Florida lime grade and size regulation.

(a) No handler shall handle any variety of limes grown in the production area unless:

\* \* \* \* \*

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Mixed Color: *Provided*, That at least 75 percent, by count, of the limes in the lot meet the requirements of the U.S. No. 1 grade, and the remainder meet the requirements of the U.S. No. 2 grade; *Provided further*, That stem length shall not be considered a factor of grade; *Provided further*, That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42 percent by volume specified in the United States Standards for Grades of Persian (Tahiti) Limes, if they meet the minimum size requirements specified in paragraph (a)(3) of this section, and if they are handled in containers other than those authorized in § 911.329.

\* \* \* \* \*

(b) Terms relating to grade and diameter shall mean the same as defined in the United States Standards for Grades of Persian (Tahiti) Limes (7 CFR 51.1000 through 51.1016).

\* \* \* \* \*

Dated: November 2, 1989.

William J. Doyle,  
Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-26326 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-02-M



## 7 CFR Parts 932 and 944

[Docket No. FV-89-067FR]

**Olive Grown in California and Imported Olives; Establishment of Grade and Size Requirements for the 1989-90 Season, and Conforming Changes in the Olive Import Regulation****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Department is adopting as a final rule the provisions of an interim final rule which established grade and size requirements for California processed olives used in the production of limited use styles of olives such as wedges, halves, slices, or segments and established similar requirements in the olive import regulation to bring that regulation into conformity with the domestic requirements. The grade and size requirements are the same as implemented last season. Olives used in limited use styles are too small to be desirable for use as whole or pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. Their use in such products over the years has helped the California olive industry meet the increasing market needs of the food service industry. The requirements for domestic olives were unanimously recommended by the California Olive Committee (committee), which works with the Department in administering the marketing order program for olives grown in California. The establishment of such requirements for imported olives is required pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937.

**EFFECTIVE DATE:** November 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, Room 2530-S, Washington, DC 20090-0458; telephone (202) 475-3862.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under

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

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

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

There are seven handlers of California olives subject to regulation under the order and approximately 1,400 olive producers in California. Approximately 25 importers of olives are subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. About 75 percent of the production comes from the San Joaquin Valley and 25 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons during the 1972-73 crop year to a high of 146,500 tons during the 1982-83 crop year. The committee indicated that 1988 production totalled about 84,600 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. The industry expects the 1989-90 crop to be about 97,500 tons.

The primary use of California olives is for canned ripe olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

This action allows handlers to market more olives than would be permitted in the absence of this relaxation in size requirements. This opportunity to handle smaller olives should increase the use of the California olive supply, facilitate market expansion, and benefit growers, handlers, and imports.

The interim rule was issued August 30, 1989, and was published in the Federal Register on September 6, 1989 (54 FR 36958). That rule invited interested persons to submit written comments through October 6, 1989. No comments were received.

The interim rule modified § 932.153 of Subpart-Rules and Regulations (7 CFR 932.150-932.161). The modification established grade and size regulations for 1989-90 crop limited use size olives. The modification was issued pursuant to paragraph (a)(3) of § 932.52 of the order. That rule also made necessary conforming changes in the olive import regulation (Olive Regulation 1; 7 CFR 944.401). The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order, the same or comparable requirements must be imposed on imports of the commodity.

Paragraph (a)(3) of § 932.52 of the marketing order provides that processed olives smaller than the sizes prescribed for whole and pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories. The section further provides for the establishment of size tolerances.

To allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1989-90 crop year (August 1, 1989, through July 31, 1990). The grade requirements are the same as those applied during the 1988-89 crop year, as are the sizes and the size tolerances. Permitting handlers to use small olives in the production of limited use style canned olives will have a positive impact on industry returns. In the absence of this action, the undersized fruit would have to be used for non-canning uses, like oil, for which returns are lower. Except for the changes necessary in the effective date, the provisions, hereinafter set forth in



§ 932.153, are the same as those contained in the interim rule.

Paragraph (b)(12) of § 944.401 of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and pitted ripe olives to be used for limited use styles if they meet specified size requirements. Continuation of the limited use authorization for California olives by this final rule requires that changes be made in paragraph (b)(12) of § 944.401 to keep the import regulation in conformity with the applicable domestic requirements. These conforming changes will benefit importers because they will be able to import small-sized olives meeting applicable grade requirements for limited use during the 1989-90 season which ends July 31, 1990.

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

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other available information, it is found that the provisions as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) This action leaves in effect relaxed requirements currently being applied to California and imported olives under an interim rule; (2) the olive import requirements are mandatory under section 8e of the Act; (3) the interim rule provided a 30-day comment period and no comments received; and (4) no useful purpose would be served by delaying the effective date of this action.

#### List of Subjects

##### 7 CFR Part 932

California, Marketing agreements and orders, Olives.

##### 7 CFR Part 944

Fruits, Import regulations, Marketing agreements and orders, Olives.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows:

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

## PART 932—OLIVES GROWN IN CALIFORNIA

## PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citations for 7 CFR parts 932 and 944 continue to read as follows:

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

2. Accordingly, the interim final rule revising § 932.153 and § 944.401(b), which was published in the *Federal Register* on September 8, 1989 (54 FR 36958) is adopted as a final rule.

Dated: November 2, 1989.

William J. Doyle,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-26327 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Part 971

[Docket No. FV-89-076]

### Lettuce Grown in Lower Rio Grande Valley in South Texas; Amendment to Continuing Handling Regulation to Authorize a New Container

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule authorizes the use of bulk bin containers for shipping South Texas lettuce to shredders under the container regulations of Marketing Order 971. Allowing handlers to ship lettuce in bulk bin containers to shredders should improve returns to producers and handlers of South Texas lettuce.

**EFFECTIVE DATE:** November 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 98456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-5331.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR part 971), both as amended, regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has

been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 10 handlers of South Texas lettuce subject to regulation under the marketing order, and approximately 20 producers in the production area. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having average annual gross revenue for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of South Texas lettuce may be classified as small entities.

As of October 4, 1989, estimated South Texas lettuce acreage planted was 2,890 acres compared to 1,629 acres in 1988. Total shipments of South Texas lettuce during the 1988-89 season were approximately 921,000 50-pound cartons. This represented nearly a 25 percent increase over the estimated 738,000 cartons shipped in the 1987-88 season. The majority of the crop was shipped to the fresh markets, with only a small volume (less than 1%) utilized by processors.

The handling requirements for South Texas lettuce are specified in § 971.322 (51 FR 2, January 2, 1986; 54 FR 8182, February 27, 1989). The current requirements for South Texas lettuce specify the inside dimensions of the five cartons that may be used to pack lettuce and the number of heads of lettuce that may be packed in each of those containers. Additionally, inspection is required and packaging lettuce on any Sunday or on Christmas Day is prohibited.

This rule adds the dimensions for bulk bin containers for lettuce shipments to shredders to the list of containers presently permitted under the handling regulation. No pack specifications are included which stipulate the number of heads of lettuce which may be shipped



in a bulk bin. This action was unanimously recommended by the South Texas Lettuce Committee (committee), the agency responsible for local administration of the marketing order, at its June 21, 1989, meeting.

Handlers of South Texas lettuce have been using the bulk bin container on a test basis for lettuce shipments to shredders, in accordance with § 971.322(a)(5) of the handling regulation. Last year, the committee authorized the limited use of 1,000 bulk bins for such purpose. These containers have approximate inside dimensions of 48 inches (length) x 38 inches (width) x 36 inches (height). The committee recommended authorizing bulk bin containers meeting these approximate dimensions. The bulk bin container has found general trade acceptance, and the South Texas lettuce industry believes that these shipments are no longer experimental but an integral part of their marketing efforts. Furthermore, the use of such containers for shipping lettuce to shredders could expand their lettuce market and reduce packing costs. The recommended bulk bin container is of a proper size to be palletized.

Last season, in accordance with § 971.322(e), handlers were required to file for experimental container exemptions by applying for a Certificate of Privilege before making lettuce shipments in bulk bin containers to shredders. Handlers also were required to provide reports as requested by the committee. The committee believes that permitting handlers to use the bulk bin containers for lettuce shipments to shredders and eliminating the need to file for experimental container exemptions and related reports would encourage the industry to increase such shipments to shredders. Accordingly, this action reduces the information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). These requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0085.

Bulk bin containers are typically less expensive to use in packing lettuce than the cartons that are currently authorized for fresh market shipments. The committee believes that authorizing these bulk bin containers will assist the industry in expanding the market for shredded lettuce by reducing costs. Thus, bulk bin containers will be authorized for use by handlers making lettuce shipments to shredders only. In addition, the handling regulation is being amended to specify that the pack

requirement is not applicable to bulk bin container shipments of lettuce destined to shredders.

The committee believes there is a sizable market for shredded lettuce, and allowing handlers to use bulk bin containers for such shipments will provide that market segment with the supply of lettuce it desires. This action should have a positive effect on lettuce shipments which would benefit both producers and handlers.

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

Notice of this action was given in the September 8, 1989, Federal Register (54 FR 37337) providing interested persons until October 10, 1989, to file written comments. No comments were received.

After consideration of all relevant matter presented including the information and recommendations submitted by the committee, and other available information, it is hereby found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because shipping season for South Texas lettuce is about to begin and this rule, in order to be of maximum benefit to producers and handlers, should apply to as many shipments as possible.

#### List of Subjects in 7 CFR Part 971

Lettuce, Marketing agreements and orders, South Texas.

For the reasons set forth in the preamble, 7 CFR part 971 is amended as follows:

#### PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR part 971 continues to read as follows:

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

2. Section 971.322 is amended by redesignating paragraph (a)(6) as (a)(7) and adding new paragraphs (a)(6) and (b)(4) to read as follows:

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

#### § 971.322 Handling regulation.

- (a) \* \* \*
- (6) Bulk bin containers with inside dimensions of approximately 48 inches x

38 inches x 36 inches to be used for lettuce shipments to shredders only.

(7) \* \* \*

(b) Pack. (1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) No pack requirements shall apply to bulk bin containers for lettuce shipments to shredders.

\* \* \*

Dated: November 2, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-26328 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-02-M

#### Farmers Home Administration

#### 7 CFR Parts 1944 and 1951

#### Interest, Penalties, and Administrative Costs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

**SUMMARY:** The Farmers Home Administration amends its regulations to provide for assessing individual borrowers a fee when the Agency must process an uncollectible item. This action is taken to implement an Office of Management and Budget (OMB) Circular A-129 requirement that agencies assess interest, penalties, and administrative costs. The effect of this action will be to compensate the Agency for the cost of processing an uncollectible item.

**EFFECTIVE DATE:** December 8, 1989.

#### FOR FURTHER INFORMATION CONTACT:

William J. French, Financial and Management Analysis Staff, Farmers Home Administration, USDA, Room 6434, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 475-4741.

#### SUPPLEMENTARY INFORMATION:

#### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of \$100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or 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.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

#### Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it only deals with the assessment of a fee on individual borrowers allowing the Government to capture its cost of processing uncollectible items.

#### Intergovernmental Consultation

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

- 10.404 Emergency Loans
- 10.406 Farm Operating Loans
- 10.407 Farm Ownership Loans
- 10.410 Low-Income Housing Loans
- 10.416 Soil and Water Loans
- 10.417 Very Low-Income Housing Repair Loans and Grants
- 10.428 Economic Emergency Loans

#### Discussion

The Farmers Home Administration is required by OMB Circular A-129 to assess interest, penalties, and administrative costs on delinquent accounts in accordance with the Debt Collection Act of 1982. The Agency has not passed the cost of processing uncollectible items on to the borrower in the past, however, it has been determined that it is not fiscally responsible for the Agency to continue to absorb these losses. A proposed rule was published in the Federal Register (54 FR 3610) on January 25, 1989. The proposed rule provided for a 60-day comment period which ended on March 27, 1989. Two comments were received during the comment period, one favorable and one unfavorable. One commenter suggested that charging a fee

for an uncollectible item would be inconsistent with the Agency goal of assisting low and very low income borrowers. We do not feel that implementing a charge which only compensates the Agency for its costs of processing the item is inconsistent with the Agency mission and, therefore, we cannot adopt the suggestion. This charge will only cover our costs of processing the item. We, therefore, are implementing regulations to charge a fee to individual borrowers for each uncollectible item. The fee is currently \$7.00. Future changes to the fee will be based on studies of the actual cost to the Agency for processing these items. Future changes to this fee will not be published in the Federal Register but will be available from any FmHA office.

#### List of Subjects

##### 7 CFR Part 1944

Home improvement, Housing and community development, Low and moderate income housing, Mobile homes, Mortgages, Rural housing and subsidies.

##### 7 CFR Part 1951

Account servicing, Accounting, Collection of loan payments & depositing payments through the Concentration Banking System (CBS), Financial institutions, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

Therefore, chapter XVIII of title 7, Code of Federal Regulations, is amended as follows:

#### PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

##### Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Exhibit D to subpart A is amended by revising item 12 to read as follows:

##### Exhibit D of Subpart A—Rural Housing Applicant Interview

12. *Monthly Payments:* Regular payments must be made on or before the due date. Normally, payments will be applied first to unpaid interest and the balance to principal. If a noninterest accruing administrative cost, such as a charge for an uncollectible check, has been charged to the borrower's account, payments will be applied to the outstanding administrative cost first. (The amounts of any such administrative charges are available

from any FmHA office.) If for any reason a payment cannot be made on time, the borrower should immediately contact the local County Office.

#### PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

##### Subpart A—Account Servicing Policies

4. Section 1951.6 is amended by revising paragraph (e)(4) to read as follows:

##### § 1951.6 Handling payments.

(e) \* \* \*

(4) If an uncollectible item is received, the Finance Office will reverse the amount from the borrower's account. The uncollectible item with a transmittal memorandum will be sent to the County Office. The County Office will return the uncollectible check to the borrower after it is fully redeemed. The borrower will make payment by sending a new check and a new payment coupon to the Finance Office. There will also be a noninterest accruing administrative cost charged to the borrower's account for uncollectible items due to insufficient funds. (The amounts of any such administrative charges are available from any FmHA office.) Therefore, the borrower's payment for the uncollectible item should be for the regular payment amount plus the administrative cost.

5. Section 1951.10 is amended by revising the introductory text to read as follows:

##### § 1951.10 Application of payments on production-type loan accounts.

Employees receiving payments on OL, EO, SW codes "24," EM for subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited first to any administrative costs, then to noncapitalized interest, then to the amount of accrued deferred interest, and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to any administrative costs, then to noncapitalized interest, then to the amount of accrued deferred



interest, then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431-2) and Form FmHA 1962-1.

6. In § 1951.11, current paragraphs (d)(1)(i) and (d)(1)(ii) are redesignated as paragraphs (d)(1)(ii) and (d)(1)(iii), respectively, and a new paragraph (d)(1)(i) is added to read as follows:

**§ 1951.11 Application of payments on real estate accounts.**

**(d) Finance Office handling.**

(1) \* \* \*

(i) Payments will be applied first to satisfy any administrative costs such as a charge for an uncollectible check. (The amounts of any such charges are available from any FmHA office.)

**Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts**

7. In § 1951.309, current paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) are redesignated as paragraphs (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) and (b)(1)(v), respectively, a new paragraph (b)(1)(i) is added, and paragraph (b)(3) is revised to read as follows:

**§ 1951.309 Receiving and applying payments.**

(b) \* \* \*

(1) \* \* \*

(i) Administrative costs, such as a charge for an uncollectible check. (The amounts of any such administrative costs are available from any FmHA office.)

(3) *Extra payments and refunds.* Extra payments and refunds will be credited to the borrower's note account(s) as of the date of the Form FmHA 451-2, "Schedule of Remittances" and will be applied as prescribed in paragraph (b)(1) of this section, except that refunds will not be applied to administrative costs. Extra payments and refunds do not relieve borrowers from making their next scheduled payment.

Dated: September 7, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-26249 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-07-M

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 561, 563, and 567**

[No. 89-340]

**Regulatory Capital**

Date: October 27, 1989.

**AGENCY:** Office of Thrift Supervision, Department of the Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** The Office of Thrift Supervision is today publishing minimum regulatory capital regulations for savings associations as required by section 5(t) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(t). This rule includes requirements for minimum levels of tangible, core, and total capital for all savings associations. These capital regulations are another step in the process of establishing the minimum capital requirements for savings associations in order to promote the long-term health of both individual thrift institutions and the thrift industry as a whole.

**EFFECTIVE DATE:** December 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert Fishman, Senior Policy Analyst, (202) 331-4592, Joe Hargett, Professional Accounting Fellow, (202) 331-4583, John Robinson, Deputy Director, Supervisory Analysis, (202) 331-4587, Supervision Economist, (202) 906-6758, Deborah Kennedy, Financial Economist, (202) 906-7298, Office of the Chief Economist; Theresa A. Stark, Attorney, (202) 906-7054, Catherine McFadden, Attorney, (202) 906-6639, Deborah Dakin, Regulatory Counsel, (202) 906-6445, Karen Solomon, Associate Chief Counsel, (202) 906-7240, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction and Background**

- A. 12/88 Proposal.
- B. FIRREA.
- C. Outline of regulation.
  - 1. Structure of capital regulations.
  - 2. Derivation of capital regulations.
    - a. Statutory resolution of an issue.
    - b. Revisions based upon the OCC's treatment of an issue in its final guidelines.
    - c. Revisions based upon responses to comments or the Office's experience.
  - 3. Substantive content of capital regulation.

**II. Summary of Comments**

- A. Credit risk weightings.
  - 1. Full faith and credit obligations.
  - 2. High quality mortgage-related securities.
  - 3. Claims on and balances due from Federal Home Loan Banks, Federal Reserve Banks and domestic depository institutions.

- 4. Stock of Federal Home Loan Banks.
- 5. 1-4 family residential mortgages.
- 6. Home equity loans.
- 7. Multifamily housing.
- 8. Derivative securities and mortgage servicing rights.
- 9. Corporate debt securities.
- 10. Real Estate Owned.
- 11. Equity investments.
- 12. Consolidation.
- 13. Off-balance sheet items.
  - a. Asset sales with recourse; senior/subordinated structures.
  - b. Commitments.
  - c. Interest-rate contracts.
  - B. Interest-rate risk.
  - C. Collateralized borrowings.
  - D. Core capital.
  - E. Maturing capital instruments.
  - F. General valuation loan and lease loss allowances.
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**I. Introduction and Background**

The Office of Thrift Supervision (the "Office") is today, pursuant to the requirement of section 5(t) of the Home Owners' Loan Act, 12 U.S.C. 1464(t), promulgating uniformly applicable capital regulations for savings associations. These capital regulations are another step in the process of establishing the minimum capital requirements for savings associations in order to promote the long-term health of both individual thrift institutions and the thrift industry as a whole. The Office expects that savings associations will strive to attain and maintain levels of capital in excess of these requirements.



Adequate capital is essential to the safe and sound operation of a savings association. It ensures that the owners, managers, and subordinated lenders of a savings association have a significant incentive to avoid loss as well as maximize gains. It is especially important that levels of capital be related to the risk of the activities in which a savings association engages. Linking the amount of an association's capital requirement to the overall riskiness of its assets is a more accurate method of ensuring that the association can afford to cover losses that may arise from such activities without becoming insolvent. This risk-based approach has been adopted by the federal banking regulators and is consistent with the international framework for capital standards established by the Basle Committee on Banking Supervision (commonly referred to as the "Basle Supervisors Committee") in July, 1988.

Activities that potentially have higher returns generally have such potential because of their higher risk of loss. Because higher risk/return activities can exhaust a savings association's capital faster than lower risk/return activities, savings associations engaging in higher risk activities should hold more capital to protect the federal deposit insurance fund and to provide appropriate incentives for prudent management. Likewise, institutions that engage in lower risk activities do not need as large a capital cushion and should be permitted to operate with a lower minimum capital requirement, consistent with protection of the insurance fund and the long-term safety of the thrift industry and the individual savings association.

The Office believes that savings associations operating with adequate capital have more incentive and are better positioned to evaluate the potential risks and rewards inherent in various activities. Thus, an association operating with more than minimum amounts of capital may be permitted a wider range of activities without as much direct regulatory restriction, subject only to supervisory review.

#### A. 12/88 Proposal

On December 15, 1988, the Federal Home Loan Bank Board ("Bank Board" or "Board") issued a risk-based capital proposal ("12/88 proposal"), which it promulgated for a ninety-day public comment period. Board Res. No. 88-1342, 53 FR 51800 (Dec. 23, 1988). The Bank Board held public hearings on this proposal on February 9 and 10, 1989. The Office reopened the comment period on this proposal from September 12, 1989, to September 22, 1989, in order to allow

additional public comment on the effect of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, ("FIRREA"), on this proposal. 54 FR 37944 (Sept. 14, 1989).

The Bank Board had also adopted two advance notices of proposed rulemaking on capital-related issues: (1) A standard for early regulatory intervention that would allow appointment of a conservator or receiver when a thrift institution is operating with substantially insufficient capital, 54 FR 826 (Dec. 30, 1988); and (2) an interest-rate risk component as part of a risk-based capital regulation, 54 FR 27885 (July 3, 1989). The Bank Board did not issue notices of proposed rulemaking on either issue. The Office believes both rulemakings should proceed. Thus, notices of proposed rulemaking on these issues will be published in the near future. Any changes adopted as a result of these or other related rulemakings will be incorporated into final capital regulations.

The 12/88 proposal was based in large part upon the joint notice of proposed guidelines published in March, 1988, by the Federal Reserve Board ("FRB"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (Collectively, "banking regulators" or "banking agencies") ("Joint Notice"), 53 FR 8550 (March 15, 1988) as supplemented by the final action of the Basle Supervisors Committee in July 1988 and indications in August 1988 of the way in which the banking agencies would resolve certain issues raised by the Joint Notice.

The 12/88 proposal would require savings associations to maintain capital against two risks: (1) Credit risk (which is primarily the risk that a debtor may default, causing a decline in value or loss on an investment); and (2) interest-rate risk (which is primarily the risk that changes in interest rates may cause the value of a thrift's asset and liability portfolio to decline). In addition, the proposal included a collateralized borrowings component designed to help protect the insurance fund against uncompensated risk that occurs because insurance premiums are levied against insured deposits rather than assets or total liabilities.

The Bank Board proposed that savings associations maintain capital in the amount of: (1) No less than 6% of risk-weighted assets (including both on- and off-balance sheet items) as protection against credit risk; (2) 50% of the change in the market value of the thrift's portfolio equity as a result of a two-

hundred basis point shift in interest rates; and (3) 3% of collateralized borrowings. This capital requirement could only be satisfied by items falling within the definition of "regulatory capital." As proposed, regulatory capital consisted of core equity capital, primarily capital as defined by generally accepted accounting principles ("GAAP"), and supplementary capital, which contained certain other items that the Bank Board also believed would provide protection against risk or were required by statute or prior regulation to be included. The 12/88 proposal required that a thrift use "core equity capital" to satisfy at least one-half of its capital requirement. In addition to this risk-based capital requirement, the proposal set for savings associations a leverage ratio requirement; the leverage ratio of 2% of core equity capital to total assets.

#### B. FIRREA

On August 9, 1989, the FIRREA was enacted. It established the Office as the primary federal banking regulator for all savings associations and savings and loan holding companies. It abolished the Bank Board effective 60 days after the statute's enactment. Section 401(h) of the FIRREA provided that orders, resolutions, determinations, and regulations of the Bank Board in effect on the date of FIRREA's enactment were to remain in effect until modified, terminated, set aside, or superseded in accordance with applicable law by the appropriate successor agency. The Bank Board's notice of proposed rulemaking on regulatory capital is such a resolution and the Office has succeeded to that notice.

Section 301 of the FIRREA amended the Home Owners' Loan Act of 1933 ("HOLA"), by adding a new section 5(t), 12 U.S.C. 1464(t),<sup>1</sup> requiring the Office to promulgate, by November 7, 1989, regulations prescribing uniformly applicable capital standards for all savings associations. These regulations must be effective by December 7, 1989. Section 5(t) contains a number of provisions affecting the content of these capital standards, establishes transition rules for certain provisions, and sets forth certain consequences of failure to meet these standards. Most of these provisions are discussed in greater detail below in parts I.C., II, and III.

New section 5(t) requires the Office to establish uniform capital standards that require savings associations to satisfy

<sup>1</sup> Hereafter, the statutory capital provisions will be cited by reference to the appropriate sections of the HOLA.



three separate tests: A risk-based capital standard, a leverage ratio standard, and a tangible capital standard. Section 5(t)(1)(A). All three standards must be no less stringent than the capital standards applicable to national banks. Section 5(t)(1)(C). The risk-based capital standard, however, may deviate from the national bank risk-based capital standards "to reflect interest-rate risk or other risks, but such deviations shall not, in the aggregate, result in materially lower levels of capital being required of savings associations" than would be required under the OCC standards. Section 5(t)(2)(C).

The statute requires the Office to use the same relevant substantive definitions as the OCC in these capital standards, with certain exceptions where the statute itself defines terms. Section 5(t) (9), (10). The statute contains specific provisions mandating the regulatory treatment of qualifying supervisory goodwill (section 5(t)(3)), purchased mortgage servicing rights (section 5(t)(4)), and subsidiaries of savings associations (section 5(t)(5)), including certain transition provisions. The statute also sets forth certain consequences of failure to meet these capital standards and allows savings associations to apply for exceptions and exemptions from some of these consequences. Section 5(t) (6), (7), (8).

### C. Outline of regulation

#### 1. Structure of Capital Regulations

The Office has reorganized and relocated its capital regulations, which appeared at §§ 561.13, 563.13, 563.14, 563.14-1, and 563.47 at the time of the 12/88 proposal, into a new part 567. It believes this new structure will make it easier for those applying or subject to these capital regulations to determine and understand their content.

New § 567.1 contains definitions of terms used in the capital standards and is derived from § 563.13(b) of the 12/88 proposal, section 5(t) of the HOLA, and 12 CFR part 3, appendix A, section 1(c). New § 567.2 sets forth the three-part capital tests that savings associations must satisfy and the transition period to the full phase-in of these standards. It is derived from former 12 CFR 563.13(a) (1988), § 563.13 (c) and (f) of the 12/88 proposal, and section 5(t)(1) of the HOLA. Corresponding sections in the OCC's final guidelines are located in sections 1(a), 1(b), and 4 of 12 CFR part 3, appendix A.

The permissible components of a savings association's capital base, including which items qualify as core capital, which items qualify as

supplementary capital, and which items must be deducted in determining the savings association's capital base for purposes of the risk-based and leverage ratio standards are set forth in new § 567.5. This section is derived from § 561.13 of the 12/88 proposal and corresponds to 12 CFR part 3, appendix A, section 2.

The credit risk categories that are used in determining a savings association's risk-weighted assets appear at § 567.6. They have been derived from § 563.13(d) of the 12/88 proposal and section 3 of 12 CFR part 3, appendix A.

Section 567.8 contains the leverage ratio required by section 5(t)(2)(A) of the HOLA. It replaces the leverage ratio proposed at § 563.13(c)(2) of the 12/88 proposal. Section 467.9 sets forth the tangible capital requirement as set forth at section 5(t)(2)(B) of the HOLA and the calculation of the capital base for this requirement.

Section 567.10 contains the statutorily mandated consequences of a savings association's failure to meet any of its regulatory capital requirements. It is derived from section 5(t)(6) of the HOLA and § 563.13(g) of the 12/88 proposal. Section 567.11, which reserves certain authority for the Office, is derived from § 563.13(i) of the 12/88 proposal and 12 CFR 3.4.

#### 2. Derivation of Capital Regulations

This rule contains elements that are specifically mandated by new section 5(t), elements that appeared in the Bank Board's 12/88 proposal, and elements that appeared in the OCC's final capital guidelines of January 27, 1989. The FIRREA capital provisions are the basic, guiding text for the Office's risk-based capital rule. With respect to any capital provisions not directly addressed in the statute itself, FIRREA requires the Office to use the OCC's capital standards as its benchmark for the standards it prescribes. The Bank Board had already taken the OCC's proposed capital guidelines, along with those of the other banking regulators, as its model for the 12/88 proposal. Much of the 12/88 proposal therefore anticipated FIRREA's requirement that thrift capital standards derive, in large measure, from those adopted by the OCC for national banks. Most of the changes from the 12/88 proposal fall into the following categories:

##### a. Statutory resolution of an issue.

Section 5(t) of the HOLA requires the deduction of certain items from a savings association's capital base, such as goodwill, certain other intangible assets, and investments in certain subsidiaries. The statute also requires

the consolidation of the assets of other subsidiaries in determining the savings association's capital requirements. It also provides that some assets must meet certain characteristics, often tied to the treatment of such assets by other banking regulators, most often the OCC, in order to qualify for special statutory treatment.

b. *Revisions based upon the OCC's treatment of an issue in its final guidelines.* Section 5(t) of the HOLA establishes the OCC's final risk-based capital guidelines as a benchmark for the Office's risk-based capital regulations. These final guidelines reflect certain changes from the Joint Notice. The Office has followed these final guidelines in resolving differences in most areas where the 12/88 proposal differed from the Joint Notice, such as the risk-weighting of Government National Mortgage Association ("GNMA") securities and the components of core capital.

c. *Revisions based upon responses to comments or the Office's experience.* Section 5(t) does not require the Office's risk-based capital regulation to be identical to the OCC's final capital guidelines. It specifically permits the Office to address different risks and to resolve certain issues differently from the OCC, provided that the Office's regulations are materially equivalent to the OCC's final guidelines and, thus, the capital standards applied to the thrift industry are no less stringent "in the aggregate" than those applied to national banks. The FIRREA Conference Report explicitly stated: "Both banking and thrift regulators have devoted considerable effort to the mutual development of risk-based capital standards. These efforts have demonstrated that the initial standards will evolve and be refined over time as the regulators and the regulated institutions gain experience with the appropriate standards applicable to the various investments made by depository institutions." H.R. Rpt. 101-222 (Aug. 4, 1989).

The Office has, therefore, reviewed the 12/88 proposal, the comments received thereon, and the supervisory experience of the Office's predecessor agency in addition to the OCC's final guidelines in addressing certain issues. As a result, it is assigning higher risk weights to some assets (such as loans ninety days past due and repossessed assets) and is assigning lower risk weights to others (such as privately issued mortgage-back securities of investment grade) than the OCC.

The Office believes that all of the issues resolved in this rule have been



adequately aired for public notice and comment as required by the Administrative Procedure Act, 5 U.S.C. 552, through the initial 90-day comment period on the 12/88 proposal (during which two days of public hearings were held) as well as the eight-day reopening of the comment period (during which the Office held another public hearing) after FIRREA was enacted. Because section 5(i)(1) requires the Office to adopt a final capital regulation not later than 90 days after enactment of FIRREA, there was not adequate time to both provide a longer comment period and comply with this statutory deadline. The Office invites additional comments, however, on this rule, and will consider any such comments in determining whether future revisions are appropriate. Additionally, where the regulation indicates that supervisory guidance will be provided to supplement portions of these regulations, the Office welcomes comments on matters that will be addressed in such guidance.

The Office anticipates publishing in the near future two notices of proposed rulemaking—one dealing with the appropriate risk-weighting of residential mortgage-related products and one dealing with interest-rate risk—which it anticipates will result in deviations from the OCC's final guidelines. It anticipates that any such deviations will better address the particular risks most common in thrift portfolios than would the OCC's final capital guidelines, which were crafted to address primarily the risks inherent in national bank portfolios.

### 3. Substantive Content of Capital Regulation.

The rule published today establishes three standards that a savings association must satisfy in order to meet its capital requirement: A leverage ratio of core capital to adjusted total assets, a tangible capital standard expressed as a percentage of adjusted total assets, and a risk-based capital standard expressed as a percentage of risk-weighted assets. Currently, the risk-based capital standard only addresses the credit risk inherent in the assets in a thrift's portfolio. There are other risks that are inherent in savings associations and their portfolios, even where assets may present little, if any, credit risk, such as operating risk, liquidity risk, and risk of fraud. The leverage and tangible capital requirements are intended to ensure that no matter how free from credit risk a savings association may be, it must maintain a minimum amount of capital measured in terms of its total assets as protection against these risks.

A savings association's risk-based capital requirement is calculated based on the credit risk presented by both its on-balance sheet assets and off-balance sheet commitments and obligations. With certain limited exceptions, the asset base of a savings association is determined on a consolidated basis, *i.e.*, including its subsidiaries. Assets are assigned a credit-risk weighting based upon their relative risk. Risk weights are generally tied to the nature of the underlying obligor.

The risk-weightings range from 0% for assets backed by the full faith and credit of the United States or that pose no credit risk to the savings association to 200% for delinquent or repossessed assets. Certain assets, such as equity investments after a limited phase-out period, are not included in the calculation of either the risk-based assets or the capital base of a savings association. In other words, certain assets require dollar-for-dollar capital backing. The Office recognizes that such treatment may encourage thrifts to put certain assets in a subsidiary where their investment may be levered. The degree of leverage, however, is determined by investors in the subsidiary who can evaluate the risk. The Office believes that it is more appropriate for the market (at the subsidiary level), rather than the regulator (at the parent level), to determine the capital required to back certain risky assets.

Off-balance sheet commitments are converted to a "credit equivalent" amount by using a conversion factor intended to estimate the likelihood that the contingent obligation will result in an actual obligation of the savings association and the potential size of loss such items may result in. That amount is then risk-weighted according to the risk associated with the underlying obligor, just as an on-balance sheet asset would be. The amount of risk-weighted assets will then be multiplied by a credit risk capital requirement to determine the minimum amount of capital required for that savings association. That requirement is phased-in over a limited number of years on a schedule similar to the one that will be effect for national banks.

Today's regulations, unlike the 12/88 proposal, do not contain capital requirements based upon a savings association's level of interest-rate risk or the amount of collateralized borrowings it holds. As indicated above, the interest-rate risk capital requirement will be addressed in a separate notice of proposed rulemaking. The Office intends to adjust the amount of capital that must

be held against credit risk at the time it adopts an interest-rate risk requirement so that the overall risk-based capital requirement for the thrift industry, including credit and interest-rate risk components will be no less stringent than the minimum capital requirement imposed on national banks.

Section 1001 of FIRREA requires a study of the federal deposit insurance system to review the issue of whether collateralized borrowings should be added to the deposit insurance base. The Office believes that collateralized borrowings should, therefore, not be addressed in its capital rule at this time.

The rule also sets forth the items that count as capital and that may be used to satisfy the risk-based capital requirement. "Core capital"<sup>2</sup> includes items of a more permanent nature, such as common stockholders' equity and retained earnings. Certain other items provide a somewhat lesser degree of protection, often because of their nonpermanent nature or their imposition of fixed obligations. These items are considered "supplementary capital."<sup>3</sup> Together, the sum of core and supplementary capital equal a savings association's "total capital."

Although both core and supplementary capital may be used in meeting the risk-based capital requirement, the amount of supplementary capital that may be counted toward that requirement is limited to the amount of the association's core capital. Additional limits are placed upon certain types of supplementary capital, such as hybrid capital instruments that have some characteristics of both debt and equity and general loan and lease valuation loss allowances. These limits may restrict the extent to which these forms of supplementary capital may be used to satisfy the savings association's capital requirement. Items that are deducted from a savings association's asset base in determining its assets are also necessarily deducted from its capital since capital equals assets minus liabilities.

### II. Summary of Comments

The Office received a total of 375 comment letters from 307 different commenters. Many commenters submitted more than one comment letter during the rulemaking process. Those who submitted comments included: 207 savings associations and related

<sup>2</sup> Core capital is equivalent to OCC's Tier 1 capital as set forth in its final guidelines.

<sup>3</sup> Supplementary capital is equivalent to the OCC's Tier 2 capital as set forth in its guidelines.



companies; 34 trade associations; 11 law firms; 9 investment banking firms; 6 consultants; 6 mortgage insurance companies; 4 government corporations or agencies; 4 industry-related companies; 3 multilateral lending institutions; one commercial bank; and one certified public accounting firm. Also received were 14 comments from students in a college financial intermediations class, one comment from a law firm representing credit card companies and one comment from a ratings service. Although comments received before August 8, 1989 addressed the Bank Board and those received after that date addressed the Office, this summary will, for consistency, refer throughout to the Office.

#### A. Credit Risk Weightings

The overwhelming majority of commenters supported the 12/88 proposal to move to a capital requirement primarily based on a risk-weighted asset base. Commenters focused their attention on specific risk weightings as summarized below.

##### 1. Full Faith and Credit Obligations

The 12/88 proposal placed obligations backed by the full faith and credit of the U.S. Government or its agencies in the 0% risk-weight category, except for mortgage-backed securities. As noted in the preamble to the 12/88 proposal, this treatment could lead to an anomaly whereby mortgages guaranteed by the Veterans Administration and Federal Housing Administration ("VA/FHA"), as federal agencies, would be placed in the 0% category, but the securities backed by those mortgages (GNMA securities) would be placed in the 20% category.

Commenters who addressed this issue agreed that GNMA securities should be placed in the 0% risk-weight category because they are backed by the full faith and credit of the U.S. Government and present virtually no credit risk to the insurance fund. A few commenters pointed out that loans guaranteed by the VA and FHA, in fact, present more risk to thrifts than GNMA securities.<sup>4</sup> Many commenters suggested that the Office follow the lead of the banking regulators and place GNMA securities in the 0% risk-weighted category and the underlying guaranteed mortgages in the 20% category.

<sup>4</sup> One commenter stated that VA guaranteed loans pay the lender a maximum of \$36,000 or 60% of the original principal amount, whichever is less. The FHA provides that lenders that do not default will receive only 85% of the value of such properties when they are assigned to the Department of Housing and Urban Development.

The Office is adopting the position taken by the OCC: securities issued by GNMA are placed in the 0% risk-weighted category, to the extent they are backed by the full faith and credit of the United States Government, and mortgages guaranteed by the VA and FHA are placed in the 20% category (to the extent they are guaranteed by the FHA or VA). Obligations collateralized by securities issued or guaranteed by the U.S. Government or one of its agencies remain in the 20% risk-weight category.

##### 2. High Quality Mortgage-Related Securities

The 12/88 proposal defines high quality mortgage-related securities as mortgage-related securities qualifying under section 3(c)(41) of the Securities Exchange Act of 1934, commonly referred to as Secondary Mortgage Market Enhancement Act or "SMMEA" securities.<sup>5</sup> Several commenters raised the concern that the definition would not include Federal National Mortgage Association ("FNMA") and Federal Home Loan Mortgage Corporation ("FHLMC") mortgage-related securities. Other commenters suggested that the Office revise its definition because, as defined in the proposal, the term mortgage-related security would mean a security representing an interest in, or one secured by and payable solely from, mortgage assets. Thus, mortgage-backed bonds would be excluded because they are backed by, but not solely payable from mortgage assets.

The Office has re-examined the definition of high quality mortgage-related securities in response to these comments and has expanded its definition to specifically include mortgage-related securities issued by, or fully guaranteed as to principal and interest by, FNMA and FHLMC and mortgage-backed bonds. It has also concluded that for purposes of a 20% risk-weighting, high-quality mortgage-backed bonds (*i.e.*, mortgage-backed bonds rated in the top two investment grade ratings by a nationally recognized rating agency) present no more credit risk than high-quality mortgage-related securities. Thus, mortgage-backed bonds

<sup>5</sup> Briefly, SMMEA securities are securities rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization and either: (1) Represent ownership of one or more promissory notes which are directly secured by a first lien on a single parcel of real estate and were originated by a savings association or similar institution supervised and examined by a Federal or state authority; or (2) are secured by one or more promissory notes which by its terms, provide for payments of principal in relation to payments on notes meeting the requirements in (1), above.

have been added to the definition of high-quality mortgage-related securities.

##### 3. Claims on and Balances Due from Federal Home Loan Banks, Federal Reserve Banks and Domestic Depository Institutions

Commenters generally suggested that balances due from Federal Home Loan Banks and Federal Reserve Banks should be placed in the 0% risk-weighted category. Some commenters viewed deposits in these institutions as cash equivalents. Others expressed the view that a qualitative difference exists between deposits in a Federal Home Loan Bank or Federal Reserve Bank and deposits in a domestic depository institution that calls for a lowering of the risk-weight category for the former.

Some commenters suggested that balances due from domestic depository institutions should be broken down into two categories: Federally insured deposits and those that are uninsured. Insured deposits, according to these commenters, should be placed in the 0% category and uninsured deposits in the 20% category. The Office believes that Federal Reserve Bank reserves, balances and stock present little or no credit risk. Therefore, deposit reserves and other balances at Federal Reserve Banks as well as the book value of paid-in Federal Reserve Bank are placed in the 0% risk-weight category, consistent with the OCC's final guidelines. Claims on and balances due from Federal Home Loan Banks are placed in the 20% risk-weight category consistent with the treatment afforded these assets, as direct claims on a United States government-sponsored entity, under the OCC final guidelines. The Office has also decided that the entire amount of balances due from domestic depository institutions should remain in the 20% risk-weight category not only because the OCC places these assets in the 20% category, but also because of the difficulty of determining the amount of insurance coverage available on such deposits prior to an institution's liquidation.

##### 4. Stock of Federal Home Loan Banks

Many commenters thought that stock in Federal Home Loan Banks should be placed in the 0% risk-weight category rather than the 20% category because it is a required investment for members of the Federal Home Loan Banks.

Federal Home Loan Bank stock remains in the 20% risk-weight category. The Office, after careful consideration of the comments, is reserving the 0% risk-weight category for assets which are backed by the full faith and credit of the



United States Government and those assets that possess negligible credit risk and that have been placed in the 0% category by the OCC in its final guidelines.

#### 5. 1-4 Family Residential Mortgages

The 12/88 proposal placed permanent 1-4 family residential first mortgage loans with loan-to-value ratios not exceeding 80% at origination in the 50% risk-weight category, unless they were backed by qualifying private mortgage insurance. All other 1-4 family residential loans were assigned to the 100% risk-weight category.

This aspect of the proposal drew a number of comments containing suggestions as to how to analyze risk characteristics of mortgage loans. Overall, commenters expressed concern that a 50% risk weighting for qualifying mortgages was too high, given historical loss experience, especially when compared with other common types of bank and thrift assets, such as commercial and consumer loans. Several commenters, in an effort to address this problem, supported a system of risk weighting that would measure risk in terms of loan-to-loan value ratios, loan seasoning, private mortgage insurance, geographic distribution, fixed versus adjustable rates, and a variety of other factors. Other commenters were concerned that the higher risk weighting of home loans compared to mortgage-backed securities would cause thrifts to hold securities rather than loans, thereby imposing unnecessary transaction costs. One commenter argued that this trend would drive up the cost of agency guarantees and, in turn, lead to higher costs to home buyers.

Several commenters provided anecdotal information regarding loss experience, but few provided data regarding the impact of each of these factors on the relative risk of mortgage loans. A few commenters provided statistics that demonstrate a correlation between the incidence of claims on private mortgage insurance and loan-to-value ratios. One private mortgage insurer stated that virtually all of the \$250 million in claims paid out for the calendar years 1987-88 was made to policy holders with loan-to-value ratios greater than 80%.

Many commenters suggested that nonqualifying mortgages should be placed in the 50% risk-weight category after two years of timely payments. Statistics presented by one mortgage insurer, however, indicate that the risk of default on a mortgage peaks during the third and fourth year of the loan and remains significant into the sixth and

seventh years. Other commenters agreed that a two-year seasoning does not significantly reduce the risk of default.

Some commenters thought it wise to distinguish between fixed-rate and adjustable-rate mortgages, especially those with "teaser" rates. Commenters suggested that 1-4 family residential mortgages with fixed rates and loan-to-value ratios of less than 50% presented virtually no risk and many suggested that they be placed in risk-weight categories lower than 50% (suggestions ranged from the 20% category to suggested new categories of 25% or 33%). It was suggested that adjustable-rate mortgages present a greater risk of default and, therefore, should be risk-weighted at a higher level (50% category). Mortgages with negative amortization features, some commenters argued, should be placed in the highest risk-weight category assigned to residential mortgages.

The Office received conflicting comments regarding the requirement that 1-4 family residential mortgages be insured by private mortgage insurance companies to an 80% loan-to-value ratio in order to qualify for a 50% risk weighting. Some commenters expressed strong support for the explicit use of private mortgage insurance as a condition for classifying home loans on the basis that self-insurance does not shift risk away from the federal insurance fund and hurts small-to-medium-sized thrifts that lack the resources to undertake a self-insurance program. Others supported the inclusion of self-insurance because, in their view, it is more cost effective and provides flexibility to nonstandard home buyers. One commenter suggested that the Office could require reserves of at least twice an institution's average annual loss experience to protect the federal deposit insurance fund from risks related to self-insurance programs.

With respect to the definition of qualifying mortgage loan, the preamble to the 12/88 proposal, stated that private mortgage insurance must be provided by an investment grade issuer approved by the FHLMC and FNMA. The proposed regulatory language did not, however, refer to the need for an investment grade rating. One commenter suggested that the Office amend the definition to include a requirement that issuers be rated by a national rating agency. Another commenter suggested that the Office drop the rating requirement because the rating agencies require that an insurer be in business for five years in some cases. Thus, a rating requirement would create a barrier to

entering the private mortgage insurance business.

Many commenters asked the Office to clarify the term "1-4 family residence." Specifically, commenters sought clarification of the treatment of condominiums, manufactured housing, mobile homes and time-share arrangements.

The data submitted by commenters as well as the data available to the staff from their research suggest that, relatively, the risk weighting for mortgages is too high compared with the risk of credit loss from other types of loans. In particular, the credit risks associated with commercial, consumer, and agricultural loans appear substantially greater than the difference implied by a 50% versus 100% risk weight. It is less clear whether the appropriate response is higher weightings for those assets or lower weightings for the lowest risk of the residential mortgage assets. Competitive equality and the Basle accord, however, suggest that higher weights for commercial, consumer and agricultural loans by thrifts are not appropriate.

As a result, today's risk-based capital regulations retain a 50% risk weighting for qualifying 1-4 family residential mortgages, which is consistent with the OCC's final guidelines. The Office, however, will be proposing, in a separate rulemaking action, an optional "marginal capital" calculation method for 1-4 family mortgages and other residential mortgage-related assets designed to address the concerns expressed by commenters. The marginal approach would require higher capital as loan-to-value ratios rise and, thus, would recognize the direct relationship between loan-to-value ratios and credit risk. If the marginal capital approach is adopted, it will be an optional method of calculating capital requirements for 1-4 family residential mortgages.

The Office has incorporated the OCC definition of residential property to clarify the types of property considered residential for purposes of inclusion in the 50% risk-weight category. Residential property includes houses, condominiums, cooperative units, and manufactured homes. Boats and motor homes are not considered residential property, even if they are used as a primary residence. In addition, the Office has made clear in its definition that time-share properties do not qualify as residential property for this purpose.

With respect to the definition of qualifying mortgage loan, the Office has chosen to retain the 80% loan-to-value ratio requirement. It is the Office's experience that default rates increase



dramatically as loan-to-value ratios rise above the 80% level. This experience was echoed by commentators who have analyzed mortgage default rates. Given these observations and the Office's long experience with the thrift industry and residential mortgage lending, the Office is adopting, in addition to the OCC standard of prudent underwriting, the 80% loan-to-value ratio requirement.

In addition, the Office has not chosen to require that issuers of private mortgage insurance also demonstrate an investment grade rating. Private mortgage insurers are already required to have FNMA or FHLMC approval. While the Office wants to ensure that mortgage insurance is provided by reliable issuers, it does not wish to create a barrier to entering the private mortgage insurance industry. The Office believes that FNMA or FHLMC approval should generally be adequate in this regard. The Office reserves the right, however, on a case-by-case basis, to deny "qualifying treatment" where circumstances merit.

The Office has not been presented with sufficient recent market data demonstrating, over a significant period of time, that adjustable rate and negative amortization mortgages present credit risks so appreciably higher than fixed-rate mortgages so as to merit placing them in a higher risk category. The data presented on seasoning as a possible factor in risk weighting mortgages leads the Office to the conclusion that such seasoning does not adequately lower the risk on high loan-to-value residential mortgages. Therefore, the Office is following the 12/88 proposal in both of these areas.

#### 6. Home Equity Loans

The commentators who addressed the 12/88 proposal to place home equity loans in the 100% category uniformly argued that, if the home equity loan (or second mortgage) when combined with the first mortgage, has a loan-to-value ratio of less than 80%, then the loan should fall within the 50% risk-weight category. These commentators argued that the risk involved with home equity loans is related to the combined loan-to-value ratio of the first and second lien, not the fact that the loan represents a second lien. Some commentators took the position that these loans are, in fact, less risky because institutions have the opportunity to review the payment history and appraisal comparables in well-established neighborhoods.

The Office addresses this issue in its proposal regarding the marginal capital option for mortgages. The Office encourages comments on the proposed treatment of home equity loans under

the marginal approach. In the meantime, the Office is leaving home equity loans in the 100% risk-weight category, consistent with OCC final guidelines.

#### 7. Multifamily Housing

The 12/88 proposal, like those of the federal banking agencies, placed multifamily housing in the 100% risk-weight category. This proposal drew a great deal of criticism, most of which centered on the need to provide multifamily housing. Many commentators argued that the principal purpose of the thrift charter is to provide affordable housing. These commentators said, in support of their arguments, that approximately 40% of the nation's population lives in multifamily housing, and in particular, in buildings with 5-20 units. One commenter claimed that these 5-20 unit buildings account for 55% of all apartment units in the United States and, therefore, the Office should encourage thrift lending on this type of housing.

These commentators also criticized the proposal for placing loans for multifamily housing in the same category as commercial, consumer and construction loans. Several commentators urged that apartment loans on such buildings are well suited to the underwriting expertise of thrifts in the community and should be placed in a lower risk-weight category. It was suggested by many that high-quality multifamily loans should be placed in the 50% risk-weight category. Others suggested a 75% risk-weight category for multifamily mortgage loans.

High quality multifamily loans were characterized by commentators as first liens<sup>6</sup> with loan-to-value ratios of not exceeding 80%. Some commentators would add to this definition of qualifying multifamily loans one or more of the following criteria: Balloon payments, if any, should not be payable within 7 years of origination; at least one year of seasoning during which the loan must have a favorable payment history; stabilized occupancy; a fixed interest rate or, if it is a loan with adjustable rate, a debt coverage ratio of at least 1.1:1 for the first year and 1.2:1 for the second year.

The Office has determined that sufficient evidence exists to demonstrate that certain multifamily housing loans are not as risky as commercial and other standard risk loans. Such housing-related loans are, the Office believes, particularly within the ability of savings associations to evaluate and underwrite appropriately.

<sup>6</sup> Or first and subordinate lien if no intervening liens were in existence.

In the rule, the Office has defined the "qualifying multifamily housing loans" to include loans on existing multifamily housing properties containing 5-36 units with a loan-to-value ratio of 80% or less and a stabilized occupancy over the preceding year of at least 80%. The regulation places these qualifying multifamily housing loans in the 50% risk-weight category. All other multifamily housing loans remain in the 100% risk-weight category.

The Office notes that, while the definition of "qualifying multifamily mortgage loan" does not require any specific debt coverage ratio, the Office will retain the flexibility to deny a lower risk weighting to any multifamily mortgage loan that it finds, through the supervisory process, to have inadequate debt service coverage.

#### 8. Derivative Securities and Mortgage Servicing Rights

The 12/88 proposal treated the credit risk of interest-only and principal-only portions of mortgage-related securities in the same manner as the underlying securities. Any interest-rate risk inherent in these instruments would be captured by the interest-rate-risk component of the proposed rule. Commenters generally agreed with this approach and argued that the same treatment should be afforded to mortgage-related securities with residual characteristics, which had been placed in the 100% risk-weight category, regardless of the underlying collateral.

Several commentators pointed out that there are many types of residuals, each having distinctly different reactions to movements in interest rates. Because of these differences, the commentators suggested that it would be arbitrary to treat all residuals in the same manner by placing them in the 100% credit-risk category regardless of type. Rather, there was substantial support for risk weighting residuals according to the credit risk inherent in the security and allowing for the interest-rate-risk component to provide additional capital based on their interest-rate sensitivity.

Commenters also believed that excess and purchased servicing rights should be assigned to the risk-weight category applicable to the underlying collateral. Several commentators expressed the opinion that excess and purchased servicing rights behave like interest-only strip securities because the risk of prepayment is the predominant risk inherent in servicing rights. That risk, they argued, is adequately covered in the interest-rate-risk component of the 12/88 proposal.



The Office agrees that the interest-rate-risk component that will be proposed shortly will address most of the risk inherent in residuals as well as interest- and principal-only portions of mortgage-related securities. Until the interest-rate-risk component is finalized, however, the Office has, in accordance with the OCC final guidelines, placed these three instruments in the 100 percent risk-weight category. In effect, the higher 100 percent risk weighting reflects both interest-rate and credit risk. After the interest-rate-risk component is promulgated, the credit-risk weights assigned to these assets will be revisited to more clearly reflect the distinction between credit risk and interest-rate risk. At that time, the Office anticipates that the credit-risk weighting of interest-only, principal-only and residual securities will be revised to reflect the credit risk associated with the underlying collateral. Likewise, the Office has kept excess and purchased mortgage servicing rights in the 100 percent risk-weight category pending further action on the interest-rate-risk component.

Commenters who addressed the FIRREA's effect upon the treatment of purchased mortgage servicing rights under the risk-based capital rule generally favored using book value rather than the 90 percent of fair market value suggested by FIRREA. The use of book value, commenters argued, would provide a level playing field with FDIC-insured banks. Moreover, it would eliminate the problems involved with establishing acceptable valuation techniques. Several commenters asserted that a uniform mechanism for determining a fair market value or purchased mortgage servicing rights on a quarterly basis does not currently exist. Thus, until such methods are developed, wide variations in the calculations are likely to exist, causing additional supervisory resources to be spent reviewing valuations.

Commenters noted that 90 percent of fair market value would, in some cases, exceed book value. While some commenters favored using 90 percent of fair market value even if it exceeded book value, others suggested that allowing this would cause an association to report inflated capital positions, inconsistent with GAAP.

Many commenters asked for clarification that excess mortgage servicing rights are not considered intangible assets and, thus, are not subject to the limitations placed on purchased mortgage servicing rights.

The OCC's final guidelines provide that purchased mortgage servicing must, for capital adequacy purposes, be

valued at the lower of either the current amortized book value or the current market value as established as part of the bank's annual audit. The Office acknowledges the concerns of those commenters that stated that there exists no uniform mechanism for valuing purchased mortgage servicing. The cost of purchased mortgage servicing is a relevant indicator of value for these assets that the Office believes should be considered in setting capital requirements. However, in order to be consistent with FIRREA and the treatment of servicing under the OCC's final guidelines, the rule values purchased mortgage servicing at the lower of 90 percent of fair market value to the extent that it is determinable, 90 percent of original cost (i.e., the fair market value at the time of purchase) or the current amortized book value as determined under GAAP, whichever is lower and places such rights on the 100 percent risk-weight category.

The Office also wishes to clarify that excess mortgage servicing rights are not considered an intangible asset under GAAP and, thus, are not subject to the limitations placed on purchased mortgage servicing rights in the rule. Accordingly, excess mortgage servicing rights are currently placed in the 100 percent risk weight category, consistent with the OCC's treatment.

#### 9. Corporate Debt Securities

The 12/88 proposal requested comment regarding the risk weighting of corporate debt securities that are rated below investment-grade. These securities are often referred to as "junk bonds." The 12/88 proposal placed these securities in the 100 percent risk-weight category, but explicitly requested comment on whether the securities should be treated in the same manner as equity risk investments, which were placed in the 300 percent risk-weight category in the proposal.

Commenters had sharply divided views on the riskiness of these securities. Some commenters maintained that a higher risk-weight is needed because the market for these securities is less liquid than the market for investment grade securities and factors outside the control of the purchaser can cause wide swings in the price of the securities. The majority of commenters, however, suggested that the Office keep these securities in the 100 percent risk-weight category, arguing that they are at least as safe as commercial loans due to the disclosure information that accompanies a high-yield bond offering, the comparative value of high-yield bonds and commercial loans in the event of default,

and the existence of a secondary market for the bonds.

Since the publication of the 12/88 proposal, Congress, in section 222 of FIRREA, has amended the Federal Deposit Insurance Act to require savings associations to divest themselves of (or transfer under certain conditions) any corporate debt securities not of investment grade no later than July 1, 1994. This requirement will cause most savings associations to account for most of their holdings at the lower of cost or market ("LOCOM") value. Where GAAP requires LOCOM, the calculation of regulatory capital will also require LOCOM treatment for junk bonds. In light of these requirements, the Office will keep these securities in the 100 percent risk-weight category.

#### 10. Real Estate Owned

All of the comment letters addressing this issue strongly opposed the proposed 200 percent risk-weight for real estate owned ("REO"). The major criticism related to the existing rules for classifying and valuing REO. Under GAAP and Office rules, REO must be written down to its fair value at the time it is acquired. It then must be periodically re-valued and carried at the lower of cost or net realizable value. Commenters argued that the periodic marking to market should be sufficient protection. They characterized the 200 percent risk weight as a double reserve penalty that would be unfairly assessed against the entire industry to protect against the over-valuation practices of a small group of institutions. These commenters argued that the problem would be best handled through increased supervision and enforcement of existing guidelines to prevent the over-valuation of REO and to examine more closely the need for annual reappraisals.

Some commenters asserted that the only legitimate rationale for a 200 percent risk weight is the concern that the values may decline during the holding period. They argued, however, that this factor is built into the evaluation, using net realizable value analysis, that is mandated when the foreclosed asset is recorded on the balance sheet. They argued that REO, because of the explicit write-down, is less risky than a bad loan that has not been revalued.

Commenters also asserted that REO is the most critically evaluated asset in the thrift portfolio because it appears as the result of foreclosed loan. In addition to undergoing review when the loan was underwritten, the asset is reviewed under GAAP when taken in, then closely



tracked, and periodically revalued. They noted that given the REO's status as a nonperforming asset, the thrift has an incentive to dispose of it as quickly as possible under reasonable terms. These incentives act as further protection to the insurance fund.

Commenters also argued that REO has substantially lower loss experience than commercial and land loans, which would be in the standard 100 percent category. Many suggested that the REO be given the same risk weight as the underlying asset before foreclosure. Most commenters, however, requested the standard 100 percent risk weighting for repossessed real estate that has been assigned by the banking regulators.

Many comment letters warned that the super-risk weighting of REO might exacerbate incentives to dispose of it, and might possibly result in wholesale "dumping" of these assets. This, they argued, would depress local markets, ultimately harming thrifts and the insurance fund.

Concern was also expressed regarding the treatment of delinquencies. It was argued that the proposal would give thrifts a strong incentive to avoid taking over a property if higher capital were required of REO than delinquent loans, especially where it would be appropriate course of action.

Supervisory experience indicates that portfolios of GAAP insolvent thrifts tend to have a high relative proportion of REO. Data demonstrates that REO is much riskier than standard loans and may be overvalued on many thrift's books. While REO is acquired at fair value, from that point on it is carried at the lower of that value or net realizable value. However, such assets are eventually sold at market value, which is generally lower. The REO has thus, because of accounting conventions, been carried at an artificially high value. In addition, REO can be viewed as an equity investment by the savings association, which the Office believes necessitates a higher capital charge. The Office has, therefore, chosen to keep REO in the 200 percent risk-weight category.

The Office agrees that it should minimize disincentives for thrifts to foreclose on property. Today's rule places all loans 90 days or more past due in the 200 percent risk-weight category, except for 1-4 family residential mortgages which are in the 100 percent risk-weight category. In effect, once a loan is delinquent, its risk weighting doubles to reflect the increased risk of loss to the savings association. Therefore, standard-risk loans assigned to the 100 percent risk-weight category would, once delinquent,

be assigned to the 200 percent category; qualifying mortgage loans assigned to the 50 percent category would, by definition, no longer qualify for the lower risk weighting once delinquent and would be assigned to the 100 percent category.

#### 11. Equity Investments

The 12/88 proposal provided for the creation of a 300 percent risk-weight category to contain "net equity-risk investment." This included all investments defined as equity-risk investments ("ERI") pursuant to 12 CFR 563.9-8 (*i.e.*, investments in equity securities, service corporations, operating subsidiaries, and real estate, as well as certain high-ratio land loans and nonresidential construction loans.) In addition, the proposed definition included as net ERI any direct credit substitutes by a savings association of the obligations of its subsidiaries or service corporations, plus any ownership interests in an investment company that has any assets in its portfolio that would qualify as ERI if held by the savings association.

A few comments unequivocally supported the proposal as presented, or supported application of the alternative, dollar-for-dollar exclusion method. Virtually all of the respondents, however, took issue with some aspect of the ERI proposal. The major concern expressed in the comments was that the capital regulations should distinguish among risks associated with different types of ERI. The need to differentiate was asserted to be especially acute, given the unusually high risk category. Moreover, it was argued, the special risk presented by thrift investments in ERI is already adequately addressed by the existing ERI regulation; any inadequacy would be better addressed through amendments to that rule, rather than by "penalizing" such investments through the capital regulation.

In addition, commenters also claimed that the failure to "grandfather" existing ERI could heavily penalize an institution's profitability even though that thrift has been conducting those investments in a safe and profitable manner. Some thrifts suggested exemptions from the 300 percent risk weighting for such existing portfolios generally, or, alternatively, where a successful track record can be shown. Commenters argued that failure to have some type of grandfathering would disrupt the economic substance of existing transactions.

The evidence submitted in support of differentiating the risks of ERI was anecdotal, asserting that particular equity-risk investment activities had

been conducted profitably and with minimal losses. Some commenters cited the Bank Board's February 10, 1989 report to Congress, asserting that direct investments have not been responsible for more than a fraction of the Federal Savings and Loan Insurance Corporation ("FSLIC") resolution costs. Commenters gave particular attention to thrifts' real estate financing through loans and equity participations in partnerships and service corporations and identified a number of other specific types of ERI for exemption from the 300 percent risk-weight category, asserting that they have a proven record of profitable investment without more than the standard credit risk. These include investments in data processing companies, credit card receivable service bureaus, insurance brokers, discount securities brokers, and property management companies.

Many commenters suggested that an investment in any company that is doing an activity that would be directly permissible for the thrift (*e.g.*, mortgage origination or holding REO) should be afforded a pass-through treatment (*i.e.*, treated as if the parent were doing the activity directly). This treatment was also suggested for out-of-state activities that must be done through subsidiaries, although they would be permissible in-state for the thrift directly. If the subsidiary engages in more than one enterprise, then commenters suggested pass-through treatment on a pro-rata basis. In support of this proposal, commenters asserted that indirect investments in lines of business that the thrift can do directly have no greater risk associated with them when conducted through a subsidiary or partnership. Indeed, it was argued that the corporate separation may in fact reduce the risk to the thrift and the insurance fund.

Some commenters also suggested that certain kinds of equity securities could be exempted from the 300 percent category and given a lower weighting. In particular, equity securities of FNMA and FHLMC, were cited as high yield, but lower risk securities. Commenters also requested lower risk weighting for mandatorily redeemable preferred stock. Although these instruments technically are equity securities, commenters asserted that both GAAP and the capital markets are said to treat them as debt issuances which have the same risk as corporate bonds and commercial loans, since they enjoy priority over common stockholders both in liquidation and periodic returns through their sinking fund. Commenters also suggested exempting collateralized preferred stock



from this category. They argued that such stock is less risky than ordinary equity securities since it is collateralized by unencumbered mortgages or mortgage-backed securities in an amount at least equal to the liquidation preference of the preferred stockholders.

In FIRREA, Congress has specifically limited the ability of state-chartered savings associations to make equity investments in an amount or of a type not permitted for Federal savings associations. The FIRREA also required the divestiture of most equity investments as quickly as prudently possible, but not later than July 1, 1994. See FIRREA, section 222, adding a new section 28(c) to the Federal Deposit Insurance Act. The Office has carefully considered this issue and has determined that, in light of this clear Congressional concern with the potential riskiness of such investments as evidenced by the required eventual divestiture of many equity investments, it is appropriate to treat equity investments in a similar manner to the treatment of investments in subsidiaries that engage in activities as a principal that are not permissible for a national bank, i.e., to phase out such investments from capital calculations over a five-year period. During this transitional period, today's rule places those equity investments includable in assets (and, thus, in capital) in the 100 percent risk-weight category.

This approach will help to ensure that the thrift maintains adequate capital against its equity investments and, until such investments are divested, it will encourage early divestiture. Additionally, it will ensure adequate capital for those equity-type investments that do not fall within the FDIC's definition of "equity investment" and therefore may still be permissible investments for savings associations.

## 12. Consolidation

The 12/88 proposal stated that, for purposes of determining the asset base for applying the new capital rule, the Office would require thrifts to use the consolidation method as required by GAAP to report investments in subsidiaries and service corporations and the assets and liabilities of such companies. The consolidation method is consistent with the banking regulators' requirement that banks generally consolidate the assets and liabilities of a bank and its majority-owned subsidiaries to calculate capital requirements.

In connection with the proposed consolidation requirement, the 12/88 proposal discussed an alternative "exclusion method" for thrift

investments in equity risk investments, including investments in service corporations and operating subsidiaries. This exclusion method was proposed for consideration as an alternative to the 300 percent risk-weighting of ERI. Under the exclusion method, an institution's investment in subsidiaries (including loans and advances to subsidiaries) is not counted in the thrift's risk-weighted asset base and, thus, is effectively "added" to the capital requirement of the institution. This method in effect would require thrifts to provide capital for their investment in subsidiaries on a dollar-for-dollar basis with their own capital rather than leveraging that investment with insured deposits. 53 FR 51808.

Various commenters opposed the use of the exclusion method for equity-risk investments since it amounts to a dollar-for-dollar capital requirement for permissible investments. Commenters also sought clarification about how the proposed consolidation requirement would be implemented. Some commenters were concerned that consolidation might be implemented in a way that would result in double counting of the consolidated assets of the subsidiary and the parent thrift's investment in the subsidiary.

FIRREA provides that the assets and liabilities of subsidiaries engaged in activities that are not impermissible for national banks must be consolidated with those of the parent savings association for purposes of determining the parent thrift's compliance with its capital standards. Section 5(t)(5)(E). A savings association's investments in or extensions of credit to a subsidiary engaged in activities as principal that are not permissible for national banks must be deducted from the association's assets for purposes of determining compliance with the capital standards required under section 5(t)(1). Section 5(t)(5)(E). If the subsidiaries were engaged in impermissible activities as of April 12, 1989, however, FIRREA provides schedule for phasing-out the inclusion of such investments over a five-year period. During this transitional period, today's rule requires associations to consolidate on a prorated basis (after accounting for the deduction of investment that has occurred) the assets of such subsidiaries.

The consolidation requirement stated in the 12/88 proposal would apply to special purpose finance subsidiaries as well as service corporation and other operating subsidiaries. As part of this proposal, the Board felt that it could delete, as unnecessary, § 563.13-2 which separately treats finance subsidiary

issuances for purposes of the current liability-based capital regulations. Under current § 563.13-2, the amount of securities issued through a finance subsidiary is exempted from the capital regulation's liability base if it substantially duration-matched; i.e., the issued securities are collateralized by assets that have substantially the same duration as the securities issued, or the securities were remitted in exchange for a liability issued by the parent thrift which was otherwise includable in the parent's regulatory capital liability base. Under the proposed consolidation requirement of the new risk-based capital rule, the relatively low credit risk of finance subsidiary assets would be accounted through direct application of the risk weighting to these assets, with any maturity mismatch being covered by the interest-rate risk component. See 53 FR at 51804.

Several commenters took specific exception to the possibility of including finance subsidiaries in the proposed new consolidation requirement. They argued that consolidation of finance subsidiary which issued collateralized mortgage obligations ("CMOs") or real estate mortgage investment conduits ("REMICs") makes little economic sense given the essentially non-recourse financing. They contended that sale-of-assets treatment should carry over to the consolidation requirement. Commenters found application of risk-weighting, through consolidation, to the assets of finance subsidiaries troublesome since the Board had encouraged use of these special purpose financing vehicles through the special rules and exclusions (e.g., they are currently excluded from the calculation of required regulatory capital). Commenters noted that there is virtually no interest-rate risk, given the duration matching, and very little credit risk, given the highly rated assets. Thus, many commenters requested that any finance subsidiaries utilized prior to the new capital rule be grandfathered, with no capital being required against such existing assets. Section 5(t)(5) does not establish a separate treatment for finance subsidiaries. Therefore, the Office is removing the separate treatment for such subsidiaries located in 12 CFR 563.13-2 (c) and (d) (1988). Investments in these subsidiaries will be treated for regulatory capital purposes in the same manner as investments in other subsidiaries. Because the rule risk weights the assets of the finance subsidiary, the separate treatment of such subsidiaries is made unnecessary. Although the 12/88 proposal would have removed this section entirely, the Office



has determined that only the paragraphs which affected the computation of regulatory capital should be removed.

### 13. Off-Balance Sheet Items

a. *Asset sales with recourse; senior/subordinated structures.* The majority of comments addressing this point opposed the 12/88 proposal's treatment of asset sales with recourse and the subordinated portions of senior/subordinated securities. The 12/88 proposal treated an asset sale with recourse, if not already included on the balance sheet, as an off-balance sheet risk financing, rather than a sale of assets. In other words, capital would be required against the full amount sold, even if the buyer had recourse against the savings association for less than the full amount. Retention of the subordinated portion of a senior/subordinated loan structure or securities was treated in the same manner, i.e., capital was required against both the senior and subordinated portions.

Commenters argued that the proposed treatment of these instruments would destroy the secondary market for mortgages, which they characterized as currently providing much-needed liquidity for thrifts and keeping costs to the consumer down. Many commenters viewed the proposed treatment of these assets as unduly harsh. Some suggested that the Office consider placing the subordinated portions of senior/subordinated structures in a higher risk-weight category to account for the increased incidence of risk inherent in subordinated pieces rather than requiring both the originating thrift and thrifts purchasing senior pieces to hold capital against the same assets.

Many commenters argued for treatment consistent with the banking agencies, especially where assets are sold with recourse to GNMA, FNMA and FHLMC. The banking regulators, by referring to the call report instructions for national banks regarding the treatment of these assets, appear to exempt mortgages sold to these agencies from the capital requirements regarding asset sales with recourse.<sup>7</sup> Commenters contended that the 12/88 proposal would, if made effective, create a competitive disadvantage that would be detrimental to the continued viability of thrifts. They argued that the proposal would seriously impede institutions that cannot originate adjustable-rate mortgages from purchasing them on the

secondary market, resulting in weakened institutions and a greater threat to the health of the insurance fund. At a minimum, commenters favored the grandfathering of all outstanding senior/subordinated structures and asset sales where recourse exists.

The Office has given careful consideration to the issues raised by commenters and has attempted to address a number of these concerns in the marginal capital proposal that it will shortly be publishing. For purposes of this rule, however, the Office is adopting its proposed position because it believes that it more accurately recognizes the significant risks in this area than the alternatives suggested by commenters. The Office notes that banking regulators are moving toward the Office's position in proposed modifications to the call reports prepared by national banks and, thus, may alleviate the potential competitive disadvantages between thrifts and banks. The Office wishes to clarify that, for purposes of this regulation, asset sales with only standard representations and warranties will not be considered sales with recourse. In instances where a savings association swaps with recourse mortgage loans in exchange for a FHLMC or FNMA participation certificate ("PC"), the mortgage loans are to be converted and risk weighted in accordance with this regulation; the on-balance sheet PC is not required to be capitalized. Subordinated portions of senior/subordinated securities will be treated similarly.

b. *Commitments.* The 12/88 proposal would assign a 0% conversion factor to unused commitments that are unconditionally cancelable and that the institution will review before extending. All other commitments would be assigned to a 50 percent conversion factor. Many commenters preferred the assignment made by the banking regulators in their final guidelines which assigned all commitments with a maturity of less than one year to the 0 percent conversion factor. Several others asked that the Office exempt mortgage commitments from this capital requirement, particularly because the life of such commitments is short and, in the opinion of these commenters, the requirement would result in increased costs to the consumer.

Many commenters believed that commitments to sell loans should offset commitments to make loans. Several commenters expressed the view that loans in process and undisbursed portions of construction loans should

not be included in the capital calculation.

A few commenters asked the Office to clarify that the term "unconditionally cancelable" refers to an institution's ability to cancel a commitment unconditionally if it retains its rights to the full extent permitted under Federal law. Such a clarification would ensure that state law impediments to cancellation would not cause a commitment automatically be assigned to a 50 percent conversion factor.

In today's rule, the Office's treatment of commitments is consistent with the banking regulators' treatment. Therefore, unused commitments with an original maturity of one year or less have a 0 percent credit conversion factor. Unused commitments with an original maturity of greater than one year are also assigned a 0 percent credit conversion factor, if they are unconditionally cancelable and the savings association has the contractual right to make, and does make, a separate credit decision based upon the borrower's current financial condition before each drawdown. Unused portions of retail credit card lines that are unconditionally cancelable by the savings association in accordance with applicable law are also in the 0 percent credit conversion category, as are unused portions of home equity lines of credit that are unconditionally cancelable in accordance with federal law. A 50 percent credit conversion factor is assigned to unused portions of commitments, including home equity lines of credit, with an original maturity exceeding one year.

c. *Interest-rate contracts.* Under the 12/88 proposal, the credit-equivalent amount of interest-rate contracts was the current exposure, or replacement cost of the contract as determined by its current market value at the end of the reporting quarter. The credit-equivalent amount is assigned to the 20 percent or 50 percent risk-weight category, depending on the nature of the obligor.

Several commenters thought that this provision was duplicative of the interest-rate-risk component. One commenter was concerned that the interest-rate-risk component would encourage the use of interest-rate contracts to manage risk but the risk weighting of off-balance sheet interest rate contracts would discourage the use of this tool for risk management. Another commenter suggested that the interest-rate-risk component should make it clear that assets that are fully hedged by an interest-rate swap transaction should be excluded from the

<sup>7</sup> The staff of the OCC has informed this Office, however, that this was not the intent of the regulation and that it does not intend to exempt such mortgages sold with recourse from its capital rule.



calculation of a savings association's value of portfolio equity.

One commenter thought that the proposed treatment of interest rate contracts was too broad. This commenter stated that, under most circumstances, the counterparty to an interest rate swap will post collateral in the form of a bond or is a counterparty of investment-grade quality. Given these circumstances, the commenter argued that there is no risk to the savings association or to the federal insurance fund.

Several commenters discussed the netting aspect of the proposal. One commenter suggested that, where a savings association has more than one contract with the same counterparty and some have mark-to-market gains and others mark-to-market losses, the contracts should be netted and the resulting amount used as the base for the capital calculation. Another commenter suggested that the rule should allow for netting positive and negative replacement costs of contracts.

The Office, in today's regulation, has continued to treat interest-rate contracts and exchange-rate contracts in the same manner as the OCC.

#### B. Interest-Rate Risk

The 12/88 proposal contained an interest-rate risk component designed to take into account, for capital calculation purposes, the effect that a change in interest rates would have on the value of the thrift's portfolio. The interest-rate risk component was the subject of a separate advance supplemental notice of proposed rulemaking published on June 22, 1989. The Office has received a number of comments regarding interest-rate risk in response to the 12/88 proposal as well as the advance notice. It believes that interest-rate risk is far too important a risk in most savings association's portfolios to ignore until the banking agencies reach a consensus on this issue. The Office is therefore preparing a notice of proposed rulemaking on the interest-rate risk component. That rulemaking will discuss and respond to all the comments it has received on the issue. Thus, discussion of comments related to interest-rate risk are not included in this rulemaking.

#### C. Collateralized Borrowings

The 12/88 proposal contained a collateralized borrowing component that required capital for liabilities against which the savings association has pledged specific assets, pledged to maintain a specific value of assets, or for which the structure of a transaction could otherwise result in an effective

pledging of assets. The proposal contained a 3 percent capital requirement for such liabilities.

Commenters uniformly expressed the opinion that: (1) Collateralized borrowings do not increase the risk exposure of the federal deposit insurance fund; (2) the proposal would result in double-counting; (3) the proposal would put thrifts at a competitive disadvantage vis-a-vis banks; and (4) a liability-based capital requirement has no place in a regulation that measures the riskiness of assets to determine capital requirements.

After careful consideration of the comments on this issue, the Office has determined that the problems presented by collateralized borrowings are more appropriately addressed in conjunction with issues related to insurance premium assessments. The Office notes that Congress has specifically instructed the Secretary of the Treasury to study the issue and determine whether collateralized borrowings should be added to the deposit insurance base as part of its overall study of the deposit insurance system. FIRREA, section 1001(b)(4). The collateralized borrowings portion of the proposed risk-based capital rule does not, therefore, appear in today's rule.

#### D. Core capital

Several comments addressed issues relating to the components of capital generally. Some of these comments involved some form of grandfathering for those components of regulatory capital that are no longer components of risk-based capital standards. It was suggested that the Office follow the OCC in permitting certain elements of Tier 2 capital in Tier 1 through 1992. Another commenter requested that infusions of non-cash assets, such as real estate, that were approved as capital before FIRREA's enactment in connection with supervisory acquisitions should be grandfathered as capital. Several comments were received asking that FSLIC-preferred stock and income capital certificates ("ICCs") be placed in core capital.

This Office is strongly committed to ensuring that solid capital protection is provided by its capital requirements. Because supplementary capital elements provide less protection than is expected of core capital, this Office declines to follow the OCC with regard to allowing certain elements of supplementary capital to satisfy core capital requirements during the transition period.

With respect to the inclusion of contributed assets in core capital, the FIRREA Conference Report makes clear

that the Director has discretion as to whether such assets may be treated as capital to the extent previously authorized, "if such treatment would be no less stringent than the treatment OCC provides for national banks." H.R. Rpt. 101-222 at 405. Like the OCC, this Office will examine such requests on a case-by-case basis.

The rule includes FSLIC preferred stock and ICCs in supplementary capital, rather than core capital, because of the small degree of protection they provide. For this reason, this Office declines to place such items in core capital, but has placed them, along with mutual capital certificates and net worth certificates, in supplementary capital.

Finally, one commenter suggested that this Office permit both noncumulative and cumulative perpetual preferred stock in core capital. This Office, for reasons discussed below, will follow the OCC by permitting only noncumulative perpetual preferred stock in core capital and assigning cumulative perpetual preferred stock to supplementary capital.

This Office, in accordance with its mandate under FIRREA, has classified the following elements as core capital (less deductions from core capital set forth in § 567.5(a)(2)): Common stockholder's equity (including retained earnings); noncumulative perpetual preferred stock and related surplus (as conditioned in footnote one of § 567.5); minority interest in the equity accounts of consolidated subsidiaries; and nonwithdrawable accounts and pledged deposits that meet the conditions of § 567.5(a)(1)(iv).

#### E. Maturing Capital Instruments

Several commenters supported the proposed approach of limiting to a fixed percentage (10-20 percent) of total capital (including maturing capital instruments) the amount of maturing capital instruments includable as supplementary capital for each of seven years remaining to maturity. Others supported the alternative set forth in Appendix A of the 12/88 proposal ("Appendix A") that established a schedule of amortization tied to the amount of the particular institution's level of tangible capital. 53 FR at 51813, 51817. A third group argued for retaining the existing provisions without substantive amendment, at least for currently outstanding issuances of mature capital instruments.

Under existing capital regulations, the portion of qualifying subordinated debt that may count as capital is reduced by one-seventh over each of its seven years to maturity. Supporters of the proposed



percentage limitation method generally applauded the elimination of this amortization rule. They viewed the existing rule as unnecessarily arbitrary, claiming that the market for these instruments has now grown to the point where there is substantially less risk that refunding would be a problem.

Some commenters argued that the percentage limitation on maturing capital includable as supplementary capital should be raised to 20% (or higher). In addition to the industry need for flexibility in raising capital, these commenters argued that in the event of a thrift's liquidation, the maturing capital instruments, regardless of remaining maturity, give the insurance fund the same protection as common stock and retained earnings.

Some comment letters favored the alternative method set forth in appendix A of tying inclusion of maturing capital instruments to tangible capital. Several commenters felt that regardless of which percentage the Office selected in the percentage limitation proposal, the formula could easily produce abrupt, sizable shifts in the amount of a savings association's maturing capital instruments that qualify as capital. They preferred the appendix A's predictable and regular annual decreases as the instrument approaches maturity.

Other reasons offered by commenters for favoring the appendix A method included the desire to avoid the transaction costs of refinancing instruments after they have less than seven years remaining to maturity. They asserted that it also gives more flexibility to thrifts to finance their operations with shorter maturity instruments, which generally are less expensive. Furthermore, in the view of some commenters, the proposed percentage formula might disadvantage smaller thrifts whose dollar amount in total regulatory capital would be relatively low even if their percentage of capital to assets exceeds required minimums.

A number of commenters supported retention of the existing amortization schedule. Although some hoped for continuation of this schedule for future issuances, these commenters argued strongly for the grandfathering under the existing schedule of maturing capital instruments that had already been issued. They argued that the existing subordinated debt structure of thrifts was planned according to the current amortization rule, including long range plans for replacing those funds with equity capital. These commenters warned that the unexpected disruption could further damage thrifts' general

access to this segment of the capital markets.

Some commenters argued that the Office should offer thrifts a choice, with regard to existing maturing capital, between the existing amortization method and the method finally adopted.

Commenters urged that any "grandfather" provision should include all maturing capital instruments that either were issued, or for which an application had been filed under the existing regulations, as of December 23, 1988, the date of publication of the risk-based capital proposal. For these issuances, commenters urged, the savings association should be able to elect seven-year amortization treatment under the existing regulation. They claimed that inclusion of filed applications, as well as outstanding issuances, would avoid the expense of having to renegotiate and restructure these pending issuances.

After consideration of the comments received on this issue, the Office has determined that it will treat subordinated debt issuances that were in existence as of the date of promulgation of this risk-based capital rule under the provisions that were in effect as of November 6, 1989. Thus, for any existing subordinated debt, institutions may continue to use the seven-year amortization. For any future issuances of subordinated debt or any other maturing capital instrument, the Office is allowing savings associations to choose, when the application to issue the debt is made, between the treatment contained in its 12/88 proposal and the treatment adopted by the OCC in its final risk-based capital guidelines, subject to the requirement that all maturing capital instruments outstanding at any point in time must be treated the same way and such treatment documented.

Under the first option, based on the proposal, the allowable percentage of maturing capital that a savings association could include as a component of supplementary capital that matured in any given year would be limited to 20% of the savings association's capital. The alternative that mirrors the OCC rule provides that, at the beginning of each of the last five years of the life of subordinated debt, the amount eligible to be included as supplementary capital is reduced by 20% of the original amount of the subordinated debt. The decision as to which treatment an issuance will receive must be made by the issuing savings association at the time of the application and is irrevocable as to that issuance.

All outstanding maturing capital instruments at any given point in time, except for those grandfathered under the current rule, must be treated for capital calculation purposes entirely under either the OCC treatment or the Office's treatment. Thus, if a savings association wishes to issue new maturing capital instruments using the OCC option while it has an outstanding issuance that is subject to the Office's treatment, it may not do so. Only when the entire first issuance matures may the association change its option with respect to the second issuance. This is because the two alternatives focus on different aspects of these instruments, i.e., the OCC treatment looks at each individual maturing capital issuance while the OTS treatment looks at all outstanding maturing capital instruments.

#### *F. General Valuation Loan and Lease Loss Allowances*

As proposed, the inclusion of general loss allowances as supplementary capital would be limited to 1.25% of risk-weighted assets, the limitation imposed by the banking regulators as of December 31, 1992.

Some commenters took exception to the 1.25% limitation. They argued that these reserves are available to absorb future losses and should be included as supplementary capital without limitation. Several commenters requested that all specific loan loss allowances, not just general reserves, be counted toward capital up to the percentage limit.

On the other hand, some commenters supported the proposed limit, if not an even more stringent limitation. Under GAAP, loan loss allowances are established against estimable and probable losses. Thus, thrifts are likely to call upon these when actual losses occur.

The OCC permits inclusion of the allowance for loan and lease losses up to a maximum of 1.5% of risk-weighted assets for the period from December 31, 1990 until December 30, 1992. This allowance is equivalent to the Office's general loan loss allowance. Therefore, the Office will permit the use of general loss allowances up to a maximum of 1.50% of risk-weighted assets until December 30, 1992 and 1.25% of risk-weighted assets thereafter. Any general loss allowances that are not included in assets are deducted from total risk-weighted assets. Because savings associations do not have general valuation allowances in the amounts that banks have, and have not relied on them as part of capital to the same extent, the Office is placing the 1.5%



limitation in effect immediately, rather than delaying it until December 1990.

#### G. Revaluation Reserves

The 12/88 proposal also requested comment as to whether revaluation reserves (*i.e.*, the unrealized appreciation in fixed assets and long-term equity investments) should be includable as supplementary capital. Because the OCC does not include revaluation reserves (or an equivalent) in supplementary capital and such treatment would be inconsistent with generally accepted accounting principles, the Office declines to include revaluation reserves in the components of capital.

#### H. Goodwill

The 12/88 proposal placed all goodwill in the 200% risk-weight category. Most commenters took issue with this proposed treatment. The strongest opposition came from a number of institutions that participated in supervisory mergers during the early 1980s. Commenters that were not involved in supervisory mergers opposed the treatment of goodwill as an asset and effectively as capital, arguing that to allow such laxity in the capital requirements would subvert the proposal's purpose of creating a stronger and more prudent capital structure for the industry.

Congress has addressed the issue of goodwill in great detail in FIRREA. New Section 18(n) of the Federal Deposit Insurance Act, added by section 221 of FIRREA, provides that no Federal banking agency is to allow any depository institution to include any unidentifiable intangible asset (*i.e.*, goodwill) acquired after April 12, 1989 in calculation of capital except as permitted under section 5(t). In general, the Office is required to follow the lead of the OCC, which deducts goodwill from capital except for pre-1985 goodwill which is grandfathered. FIRREA, however, provides for a 5-year phase-out and a maximum 20 year straight-line amortization of qualifying supervisory goodwill as a component of core capital. Under the terms of FIRREA, the phase-out can only be utilized by "eligible" savings associations, *i.e.*, those that are well-managed, in compliance with all applicable statutes, regulations, orders and supervisory agreements, and not involved in transactions that threaten the safety and soundness of the savings association. See section 5(t)(3)(B).

The definition of supervisory goodwill was the subject of some concern among commenters. The Act did not define the term supervisory goodwill, however,

there was a great deal of congressional discussion of what constitutes supervisory goodwill for purposes of the statutory transition rule. Unfortunately, there is conflicting legislative history in this area. The majority of commenters addressing this issue urged the Office to adopt the definition used in the House Banking Committee Report<sup>8</sup> which, they argue, was fashioned to assure a reasonable transition for all institutions with supervisory goodwill approved by the Bank Board. Many commenters argued for an even broader definition that would include goodwill that resulted from a merger or acquisition of "problem" institutions.

Some commenters suggested that savings associations be deemed eligible unless or until the Director makes a determination that the association does not meet the eligibility requirements. The main concern expressed by commenters was that savings associations and supervision staff would be pressed to submit and review applications for eligibility and business plans required under section 5(t)(6)(A) of FIRREA in such a short time-frame.

In addition, a few commenters requested that the Office allow the netting of goodwill and discounts as reported in the Thrift Financial Report. Clarification was also sought regarding the inclusion of supervisory goodwill in the calculation of tangible capital.

In today's regulation, the Office is defining supervisory goodwill to include not only institutions that failed their capital requirements but also institutions that presented supervisory concerns. The Office defines eligible savings associations in accordance with FIRREA and is including a provision deeming savings associations with supervisory goodwill to be eligible savings associations until notified otherwise by the Director. The Office believes this treatment is consistent with congressional intent while this asset is being phased out of capital.

The Office has not provided for the netting of goodwill and discounts in the rule because to do so would neither comply with GAAP nor OCC standards. Under the provisions of FIRREA, the Office cannot include supervisory goodwill in the calculation of tangible capital.

<sup>8</sup> The House Report defines supervisory goodwill as that goodwill "resulting from the acquisition, merger, consolidation, purchase of assets or other business combination of any savings association where the market value of the assets acquired was less than the market value of the liabilities at the time of the transaction and where the accounting treatment of the goodwill has been approved by the Federal Home Loan Bank Board." H.R. Rpt. 101-54, Part I at 432.

While FIRREA arguably provides the Office with the flexibility to grandfather certain goodwill as a component of supplementary capital, and such grandfathering would be consistent with the current OCC rules, the Office believes that such a position would not conform with congressional intent. The Office's regulation, therefore, requires the deduction of non-supervisory goodwill and the phase-out over 5 years of qualifying supervisory goodwill. Thus, non-qualifying goodwill will be deducted immediately upon the effective date of the regulation and qualifying supervisory goodwill will be phased-out over the five-year statutory schedule.

#### I. Leverage Ratio

The 12/88 proposal contained a 2% leverage ratio designed to protect institutions with relatively riskless assets from losses that could occur due to mismanagement or fraud. The OCC's final risk-based guidelines did not contain a similar leverage limit.<sup>9</sup> FIRREA provides that the Office adopt a leverage limit of not less than 3 percent. The Act also, as mentioned previously, requires the Office to adopt capital standards that are no less stringent than those applicable to national banks. The OCC has a required capital ratio of 5.5% of primary capital and 6% of total capital under its current capital rule. The issue of what the leverage ratio for savings associations should be after the enactment of FIRREA has been the subject of much comment.

The overwhelming majority of comments the Office has received supported the adoption of a 3% leverage ratio. Commenters argued that the legislative history of FIRREA supports their position. They argued that because the current OCC ratio refers to primary capital rather than core capital (which consists of fewer elements that provide better protection to the insurance fund) it does not make sense to require such a high ratio to the risk-based capital framework. In fact, they argue, to do so would be to defeat the aim of a risk-based approach: To lower capital requirements by lowering the risk in the association's asset portfolio.

The Office has concluded that the 3% leverage ratio prescribed by FIRREA should be promulgated effective at the same time as the risk-based capital requirement. It is difficult to draw a comparison between the OCC's current primary and total capital leverage ratios and the core capital leverage ratio

<sup>9</sup> The OCC has proposed to adopt a 3% leverage ratio effective when the risk-based capital rule takes effect. 54 FR 46394 (Nov. 3, 1989).



prescribed by FIRREA because the components of primary and of total capital differ significantly from the components of core capital. Compare 12 CFR 3.2(c) (definition of primary capital) with 54 FR at 4179 (OCC definition of Tier 1, or core, capital). The Office concludes, however, that its own definition of core capital, which emulates the OCC's, is more stringent for savings associations than the OCC's definition of primary capital is for national banks. For example, national banks may include allowances for loan and lease losses in primary capital. These allowances are not permissible as core capital either for banks or for savings associations.

Moreover, the application of the primary and total capital ratios would actually result in a rule that is inconsistent with the overall pattern of the capital provisions of the statute. Embedded in section 5(t) of the HOLA is a clear pattern that calls for savings associations to steadily increase capital over the next 5 years. Thus, for example, capital must increase as supervisory goodwill phases out and as the exclusion rule applicable to investments in certain subsidiaries phases in. Empirical data show, however, that the application to thrifts of the primary and total capital ratios currently in effect for national banks would cause more savings associations to fail their capital requirement than will fail under a 3% core capital leverage limit. Thus, imposition of the primary and total capital ratios would cause capital requirements to "spike" up immediately upon the rule's effective date, and then recede if and when the Comptroller adopts a 3% leverage ratio. This result would be inconsistent with the apparent statutory scheme of a gradual, but continually increasing, capital requirement.

The FIRREA requires savings associations to comply with a core capital leverage ratio no less stringent than that applicable to national banks. Since such a limit is not yet applicable to national banks, as discussed above, savings associations need not yet comply with this future standard. The FIRREA, however, as discussed, specifies a minimum 3% core capital leverage ratio in the absence of such a currently applicable OCC standard.

The Office believes it is appropriate to adopt a 3% leverage limit in tandem with its risk-based capital standard. The Comptroller has reasoned that this leverage limit is appropriate, when applied in combination with a risk-based standard, because, while the leverage limit provides protection

against certain risks not addressed by the risk-based rule, "the risk-based standard should be the primary focus in determining the adequacy of a bank's capital." 54 FR at 4170. The Office believes it is consistent with the safe and sound operation of savings associations to require application of the two rules together.

#### *J. Phase-in*

The 12/88 proposal provided that savings associations must hold 2% of total assets in the form of core equity capital and 80% of their risk-based capital requirement by January 1, 1991. Fully phased-in risk-based capital would have been required by January 1, 1993 under the proposal. A number of commenters considered this phase-in schedule too optimistic and, indeed, unrealistic given current capital markets and the negative publicity regarding savings and loans. A variety of time tables were suggested ranging from an additional two to ten years to provide for a smooth transition from current capital requirements to a risk-weighted capital rule.

A number of these comments have been rendered moot by the FIRREA. The capital regulations will be effective on December 7, 1989, as provided by FIRREA, section 5(t)(1)(D). The Office is providing a transition period from December 7, 1989 to December 30, 1990 that requires savings associations to maintain capital in an amount greater than or equal to 80% of the amount they will be required to maintain on or after December 31, 1992. Between December 31, 1990 and December 30, 1992, all savings associations will be required to maintain capital in an amount greater than or equal to 90% of the amount they will be required to maintain on or after December 31, 1992. All savings associations will be required to satisfy the fully phased-in risk-based capital requirement by December 31, 1992.

### **III. Discussion of Regulation**

#### *A. Definitions*

FIRREA instructs the Office to include in its capital standards "all relevant substantive definitions" that the OCC has established for national banks, subject to the following special rule: "If the [OCC] has not made effective regulations defining core capital or establishing a risk-based standard, the Director shall use the definition and standard contained in the [OCC's] most recently published final regulations." HOLA, section 5(t)(10)(A) and (B).

In accordance with the statutory mandate, the definitions contained in the regulation correspond, for the most

part, to the definitions prescribed by the OCC in its recent final guidelines. Some definitional sections have been modified to reflect the differences between the terminology used in the thrift and banking industries. In particular, the term "general valuation loan and lease loss allowances" is used to refer to "allowances for loan and lease losses" and the term "retained earnings" is substituted for "undivided profits." The term "capital surplus" is not specifically mentioned because such surplus is accounted for in common stockholders' equity. Other definitions have been added to reflect statutory provisions regarding, among other things, the treatment of qualifying supervisory goodwill as a deduction from capital and the requirement for separate capitalization for certain subsidiaries.

The definition of "adjusted total assets" is based on the OCC's definition at 12 CFR 3.2(a), but is modified to reflect the treatment of investments in subsidiaries and qualifying supervisory goodwill under FIRREA.

The Office has retained the definition of "depository institution" with a modification to clarify that savings and loan holding companies are not considered depository institutions.

The term "eligible savings association" is largely taken from the provisions of FIRREA governing the inclusion of supervisory goodwill in core capital. The Office has provided that associations will be deemed eligible unless notified otherwise.

#### *B. Components of Capital*

FIRREA requires different capital components for each of the three capital standards: The risk-based capital standard, the leverage ratio capital standard, and the tangible capital standard. The risk-based capital standard may be satisfied by a specified combination of core capital and supplementary capital. The leverage ratio standard must be satisfied with core capital. The tangible capital requirement must be met with tangible capital.

#### *1. Core Capital*

Core capital includes common stockholders' equity, retained earnings, noncumulative perpetual preferred stock<sup>10</sup> (less contra accounts such as

<sup>10</sup> Preferred stock issued by a savings association or subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries is not considered part of capital, regardless of its cumulative or noncumulative characteristics.



shareholder receivables), and minority interests in the equity accounts of consolidated subsidiaries. For purposes of the core capital calculation, there are special rules regarding the deduction from core capital of certain intangibles.

Common stockholders' equity is a "permanent," *i.e.*, nonmaturing or nonredeemable, source of protection for the savings association and the deposit insurance fund. Common stockholders' equity includes common stock, additional paid-in capital and retained earnings.

The 12/88 proposal defined core capital to include "perpetual preferred stock,"<sup>11</sup> without distinguishing between cumulative and noncumulative preferred stock. The OCC's final guidelines make such a distinction and only permit noncumulative preferred stock to be considered as Tier 1 (core) capital. Because section 5(i)(10) requires the Office to follow the definition of core capital in the OCC's final risk-based capital guidelines, the Office's rule includes only noncumulative perpetual preferred stock in core capital, notwithstanding this Office's belief that cumulative preferred stock serves the functions of equity capital for savings associations equally well from a public policy perspective.

Noncumulative perpetual preferred stock differs from common stockholders' equity primarily in that there is a fixed requirement to pay dividends. It has no maturity and holders of such stock are residual owners of a savings association rather than creditors. A savings association cannot be forced into insolvency by its requirement to pay dividends on this preferred stock, since the obligation to pay dividends can be suspended when the savings association encounters financial difficulties. The treatment of noncumulative perpetual preferred stock as core capital and cumulative preferred stock as supplementary capital is consistent with the standards adopted in July, 1988, by the Basle Supervisors' Committee and with the definition of capital that the OCC has adopted.

Core capital includes minority interests in equity accounts of fully-consolidated subsidiaries unless the Office determines in the case of a particular savings association that it does not provide a cushion to absorb losses. This could occur, for example, where the minority interest consists of a preferred interest in the subsidiary.

Core capital also includes any pledged deposits or nonwithdrawable accounts that meet the same criteria as noncumulative preferred stock; *i.e.*, they are includable if there is no maturity and the obligation to pay interest (*i.e.*, dividends) can be suspended when the savings association encounters financial difficulties. Such items generally belong to the directors of mutual savings associations and are pledged to the savings association. They often perform the same function for those savings associations that preferred stock performs for stock savings associations. Nonwithdrawable and pledged accounts that do not meet the same criteria as noncumulative perpetual preferred stock may be counted toward supplementary capital. Per section 5(i)(3), core capital also includes, until December 31, 1994, goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices. This goodwill is gradually phased out over this five year period.

**a. Deductions from core capital.** Generally, for purposes of the core capital requirement, all intangible assets are excluded from assets and must therefore be deducted from core capital. Nevertheless, FIRREA permits certain items to be included in assets and, therefore, does not require such items to be deducted in core capital calculations as discussed below.

The OCC permits those intangibles that meet its three-part test to be included in assets. 54 FR 4168, 4179 (Jan. 27, 1989) (Deductions from Tier 1 capital at (c)(2)). The Office will accordingly permit, on a case-by-case basis, savings associations to include those intangible assets that qualify under the three-part test, 12 CFR 567.5(a)(2)(ii), in assets up to 25% of core capital, except for purchased mortgage servicing rights, which are treated separately by the statute and thus by these regulations.

FIRREA made separate provision for inclusion in assets of two types of intangibles: Qualifying supervisory goodwill and purchased mortgage servicing rights. The amount of qualifying supervisory goodwill that may be included by an eligible association<sup>12</sup> in assets and, therefore, need not be deducted from core capital, may not exceed the applicable percentage of adjusted total assets set forth in the following table:

	Percent
Prior to January 1, 1992.....	1.500
January 1, 1991–December 31, 1992..	1.000
January 1, 1993–December 31, 1993..	0.750
January 1, 1994–December 31, 1994..	0.375
Thereafter.....	0

FIRREA also specifically provides for inclusion of purchased mortgage servicing rights in assets. Purchased mortgage servicing rights may be included in assets (*i.e.*, there is no deduction from core or tangible capital) only to the extent allowed by the FDIC. In the Joint Explanatory Statement of the Committee of Conference,<sup>13</sup> House and Senate conferees indicated that, in calculating core capital for the three capital standards, the Office "shall permit" savings associations to treat purchased mortgage servicing rights in a manner no less stringent than they are treated under regulations prescribed by the FDIC and the OCC. The conferees referred to the OCC's standards with respect to purchased mortgage servicing in discussing the qualitative standards for marketability, valuation, and separability of such servicing that the Office "may prescribe" for the capital standards of savings associations. The conferees specifically stated, however, that the capital standards for savings associations should not be limited to OCC quantitative standards for tangible capital. The Office will therefore rely on the FDIC's quantitative standards for the treatment of purchased mortgage servicing rights, modified to comport with the provisions of FIRREA. At present both the OCC and the FDIC apply the same qualitative standards, which this Office intends to follow: If, however, one of these regulators were to revise its qualitative standards, this Office would take appropriate action.

**b. Deductions from core and tangible capital.** Section 5(i)(5) of the HOLA requires that investments in certain nonincludable subsidiaries must be deducted, in increasing amounts, in determining compliance with all capital standards established under section 5(i)(1) over a five year phase-out period. This rule, therefore, deducts such investments for purposes of determining a savings association's tangible and core capital pursuant to § 567.5(a)(2) and § 567.9(c). Nonincludable subsidiaries are, generally, those engaged as principal in activities not permissible for national banks.

Any subsidiary that is engaged in activities permissible for a national

<sup>11</sup> The regulation excepts preferred stock that is, in effect, collateralized by assets of the savings association or one of its subsidiaries. See discussion below.

<sup>12</sup> "Eligible savings association" is defined at 12 CFR 567.1(h).

<sup>13</sup> H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess. 405 (1989).



bank or is engaged in activities not permissible for a national bank, but solely as an agent, or is itself a depository institution (acquired directly or indirectly before May 1, 1989) will be consolidated with the parent for purposes of capital and deduction of the investment in the subsidiary is not required. Where the association has a ownership interest not consolidated under CAAP in a subsidiary engaged in permissible activity, the consolidation is prorated. That is, the association's percentage interest in the subsidiary is multiplied by the subsidiary's assets and the resulting amount is consolidated with the parent association. The assets consolidated in this manner are placed in the 100% risk-weight category. When the association has a majority interest in a subsidiary, assets are fully consolidated. The assets of the majority-owned subsidiary are risk-weighted in the same manner as assets of the parent.

With respect to subsidiaries that are engaged in activities that are not permitted for national banks, FIRREA requires that all of an association's investments in such subsidiaries so engaged after April 12, 1989 must immediately be deducted from assets. For subsidiaries engaged in such activities prior to April 12, 1989, the Act provides a transition period whereby associations must deduct a certain percentage of their investments in such subsidiaries each year. By July 1994, all investments in subsidiaries engaged in activities not permitted for national banks must be deducted from assets and, thus, capital. During the phase-in of this requirement, the rule requires that the assets of subsidiaries that engage in activities not permitted for national banks (where the amount of the investment has not been fully deducted) be consolidated on a prorated basis to the extent of the remaining investment. Thus, during the phase-in period, associations must multiply their ownership interest in a subsidiary engaged in activities not permitted for national banks by the subsidiary's assets and by that portion of its investment that is not deducted under the phase-in schedule. This treatment applies to all investments in subsidiaries whether the association's investment constitutes a minority or majority interest.

When a savings association, after May 1, 1989, acquires a depository institution, either directly or through a subsidiary, the sole investment of which is a depository institution or institutions, the savings association's investment in the lower tier depository institution (or intermediate subsidiary) will be

deducted in determining capital compliance under all three capital standards unless the lower tier depository institution is engaged solely in activities permissible for a national bank or the Office determines that the capital requirement for the parent savings association would be higher if the assets and liabilities of the parent and subsidiary were consolidated. Where the Office creates such a determination, assets and liabilities of such lower tier subsidiaries will be consolidated with those of the parent savings association for purposes of determining compliance with capital standards, pursuant to sections 5(t)(5)(A) and 5(t)(5)(E).

Where such investments have been acquired before May 1, 1989, regardless of whether the lower tier depository institution is engaged in activities not permissible for a national bank, the investment will not be deducted in determining capital compliance, pursuant to section 5(t)(5)(C)(ii). While section 5(t)(5)(E) does not require the Office to consolidate such subsidiaries with the parent savings association for purposes of determining compliance with capital standards, neither that section nor section 5(t)(5)(C) requires the Office to treat such investments in a particular way, leaving that determination to the Office. The Office is aware of a colloquy between Senators Garn and D'Amato on this issue on August 4, 1989 that indicates that the statute does not require such consolidation and that the capital requirements should be applied separately to each savings association. See Cong. Rec. S. 10199 (Aug. 4, 1989). The Office is very concerned, however, about the "double leveraging" of capital by savings associations inherent in such structures if such investments are not consolidated. Additionally, the Office wishes to minimize any incentives the parent savings association may have to only minimally capitalize the lower tier depository institution. While the Office believes that the exclusion treatment for non-depository institution subsidiaries, depending upon their activities, is appropriate, in part because such treatment does encourage savings associations to minimize such investments, it believes that depository institution subsidiaries should be more than minimally capitalized. The Office therefore has determined to require consolidation of the assets and liabilities of such subsidiaries with those of the parent savings association for purposes of determining capital compliance. Such treatment is consistent with the FDIC's general treatment of

investments in subsidiaries representing majority ownership in another federally insured depository institution. See 54 FR 11511 n.10 (March 21, 1989).

## 2. Supplementary Capital

Supplementary capital elements count towards a savings association's total capital up to a maximum of 100% of the association's core capital. Supplementary capital elements are divided into three categories: permanent capital instruments, maturing capital instruments, and general valuation loan and lease loss allowances.

Core capital is the most permanent form of capital and places the least amount of fixed obligations on the savings association. It therefore provides the best protection for the savings association and the insurance fund. Nevertheless, there are circumstances when issuing equity can prove to be expensive in terms of the savings association's future ability to raise capital and, therefore, detrimental to a savings association. Depending on market conditions, the issuance of equity securities by a savings association may prove to be very costly in comparison to other methods of raising capital, such as the issuance of debt. The Office continues to believe such other instruments should be included as components of capital for purposes of meeting capital requirements. Thus, the definition of total capital should enable savings associations to raise a portion of their capital from less costly sources when appropriate.

Supplementary capital is comprised of those debt or equity instruments that are not as permanent as or have less certain value than the components of core capital. Supplementary capital components include: mandatory convertible subordinated debt (both capital notes and commitment notes), net worth and capital certificates, perpetual subordinated debt, mandatory redeemable preferred stock, qualifying subordinated debt, and general valuation loan and lease loss allowances.

Perpetual preferred stock is preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder. With one exception, discussed below, perpetual preferred stock instruments qualify for inclusion in supplementary capital. Cumulative perpetual preferred stock qualifies as supplementary capital, as discussed above, consistent with the OCC's determination to exclude such preferred stock from its Tier 1 (core) capital.



Preferred stock with a dividend rate that is periodically reset in an auction-type process to reflect the creditworthiness of the issuer<sup>14</sup> is included as supplementary capital only, regardless of whether dividends are cumulative or not. Furthermore, in order to meet the definition of perpetual preferred stock, the issue may not be redeemed at the option of the holder of the instrument or have other provisions that would require future redemption of the stock.

An exception to the inclusion of perpetual preferred stock in supplementary capital is the preferred stock issued by a savings association or subsidiary that is, in effect, collateralized by assets. Because this stock has a claim on assets that is senior to that of the FDIC, such instruments do not qualify as capital.

Mutual capital certificates, net worth certificates, and income capital certificates remain in supplementary capital as set forth in the 12/88 proposal.

Pledged deposits and nonwithdrawable accounts generally belong to the owners or directors of the savings association and are pledged to the association. Because owners of such instruments are subordinated to the savings association, they are included in either core or supplementary capital, depending upon whether they could satisfy the same criteria as noncumulative preferred stock.

**a. Transition Rules for Maturing Capital Instruments.** The characteristics of maturing capital instruments require some form of special provision for their inclusion in capital. These instruments present a refunding risk to the savings associations that issue them. If these types of instruments are not refunded they could cause a precipitous reduction in the capital position of a savings association. For this reason, the amount of maturing capital instruments eligible for inclusion in supplementary capital is limited or discounted as the investment approaches maturity.

The Office is establishing two categories of rules for the inclusion of maturing capital instruments in supplementary capital. The first rule applies to all maturing capital instruments issued by savings associations on or before November 7, 1989. The second category applies to maturing capital instruments that were issued after November 7, 1989. Under the second category, a savings association issuing such instruments has two options from which to choose. One

option focuses upon the amount of all outstanding maturing capital instruments that will mature in a particular period as a percentage of capital. The second focuses upon the amortization of each particular issuance. Once an association selects an option, however, that option applies to all maturing capital instruments subsequently issued by the association for as long as there is a balance outstanding of post-November 7, 1989, issuances. Only when the balance of post-November 7, 1989, maturing capital instruments issued pursuant to the originally selected option have been repaid will the association be permitted to select the other option for new issuances. This limitation is necessary to avoid double-counting.

The rule that applies to maturing capital instruments issued before November 7, 1989, is identical to the schedule set forth at 12 CFR 561.13(c)(1) (1988). The rule, which is similar to the approach previously allowed by the federal banking agencies, requires maturing capital instruments to be amortized at the rate of  $\frac{1}{4}$ , or approximately 14%, per year during the final seven years to maturity. As discussed in detail in the 12/88 proposal, the Office believes that this treatment may result in such instruments becoming an increasingly expensive form of capital as they near maturity. This may result in savings associations relying on longer-term funds and having to pay higher interest rates or incurring unnecessary transaction costs for refunding instruments earlier than necessary. The Office is retaining these provisions for the reasons discussed in the summary of comments.

The second category of rules consists of the two amortization options for maturing capital instrument issued after November 7, 1989. The first option is the rule that appears in section 2(b)(2) of the OCC's final guidelines. 54 FR at 4179. It reduces the outstanding amount of the maturing capital instruments that would count as supplementary capital by a fifth of the original amount (less redemptions) each year during the instrument's last five years before maturity. This approach is similar to the prior amortization rule except the amortization period has been shortened from seven to five years.

To avoid the adverse effects of the present rule and the OCC's treatment of these items, while continuing to protect the Office's interest in encouraging strong capital positions for savings associations, the Office is including, as discussed above, an alternate amortization option for the treatment of

maturing capital instruments. This option would limit (for inclusion in capital for purposes of this regulation) the aggregate amount of capital that matures in any one year during the seven years immediately prior to an instrument's maturity to 20% of the association's capital. If a savings association wishes to hold, and to count for purposes of this rule, maturing capital that is greater than 20% of capital, it must spread the maturities over two or more years so that no more than an amount equal to 20% of capital will mature in any one year.

**b. General Valuation Loan and Lease Loss Allowances.** This Office, like the OCC, is concerned about the degree of protection afforded by another element of supplementary capital, general valuation loan and lease loss allowances. General valuation loan and lease loss allowances are established through a charge against earnings to absorb inherent but unidentified losses on loans. They do not include allowances held for specifically identified losses or earmarked for a specified asset. In the Office's view, general valuation loan and lease loss allowances represent, effectively, a segregation of retained earnings and therefore are appropriately includable in meeting capital requirements. Because they do represent potential losses to the association, however, they are a limited component of capital. Under the guidelines adopted by the OCC, general reserves for loan and lease losses includable in capital are phased down to 1.25% of risk-weighted assets. The Director is adopting a similar limitation for thrifts' general valuation loan and lease loss allowances. Initially, allowances for such items, as a component of capital, may constitute no more than 1.5 percent of risk-weighted assets. At the end of 1992 and thereafter they may constitute no more than 1.25 percent of risk-weighted assets.

Although some associations may perceive the limit as a disincentive for prudent allowance practices, every savings association must still maintain adequate general loan and lease loss allowances. The Office will continue to enforce the standards for general valuation loan and lease loss allowance adequacy on a case-by-case basis through its supervisory process.

**c. Other items included as components of capital in the 12/88 proposal.** Deferred loan losses were included in the 12/88 proposal because the Competitive Equality Banking Act of 1987 required that such items be included in capital. Their inclusion, however, would not be consistent with

<sup>14</sup> Examples of such auction-type processes are: Dutch auction, auction rate, remarketable, and money market preferred stock.



either GAAP or OCC rules. As a result, they are no longer includable in determining capital. Appraised equity capital, the excess of historical cost over market value of shares in liquid asset mutual fund investments, and other risk analysis reporting components are no longer components of capital because their inclusion is neither permitted by the OCC, nor consistent with the clear congressional intent that thrift capital, both core and supplementary, be materially equivalent to bank capital. As such, they are no longer includable in assets for savings associations and are thus removed from capital.

### 3. Deductions from Total Capital

Reciprocal holdings of capital instruments issued by other depository institutions are deducted from a savings association's total capital. Reciprocal holdings are cross-holdings or other formal or informal agreements in which two or more depository institutions swap, exchange, or otherwise agree to hold each other's capital instruments. Generally, as this definition implies, deductions are limited to intentional cross-holdings. These items are excluded for two reasons. First, the Office is concerned that such holdings could cause cross failures among depository institutions, including savings associations. Second, FIRREA directs that this Office parallel the substance of the OCC's regulation, which excludes such holdings from capital calculations.

All equity investments, except for investments in subsidiaries, are being excluded from calculations of total capital because they represent a high degree of variability of risk similar to investments in subsidiaries, which are specifically dealt with in section 5(j)(5) of the HOLA. The Office has therefore determined to treat them similarly to the treatment FIRREA mandates for investments of non-includable subsidiaries. The Office is not required, however, to deduct these investments from core and tangible capital for purposes of its capital standards. It is therefore phasing them out from calculations of total capital over a five-year period. In the interim, the amount not excluded is placed in the 100% risk weight category.

Finally, the Office is also excluding from assets and therefore from calculations of total capital, that portion of a non-residential construction or land loan that is above an 80% loan-to-value ratio. The Office's experience with its equity risk investment regulation (which treats such loans as equity risk investments) has been that such high loan-to-value loans present particularly

high levels of risk. It has determined that those positions of the loan above the 80% loan-to-value ratio should not be included in calculating capital.

### C. Credit Risk Weightings

There have been several adjustments made to the risk weighting assignments in the regulation. These adjustments generally reflect three concerns: (1) The statutory requirement that the capital standards for thrifts be no less stringent than those of national banks; (2) the ability to differentiate from the bank regulations in areas where thrifts have a particular expertise and the Office believes there are different risks inherent in such assets; and (3) where today's rule, because it does not yet contain an interest-rate risk component, places certain assets in higher credit risk categories as an interim measure to account for their high level of risk related to interest rate fluctuations.

#### 1. On-Balance Sheet Assets

The Office has lowered the risk weighting of GNMA securities and placed them in the 0% category. The underlying FHA/VA (to the extent they are guaranteed) mortgage loans, on the other hand, have been placed in the 20% category rather than in the 0% category, as proposed. This revision not only makes the treatment of GNMA's and FHA/VA mortgages consistent with the banking regulators, but also more accurately reflects the credit risk associated with each asset.

The rule lowers the risk weighting of deposit reserves and other balances at Federal Reserve Banks as well as the book value of paid-in Federal Reserve Bank stock to the 0% category, consistent with the OCC's treatment of claims on and stock of Federal Reserve Banks. Likewise, items collateralized by cash have been raised from the 0% to the 20% risk-weight category.

The Office has determined to retain in this rule the treatment afforded high quality private issue mortgage-backed securities, i.e., placing them in the same 20% risk-weight category as such securities issued by FHLMC or FNMA. The Office has carefully reviewed the history and characteristics of such securities and believes that this risk weight is appropriate. Such securities are generally placed in the 50% risk-weight category under the OCC's final guidelines.

As discussed in the summary of comments, the rule places securities with residual characteristics and all stripped mortgage-backed securities, including interest-only and principal-only portions in the 100% risk-weight category. This treatment is consistent

with the OCC and reflects the risk inherent in these instruments as compared to typical mortgage-backed securities. This treatment will be reconsidered in conjunction with an adoption of an interest rate risk component.

The Office has placed claims on certain foreign governments and depository institutions and official multilateral lending institutions or regional development institutions in the same risk-weight categories as the OCC.

Goodwill and equity investments that are not deducted from assets and, thus, from capital and non-investment grade corporate debt securities are placed in the 100% risk-weight category. The Office had considered assigning risk-weights in excess of 100% to these assets in its proposal. FIRREA requires that supervisory goodwill be phased-out as a component of capital over a five-year period. State-chartered savings associations are generally prohibited from making new equity investments. FIRREA also requires that thrifts divest themselves of investments in non-investment grade corporate debt securities and most equity securities no later than July 1, 1994. The Office has determined that a "super" risk-weighting of these assets is not necessary given the restrictions contained in FIRREA. A thrift's minority interest in a subsidiary that engages in permissible activities that would not be consolidated under GAAP will, for capital purposes, be consolidated in a prorated fashion, whereby the association will multiply its percentage of ownership in the subsidiary by the subsidiary's assets.<sup>16</sup> For purposes of the risk-based capital rule, that amount is placed in the 100% risk-weight category. No capital will be required against the investment in the subsidiary for capital purposes.

The Office has retained one risk-weight category in excess of the 100% category for standard risk assets. All assets (except 1-4 family residential mortgages) that are more than 90 days past due and assets in foreclosure are assigned a 200% risk-weighting. Those 1-4 family residential mortgages that are more than 90 days past due will be placed in the 100% risk-weight category (double the risk-weight of a current qualifying residential mortgage).

#### 2. Off-Balance Sheet Items

In today's rule, unused commitments with an original maturity of one year or

<sup>16</sup> Assets, for this purpose, should be assets as determined in most recently available GAAP report, but in no event should the report be greater than one year old.



less have a 0% credit conversion factor. Unused commitments with an original maturity of greater than one year are also assigned a 0% credit conversion factor, if unconditionally cancelable and the savings association has the contractual right to and, in fact, does make a separate credit decision based upon the borrower's current financial condition before each drawdown.

Unused portions of retail credit card lines that are unconditionally cancelable by the savings association in accordance with applicable law are in the 0% credit conversion category, as are home equity lines of credit unconditionally cancelable by the association in accordance with federal law. A 50% credit conversion factor is assigned to unused portions of other commitments, including home equity lines of credit, with an original maturity exceeding one year.

#### D. Leverage Ratio and Tangible Capital Requirements

Today's rule implements a leverage ratio of 3% of adjusted total assets held in the form of core capital for savings associations. The leverage ratio is to ensure that savings associations maintain a level of capital adequate to protect from fraud, mismanagement and other risks that are not accounted for by measuring capital against risk-weighted assets. The OCC did not provide for a leverage limit in its final guidelines, but has announced its intention to propose a 3% leverage limit to be effective simultaneously with the effective date of the guidelines.

The Office is, therefore, consistent with FIRREA and the actions of the OCC, adopting a minimum leverage ratio requirement for savings associations at the same level as the OCC has proposed to use in conjunction with its final risk-based capital guidelines. If, in any final rule, the OCC modifies either the level of this leverage ratio or the elements of capital that can be used to satisfy the requirement, the Office will revisit this provision and make any necessary revisions consistent with sections 5(t)(1)(C) and 5(t)(2)(A) of the HOLA.

The Office has provided for tangible capital in the amount of 1.5% of adjusted total assets in today's rule. Since the OCC does not define tangible capital, the Office has adopted the definition contained in FIRREA, *i.e.*, tangible capital means core capital minus any intangible assets as defined by the OCC. The rule adopts the OCC's definition of intangible assets for purposes of tangible capital as well as other capital standards.

#### E. Transition and Effective Date

##### 1. Risk-Based Capital Standards

Section 5(t)(1)(D) requires these regulations regarding capital standards to be effective on December 7, 1989. All savings associations are required to meet their fully phased-in risk-based capital requirements by December 31, 1992, the date the OCC final risk-based capital guidelines will be fully phased-in except that certain items that the FIRREA phases out over a longer period of time will continue to be included, in decreasing amounts, according to the statutory schedules. These schedules are discussed in section E.2 below. The final rule contains a transition period for meeting the fully-phased-in risk-based capital requirement. For the period between December 7, 1989 and December 30, 1990, savings associations must attain and maintain no less than 80% of the amount of capital that will be required under the risk-based capital standard on December 31, 1992. For the period between December 31, 1990 and December 30, 1992, savings associations must attain and maintain no less than 90% of the amount of capital that will be required under the risk-based capital standard on December 31, 1992. Thereafter, the risk-based capital standard will be 100% of that amount.

The tangible capital and leverage ratio requirements must be satisfied in total as of the effective date of these regulations, December 7, 1989.

##### 2. Other Phase-Out Rules

(a) *Goodwill.* Section 5(t)(3) of FIRREA allows for the inclusion of certain goodwill in assets and, thus, in core capital. Under the provisions of the statute, eligible savings associations<sup>18</sup> may include qualifying supervisory goodwill as defined in 567.1(ee) up to the applicable percentage of total assets as set forth in the following table:

	Percent
Prior to January 1, 1992 .....	1.500
Jan. 1, 1992-Dec. 31, 1992 .....	1.000
Jan. 1, 1993-Dec. 31, 1993 .....	0.750
Jan. 1, 1994-Dec. 31, 1994 .....	0.375
Thereafter .....	0

<sup>18</sup> An association is an eligible savings association if the Director determines that: (i) The savings association's management is competent; (ii) The savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and (iii) the savings association management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

(b) *Investments in subsidiaries.* FIRREA provides that all of a savings association's investments in and extensions of credit to any subsidiary (including minority ownership interests in subsidiaries) engaged as a principal in activities that are not permissible for a national bank must be deducted from the assets and, thus, the capital of the association. Notwithstanding this provision, the statute provides that, if a savings association's subsidiary was engaged, as of April 12, 1989, in investments that are not permitted for national banks, the savings association may include the lesser of its investments in and extensions of credit to the subsidiary on April 12, 1989 or its investments in and extensions of credit to the subsidiary on the date its capital is being determined, in accordance with the applicable percentage as follows:

	Percent
Prior to July 1, 1990 .....	100
July 1, 1990-June 30, 1991 .....	90
July 1, 1991-June 30, 1992 .....	75
July 1, 1992-June 30, 1993 .....	60
July 1, 1993-June 30, 1994 .....	40
Thereafter .....	0

#### F. Consequences of Failure

The Office has added a section dealing specifically with the consequences of failing the minimum capital requirements under the regulations. This section combines the remedies that were formerly contained in § 563.13(d) and those mandated by FIRREA. In particular, FIRREA requires any savings association not in compliance with the capital regulations to submit a plan to the Director detailing its efforts to correct its capital situation. Submission of such plans is not an enforcement action by this Office. Under section 5(t)(6)(A)(ii) of FIRREA, the Director must require the submission of these plans. Prior to January 1, 1991 the Director may also restrict the asset growth of any savings association that is not in compliance with the capital standards. On and after January 1, 1991, asset growth must be prohibited under the terms of the Act except as provided under limited circumstances where any increase in assets is accompanied by an increase in tangible capital.

In addition to these regulatory provisions, the Office will provide guidance to savings associations regarding the process for applications to be exempted from sanctions or excepted from the capital standards. As part of this effort, details relating to the content of capital plans, the standards by which



they will be judged, and the process to be followed in filing them with the Office will be forthcoming.

The Office intends to notify each savings association that it believes will fail one or more of the capital requirements as of December 7, 1989 and direct each to file a capital plan or rebut the Office's contention of failure. There are no required forms to be submitted as part of the capital plan process. Each savings association's plan will differ and should reflect the association's unique facts and circumstances. As part of the process, savings associations will be required to certify to the Director that during the pendency of their applications they will not grow beyond interest credited, make any capital distributions, or engage in any activity prohibited under FIRREA or otherwise act in a manner inconsistent with limitations established by the Office for associations not meeting their capital requirements. Applications not containing such certifications are not acceptable capital plans. These capital plans will be used by the Office in determining the capital adequacy of these savings associations. Savings associations whose capital plans are rejected will be subject to immediate restrictions on growth and in any other areas the Director determines to be appropriate for that particular association.

The Office will apply Regulatory Bulletin 3a, which restricts the growth of undercapitalized savings associations to a maximum of interest credited on liabilities. These growth restrictions will be imposed until the savings association has met the minimum capital standards.

Savings associations seeking exemptions from sanctions, other than post-1991 growth restrictions, that the Director may impose upon undercapitalized savings associations must apply to the Director. As part of that application, those savings associations must submit a capital plan. The Office will give the review of capital plans and applications for exemptions a high priority. The Office expects to issue more detailed supervisory guidance on these important issues in the immediate future.

#### G. Reservations of Authority

Consistent with the OCC's capital regulations appearing at 12 CFR part 3 and its risk-based capital guidelines appearing at the Appendix to that Part, the Office has added a new section 567.12, dealing with the residual authority of the Office to address certain items on a case-by-case basis to ensure that the purpose of the statute and regulations is carried out.

#### H. Comparison with OCC Final Risk-Based Capital Guidelines

Today's regulation, as discussed above, has been modeled closely on the final risk-based guidelines adopted by the OCC for national banks. The risk-based sections of the regulation are not identical to those guidelines, however, because the Office has determined that certain statutory requirements, the mutual structure of a large number of savings associations (which has no counterpart in national bank structure), the nature of thrift portfolios, the types and magnitude of risks associated with them, and the Office's experience mandate different treatment of certain assets and certain components of capital. The areas of difference are set forth in this section. Overall, the Office believes that even with these differences, the rule, in the aggregate, results in a risk-based capital regulation materially equivalent to the OCC's final guidelines.

The primary areas of difference are in: (1) Mortgages and mortgage-related assets; (2) the risk-weighting of repossessed and past-due assets, obligations of and assets covered by the Federal Savings and Loan Insurance Corporation or a successor agency; (3) the phased-out exclusion from assets and capital calculations of supervisory goodwill, equity investments, certain high loan-to-value loans, and investments in certain subsidiaries; (4) the inclusion of certain nonwithdrawable accounts and pledged deposits in core capital for mutual savings associations where such instruments meet the same criteria as noncumulative preferred stock; (5) an alternative treatment of maturing capital instruments; and (6) an accelerated transition period on the limited inclusion of general valuation loan and lease loss allowances, the lack of the OCC's transitional inclusion of a percentage of Tier 2 (supplementary) capital in determining Tier 1 (core) capital, and an immediate effective date for the risk-based capital standards.

#### Executive Order 12291

It is certified that this regulation does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

#### Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Office is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

3. *Significant alternatives minimizing small entity impact and agency response.* This rule will not have a disproportionate impact on small savings associations. Section 5(i) of the Home Owners' Loan Act of 1933 requires the Office to promulgate "uniformly applicable capital standards for savings associations." The Office believes that there are no significant alternatives to the rule that will adequately address the Office's statutory responsibility to promulgate such regulations. While the Office anticipates that all savings associations may have to make some revisions to their reporting procedures, the Office intends that any required revisions will try to minimize the burden on small savings associations to the extent consistent with providing adequate information for supervisory monitoring of their capital ratios. The regulation will have the most significant impact on those savings associations that do not have sufficient capital in relation to their asset size or risk profiles.

#### Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d)(3), the office finds good cause for waiving the 30-day delay of effective date provisions of the Administrative Procedure Act in that FIRREA requires these regulations to be effective 120 days after enactment of the law. Thus, these regulations will be effective on December 7, 1989.

#### List of Subject

##### 12 CFR Part 561

Savings associations.

##### 12 CFR Part 563

Accounting, Advertising, Bank deposit insurance, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 567

Currency, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office hereby amends parts 561, 563 and 567, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.



1. The heading for subchapter D of 12 CFR chapter V is revised to read as follows:

**SUBCHAPTER D—REGULATIONS  
APPLICABLE TO ALL SAVINGS  
ASSOCIATIONS**

**PART 561—[AMENDED]**

1a. The authority for part 561 is revised 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. 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).

**§ 561.13 [Removed and Reserved]**

2. Section 561.13 is removed and reserved.

**PART 563—[AMENDED]**

3. The authority for part 563 is revised 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. 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).

**§ 563.13 [Removed and Reserved]**

4. Section 563.13 is removed and reserved.

**§ 563.13-2 [Amended]**

5. Section 563.13-2 is amended by removing paragraphs (c) and (d) and redesignating paragraph (e) as new paragraph (c).

6. Part 567 is revised to read as follows:

**PART 567—CAPITAL**

- Sec.  
567.1 Definitions.  
567.2 Minimum regulatory capital requirement.  
567.5 Components of capital.  
567.6 Risk-based capital credit risk weight categories.  
567.8 Leverage ratio.  
567.9 Tangible capital requirement.  
567.10 Consequences of failure to meet capital requirements.  
567.11 Reservation of authority.

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).

**§ 567.1 Definitions.**

For purposes of this part:

(a) *Adjusted total assets.* The term "adjusted total assets" means:

(1) A savings association's total assets as defined in § 567.1(ff);

(2) Plus

(i) For the risk-based capital standard, general valuation loan and lease loss allowances up to 1.5% of risk-weighted assets until December 30, 1992, and up to 1.25% of risk-weighted assets on or after December 31, 1992;

(ii) The prorated assets of any includable subsidiary in which the savings association has a minority ownership interest that is not consolidated under generally accepted accounting principles;

(iii) The prorated assets of any subsidiary acquired prior to April 12, 1989 that is not an includable subsidiary to the extent set forth in § 567.5(a)(2)(v)(C) or § 567.9(c)(3)(iii) respectively; and

(iv) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in paragraph (w)(1) of this section;

(3) Minus

(i) Assets not included in the applicable capital standard except for those subject to paragraphs (a)(3)(ii) and (a)(3)(iii) of this section;

(ii) Investments in any includable subsidiary in which a savings association has a minority interest;

(iii) Investments in any subsidiary subject to consolidation under paragraph (a)(2)(iii) of this section; and

(iv) for purposes of determining core capital, qualifying supervisory goodwill.

(b) *Cash items in the process of collection.* The term "cash items in the process of collection" means checks or drafts in the process of collection that are drawn on another depository institution, including a central bank, and that are payable immediately upon presentation; U.S. Government checks that are drawn on the United States Treasury or any other U.S. Government or Government-sponsored agency and that are payable immediately upon presentation; broker's security drafts and commodity or bill-of-lading drafts payable immediately upon presentation; and unposted debits.

(c) *Commitment.* The term "commitment" means any arrangement that obligates a savings association to: (1) Purchase loans or securities; or (2) extend credit in the form of loans or leases, participations in loans or leases,

overdraft facilities, revolving credit facilities, or similar transactions.

(d) *Common stockholders' equity.* The term "common stockholders' equity" means common stock, common stock surplus, retained earnings, adjustments for the cumulative effect of foreign currency translation and net unrealized losses on non-current marketable equity securities.

(e) *Conditional guarantee.* The term "conditional guarantee" means a contingent obligation of the United States Government or its agencies, the validity of which to the beneficiary is dependent upon some affirmative actions—e.g., servicing requirements—on the part of the beneficiary of the guarantee or a third party.

(f) *Direct credit substitutes.* The term "direct credit substitutes" means any irrevocable obligation or portion thereof in which a savings association has essentially the same credit risk as if it had made a direct loan to the obligor or account party. It includes, but is not limited to, guarantees or guarantee-type instruments backing financial claims such as outstanding securities, loans, and other financial obligations, and financial guarantee-type standby letters of credit.

(g) *Depository institution.* The term "domestic depository institution" means a financial institution that engages in the business of banking; that is recognized as a bank by the bank supervisory or monetary authorities of the country of its incorporation and the country of its principal banking operations; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. In the United States, this definition encompasses all federally insured offices of commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions, and international banking facilities of domestic depository institutions. Bank holdings companies and savings and loan holding companies are excluded from this definition. For the purposes of assigning risk weights, the differentiation between OECD depository institutions and non-OECD depository institutions is based on the country of incorporation. Claims on branches and agencies of foreign banks located in the United States are to be categorized on the basis of the parent bank's country of incorporation.

(h) *Eligible savings association.* (1) The term "eligible savings association" means a savings association with respect to which the Director of the Office of Thrift Supervision has



determined, on the basis of information available at the time, that:

- (i) The savings association's management appears to be competent;
- (ii) The savings association, as certified by its Board of Directors, is in substantial compliance with an applicable statutes, regulations, orders and written agreements and directives; and
- (iii) The savings association's management, as certified by its Board of Directors, has not engaged in insider dealing, speculative practices, or any other activities that have or may jeopardize the association's safety and soundness or contributed to impairing the association's capital.

(2) Savings associations, for purposes of this paragraph, will be deemed to be eligible unless the Director makes a determination otherwise or notifies the savings association of its intent to conduct either an informal or formal examination to determine eligibility and provides written notification thereof to the savings association.

(i) *Equity investments.* (1) The term "equity investments" includes investments in equity securities and real property that would be considered an equity investment under generally accepted accounting principles.

(2) The term "equity securities" means any

(i) stock, certificate of interest of participation in any profit-sharing agreement, collateral trust certificate or subscription, preorganization certificate or subscription, transferable share, investment contract, or voting trust certificate; or

(ii) in general, any interest or instrument commonly known as an equity security; or

(iii) loans having profit sharing features which generally accepted accounting principles would reclassify as equity securities; or

(iv) any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; or

(v) any security carrying any warrant or right to subscribe to or purchase such a security; or

(vi) any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing or any partnership interest; or

(vii) investments in equity securities and loans or advances to and guarantees issued on behalf of partnerships or joint ventures in which a savings association holds an interest in real property under generally accepted accounting principles.

It does not include investments in subsidiaries as defined in paragraph (dd) of this section or service corporations or stock of Federal Home Loan Banks or Federal Reserve Banks.

(3) For purposes of this part, the term "equity investments in real property" does not include interests in real property that are primarily used or intended to be used by the savings association, its subsidiaries, or its affiliates as offices or related facilities for the conduct of its business.

(4) In addition, for purposes of this part, the term "equity investments in real property" does not include interests in real property that are acquired in satisfaction of a debt previously contracted in good faith or acquired in sales under judgments, decrees, or mortgages held by the savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of within five years or a longer period approved by the Office.

(j) *Exchange rate contracts.* The term "exchange rate contracts" includes cross-currency interest rate swaps; forward foreign exchange rate contracts; currency options purchased; and any similar instrument that, in the opinion of the Office, may give rise to similar risks.

(k) *High quality mortgage-related securities.* The term "high quality mortgage-related securities" means any mortgage-related security as defined in section 3(c)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(41), and any mortgage-backed securities issued by, or fully guaranteed as to principle and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. It includes mortgage-backed bonds meeting equivalent rating requirements.

(l) *Includable subsidiary.* The term "includable subsidiary" means a subsidiary of a savings association that is:

(1) Engaged solely (either directly or through ownership of a subsidiary) in activities not impermissible for a national bank;

(2) Engaged in activities not permissible for a national bank, but only if acting solely as agent for its customers and such agency position is clearly documented in the savings association's files;

(3) Engaged solely in mortgage-banking activities;

(4)(i) Itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

(ii) Was acquired by the parent savings association prior to May 1, 1989; or

(5) A subsidiary of any Federal savings association existing as a Federal savings association on August 9, 1989 that

(i) Was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law, or

(ii) Acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

(m) *Intangible assets.* The term "intangible assets" includes, but is not limited to, credit card servicing rights, goodwill, favorable leaseholds, core deposit value, and purchased mortgage servicing rights.

(n) *Interest-rate contracts.* The term "interest-rate contracts" includes single currency interest-rate swaps; basis swaps; forward-rate agreements; interest-rate options purchased; forward deposits accepted; and any other instrument that, in the opinion of the Office, may give rise to similar risks, including when-issued securities.

(o) *Mortgage-related securities.* The term "mortgage-related securities" means any mortgage-related qualifying security under section 3(c)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(41), provided That, the rating requirements of that section shall not be considered for purposes of this definition.

(p) *OECD-based country.* The term "OECD-based country" means a member of the grouping of countries that are full members of the Organization of Economic Cooperation and Development, plus countries that have concluded special lending arrangements with the International Monetary Fund ("IMF") associated with the IMF's capital General Arrangements to Borrow. These countries are hereinafter referred to as "OECD countries". "Public-sector entities" include states, local authorities, and governmental subdivisions below the central government level in any OECD-country. "Central government" means the national governing authority of a country; it includes the departments, ministries and agencies of the central government. This definition does not include the following: State, provincial, or local governments; commercial enterprises owned by the central government, which are entities engaged in activities involving trade, commerce, or profit that are generally conducted or performed in the private sector of the United States economy; and non-central government entities whose obligations



are guaranteed by the central government.

(g) *Original maturity.* The term "original maturity" means, with respect to a commitment, the earliest possible date after a commitment is made on which it expires or is unconditionally cancelable at the option of the issuing savings association.

(r) *Perpetual preferred stock.* The term "perpetual preferred stock" means preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. For purposes of these instruments, preferred stock that can be redeemed at the option of the holder is deemed to have an "original maturity" of the earliest possible date on which it may be so redeemed. Cumulative perpetual preferred stock is preferred stock where the dividends accumulate from one period to the next. Noncumulative perpetual preferred stock is preferred stock where the unpaid dividends are not carried over to subsequent dividend periods.

(s) *Problem institution.* The term "problem institution" means a savings association that, at the time of its acquisition, merger, purchase of assets or other business combination with or by another savings association:

- (1) Was subject to special regulatory controls by its primary Federal or state regulatory authority;
- (2) Posed particular supervisory concerns to its primary Federal or state regulatory authority; or
- (3) Failed to meet its regulatory capital requirement immediately before the transaction.

(t) *Prorated assets.* The term "prorated assets" means the total assets (as determined in the most recently available GAAP report but in no event more than one year old) of a subsidiary (including those subsidiaries where the savings association has a minority interest) multiplied by the savings association's percentage of ownership of that subsidiary.

(u) *Qualifying mortgage loan.* The term "qualifying mortgage loan" means a permanent 1-4 family residential first mortgage loan that is prudently underwritten and is performing and not more than 90 days past due with a documented loan-to-value ratio not exceeding 80 percent (at origination) unless insured to at least an 80 percent loan-to-value ratio by private mortgage insurance provided by an issuer approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(v) *Qualifying multifamily mortgage loan.* The term "qualifying multifamily

mortgage loan" means a loan on an existing property consisting of 5-36 dwelling units with an initial loan-to-value ratio of not more than 80 percent where an average annual occupancy rate of 80 percent or more of total units has existed for at least one year.

(w) *Qualifying supervisory goodwill.* The term "qualifying supervisory goodwill" means, for eligible savings associations:

- (1) Any unamortized goodwill (FSLIC Capital Contributions, as reported in the September 30, 1989 Thrift Financial Report) that existed on April 12, 1989 resulting from prior regulatory accounting practices less any amortization that would have occurred subsequent to April 12, 1989 through the current reporting period where the amortization is calculated on a straight line basis over the shorter of 20 years, or the remaining period for amortization in effect on April 12, 1989 for regulatory accounting practices; plus
- (2) The lesser of:

- (i) Supervisory goodwill as defined in § 567.1(ee) that is included in goodwill that is reflected in the current reporting period under generally accepted accounting principles ("GAAP"); or

- (ii)(A) Supervisory goodwill as defined in § 567.1(ee) that is included in goodwill that is reflected in the current reporting period under GAAP;

- (B) Plus any amortization of the goodwill in paragraph (w)(2)(ii)(A) of this section that occurred subsequent to April 12, 1989 for GAAP reporting purposes;

- (C) Minus the amortization of the goodwill in paragraph (w)(2)(ii)(A) of this section through the current reporting period that results when the goodwill is amortized subsequent to April 12, 1989 on a straightline basis over the shorter of 20 years, or the remaining period for amortization in effect on April 12, 1989 for GAAP reporting purposes.

(x) *Reciprocal holdings of depository institution instruments.* The term "reciprocal holdings of depository institution instruments" means cross-holdings or other formal or informal arrangements in which two or more depository institutions swap, exchange, or otherwise agree to hold each other's capital instruments. This definition does not include holdings of capital instruments issued by other depository institutions that were taken in satisfaction of debts previously contracted, provided that the reporting savings association has not held such instruments for more than five years or a longer period approved by the Office.

(y) *Replacement cost.* The term "replacement cost" means, with respect to interest rate and exchange-rate

contracts, the loss that would be incurred in the event of a counterparty default, as measured by the net cost of replacing the contract at the current market value. If default would result in a theoretical profit, the replacement value is considered to be zero. This mark-to-market process must incorporate changes in both interest rates and counterparty credit quality.

(z) *Residential properties.* The term "residential properties" means houses, condominiums, cooperative units, and manufactured homes. This definition does not include boats or motor homes, even if used as a primary residence, or timeshare properties.

(aa) *Residual characteristics.* The term "residual characteristics" means interests similar to a multi-class pay-through obligation representing the excess cash flow generated from mortgage collateral over the amount required for the issue's debt service and ongoing administrative expenses or interests presenting similar degrees of interest-rate/prepayment risk and principal loss risks.

(bb) *Risk-weighted assets.* The term "risk-weighted assets" means the sum total of risk-weighted on-balance sheet assets and the total of risk-weighted off-balance sheet credit equivalent amounts. These assets are calculated in accordance with section 567.6 of this part.

(cc) *State.* The term "State" means any one of the several states of the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(dd) *Subsidiary.* The term "subsidiary" means any corporation, partnership, business trust, joint venture, association, pool, syndicate or other similar organization, in which a savings association has a 5% or greater ownership interest,<sup>1</sup> regardless of whether the savings association exercises, directly or indirectly, control as determined under generally accepted accounting principles. This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting savings association has not held the interest for more than five years or a longer period approved by the Office.

<sup>1</sup> The Office reserves the right to review a savings association's investment in a subsidiary on a case-by-case basis. If the Office determines that such investment is more appropriately treated as an equity security or an ownership interest in a subsidiary it will make such determination regardless of the percentage of ownership held by the savings association.



(ee) *Supervisory goodwill*. The term "supervisory goodwill" means goodwill resulting from the acquisition, merger, consolidation, purchase of assets, or other business combination (if such transaction occurred on or before April 12, 1989) of

(1) a savings association where the fair market value of assets was less than the fair market value of liabilities at the acquisition date; or

(2) a problem institution.

(ff) *Total assets*. The term "total assets" means total assets as would be required to be reported for consolidated entities on period-end reports filed with the Office in accordance with generally accepted accounting principles.

(gg) *Unconditionally cancelable*. The term "unconditionally cancelable" means, with respect to a commitment-type lending arrangement, including retail credit card lines, that a savings association may, at any time, with or without cause, refuse to advance funds or extend credit under the facility.

(hh) *United States Government or its agencies*. The term "United States Government or its agencies" means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

(ii) *United States Government-sponsored agency or corporation*. The term "United States Government-sponsored agency or corporation" means an agency or corporation originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

#### § 567.2 Minimum regulatory capital requirement.

(a) To meet its regulatory capital requirement a savings association must satisfy each of the following capital standards:

(1) *Risk-based capital requirement*. (i) A savings association's minimum risk-based capital requirement shall be an amount equal to 6% of its risk-weighted assets as measured pursuant to § 567.6 of this part plus 2% of its risk-weighted assets as measured pursuant to that section.

(ii) A savings association may not use supplementary capital to satisfy this requirement in an amount greater than 100% of its core capital as defined in § 567.5 of this part.

(2) *Leverage ratio requirement*. (i) A savings association's minimum leverage

ratio requirement shall be the amount set forth in § 567.8 of this part.

(ii) A savings association must satisfy this requirement with core capital as defined in § 567.5 of this part in an amount not less than 3% of its adjusted total assets.

(3) *Tangible capital requirement*. (i) A savings association's minimum tangible capital requirement shall be the amount set forth in § 567.9 of this part.

(ii) A savings association must satisfy this requirement with tangible capital as defined in § 567.9 of this part in an amount not less than 1.5% of its adjusted total assets.

(b) *Transition period for risk-based capital requirement*. (1) From December 7, 1989 to December 30, 1990, a savings association's minimum risk-based capital requirement for any calendar quarter shall be an amount equal to 80% of the amount required under paragraph (a)(1) of this section; and

(2) From December 31, 1990 until December 31, 1992, a savings association's minimum risk-based capital requirement for any calendar quarter shall be an amount equal to 90% of the amount required under paragraph (a)(1) of this section.

(c) Savings associations are expected to maintain compliance with all of these standards at all times.

#### § 567.5 Components of capital.

(a) *Core Capital*. (1) The following elements, less the amount of any deductions pursuant to paragraph (a)(2) of this section, comprise a savings association's core capital:

(i) Common stockholders' equity (including retained earnings);

(ii) Noncumulative perpetual preferred stock and related surplus;<sup>2</sup>

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated;

(iv) Nonwithdrawable accounts and pledged deposits of mutual savings associations (excluding any treasury shares held by the savings association) meeting the criteria of regulations and memoranda of the Office to the extent that such accounts or deposits have no

<sup>2</sup> Preferred stock issues where the dividend is reset periodically based upon current market conditions and the savings association's current credit rating, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to supplementary capital, regardless of its cumulative or noncumulative characteristics. Preferred stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report, likewise may not be considered in calculating capital. Preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries may not be included in capital.

fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods.

(v) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in § 567.1(w)(1) of this part.

(2) *Deductions from core capital*. (i) Intangible assets are deducted from assets for purposes of determining core capital except as provided elsewhere in this paragraph.

(ii) Assets that meet the definition of intangible assets as set forth at § 567.1(m) of this part (excluding purchased mortgage servicing rights), but meet the following three-part test shall not be considered intangible assets for purposes of this section but are limited to 25% of core capital:

(A) The intangible asset must be able to be separated and sold apart from the savings association or from the bulk of the savings association's assets;

(B) The market value of the intangible asset must be established on an annual basis through an indentifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the savings association; and

(C) The savings association must demonstrate and document that a market exists which will provide liquidity for the intangible asset.

(iii) Paragraph (a)(2)(i) of this section does not apply to the following intangible assets:

(A) Purchased mortgage servicing rights. These must be valued at the lower of 90% of fair market value to the extent determinable, 90% of original cost or the current amortized book value as determined under generally accepted accounting principles. The amount written off, if any, is deducted from assets and, therefore, core capital.

(B) Qualifying supervisory goodwill held by an eligible savings association (as defined in § 567.1(h) of this part) to the extent permitted by this paragraph. The amount of qualifying supervisory goodwill may not exceed the applicable percentage of adjusted total assets as calculated for the tangible capital requirement set forth in the following table:

	Percent
Prior to Jan. 1, 1992	1.500
Jan. 1, 1992-Dec. 31, 1992	1.000
Jan. 1, 1993-Dec. 31, 1993	0.750
Jan. 1, 1994-Dec. 31, 1994	0.375
Thereafter	0



(iv) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest) are deducted from assets and, thus core capital except as provided in paragraphs (a)(v) and (a)(vi) of this section.

(v)(A) For investments described in paragraph (a)(iv) of this section where the subsidiary was engaged before April 12, 1989 in activities that would not fall within the scope of activities in which includable subsidiaries may engage, a savings association must deduct from assets and, thus, capital the applicable percentage set forth in paragraph (a)(2)(v)(B) of this section of the lesser of:

(1) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(2) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(B) For purposes of paragraph (a)(2)(v)(A) of this section the applicable percentage is as follows:

For the period	The applicable percentage is
Prior to July 1, 1990.....	0
July 1, 1990-June 30, 1991.....	10
July 1, 1991-June 30, 1992.....	25
July 1, 1992-June 30, 1993.....	40
July 1, 1993-June 30, 1994.....	60
Thereafter.....	100

(C) A savings association that has deducted a portion of its investment in a subsidiary pursuant to paragraph (a)(2)(v)(A) of this section must consolidate the prorated assets of the subsidiary in calculating adjusted total assets for the core capital requirement by multiplying those prorated assets by the following applicable percentage and adding that amount in calculating its adjusted total assets:

For the period	The applicable percentage is
Prior to July 1, 1990.....	100
July 1, 1990-June 30, 1991.....	90
July 1, 1991-June 30, 1992.....	75
July 1, 1992-June 30, 1993.....	60
July 1, 1993-June 30, 1994.....	40
Thereafter.....	0

(iv) If a savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic

depository institution, the Office may, in its sole discretion upon determining that the amount of core capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (a)(2)(iv) and (a)(2)(v) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 567.1(1) of this part.

(b) *Supplementary Capital.* Supplementary capital counts towards a savings association's total capital up to a maximum of 100% of the savings association's core capital. The following elements comprise a savings association's supplementary capital:

(1) *Permanent Capital Instruments.* (i) Cumulative perpetual preferred stock and other perpetual preferred stock<sup>3</sup> issued pursuant to regulations and memoranda of the Office;

(ii) Mutual capital certificates issued pursuant to regulations and memoranda of the Office;

(iii) Nonwithdrawable accounts and pledged deposits (excluding any treasury shares held by the savings association) meeting the criteria of 12 CFR 561.42 to the extent that such instruments are not included in core capital under paragraph (a) of this section;

(iv) Net worth certificates either issued pursuant to regulations and memoranda of the Office, or that the FDIC is committed to purchase;

(v) Income capital certificates;

(vi) Perpetual subordinated debt issued pursuant to regulations and memoranda of the Office; and

(vii) Mandatory convertible subordinated debt (capital notes) issued pursuant to regulations and memoranda of the Office.

(2) *Maturing Capital Instruments.* (i) Subordinated debt issued pursuant to regulations and memoranda of the Office;

(ii) Intermediate-term preferred stock issued pursuant to regulations and

<sup>3</sup> Preferred stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report likewise may not be considered in calculating capital. Preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries may not be included in capital.

memoranda of the Office and any related surplus;

(iii) Mandatory convertible subordinated debt (commitment notes) issued pursuant to regulations and memoranda of the Office; and

(iv) Mandatorily redeemable preferred stock that was issued before July 23, 1985 or issued pursuant to regulations and memoranda of the Office and approved in writing by the FSLIC for inclusion as regulatory capital before or after issuance.

(3) *Transition rules for maturing capital instruments.*—(i) *Maturing capital instruments issued on or before November 7, 1989.* For all maturing capital instruments issued on or before November 7, 1989, the following amortization schedule applies:

Years to maturity of outstanding subordinated debt	Percent included in supplementary capital
Greater than or equal to 7.....	100
Less than 7 but greater than or equal to 6.....	86
Less than 6 but greater than or equal to 5.....	71
Less than 5 but greater than or equal to 4.....	57
Less than 4 but greater than or equal to 3.....	43
Less than 3 but greater than or equal to 2.....	29
Less than 2 but greater than or equal to 1.....	14
Less than 1.....	0

(ii) *Maturing capital instruments issued after November 7, 1989.* A savings association issuing maturing capital instruments after November 7, 1989, may choose, subject to paragraph (b)(3)(ii)(C) of this section, to include such instruments pursuant to either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section.

(A) At the beginning of each of the last five years of the life of the maturing capital instrument, the amount that is eligible to be included as supplementary capital is reduced by 20% of the original amount of that instrument (net of redemption).<sup>4</sup>

(B) Only the aggregate amount of maturing capital instruments that mature in any one year during the seven years immediately prior to an instrument's maturity that does not

<sup>4</sup> Capital instruments may be redeemed prior to maturity and without the prior approval of the Office, as long as the instruments are redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument. However, the Office must be notified in writing at least 30 days in advance of such redemption.



exceed 20% of an institution's capital will qualify as supplementary capital.

(C) Once a savings association selects either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section for the issuance of a maturing capital instrument, it must continue to elect that option for all subsequent issuances of maturing capital instruments for as long as there is a balance outstanding of such post-November 7, 1989 issuances. Only when such issuances have all been repaid and the savings association has no balance of such issuances outstanding may the savings association elect the other option.

(4) *General valuation loan and lease loss allowances.* General valuation loan and lease loss allowances established pursuant to regulations and memoranda of the Office up to a maximum of 1.25 percent of risk-weighted assets.<sup>5</sup> Until December 31, 1992, such allowances may not constitute any more than 1.5% of risk-weighted assets. Thereafter they may not constitute any more than 1.25% of risk-weighted assets.

(c) *Total Capital.* (1) A savings association's total capital equals the sum of its core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital).

(2) The following assets, in addition to assets required to be deducted elsewhere in calculating core capital, are deducted from assets for purposes of determining total capital, subject to paragraph (c)(3) of this section.

(i) Reciprocal holdings of depository institution capital instruments;

(ii) All equity investments, except as provided in paragraph (c)(3) of this section; and

(iii) That portion of land loans and nonresidential construction loans in excess of 80 percent loan-to-value ratio.

(3) The following percentages of investments described in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section may be included in the calculation of adjusted total assets and, thus, total capital for the periods indicated:

	Percent
Prior to July 1, 1990.....	100
July 1, 1990-June 30, 1991.....	90
July 1, 1991-June 30, 1992.....	75
July 1, 1992-June 30, 1993.....	60

<sup>5</sup> The amount of the general valuation loan and lease loss allowances that may be included in capital is based on a percentage of risk-weighted assets. A savings association may deduct an allowance for general valuation loan and lease losses in excess of the amount permitted to be included as capital from the gross sum of risk-weighted assets in computing the denominator of the risk-based capital standard.

	Percent
July 1, 1993-June 30, 1994.....	40
Thereafter.....	0

#### § 567.6 Risk-based capital credit risk weight categories.

(a) *Risk-weighted Assets.* Risk-weighted assets equal total assets plus consolidated off-balance sheet items where each asset or item is multiplied by the appropriate risk-weight as set forth in this section. Before an off-balance sheet item can be assigned a risk weight, it must be converted to an on-balance sheet credit equivalent amount in accordance with this section. The risk weight assigned to a particular asset or on-balance sheet credit equivalent amount determines the percentage of that asset/credit equivalent amount that is included in the calculation of risk-weighted assets for purposes of this rule. Assets not included for purposes of calculating capital pursuant to § 567.5 of this Part are not included in calculating risk-weighted assets.

(1) *On-Balance Sheet Assets:* The risk categories/weights for on-balance sheet assets are:

(i) *Zero percent Risk Weight (Category 1).* (A) Cash, including domestic and foreign currency owned and held in all offices of a savings association or in transit. Any foreign currency held by a savings association must be converted into U.S. dollar equivalents;

(B) Securities issued by and other direct claims on the U.S. Government or its agencies (to the extent such securities or claims are unconditionally backed by the full faith and credit of the United States Government) or the central government of an OECD country;

(C) Notes and obligations issued by either the Federal Savings and Loan Corporation or the Federal Deposit Insurance Corporation and backed by the full faith and credit of the United States Government;

(D) Deposit reserves at, claims on, and balances due from Federal Reserve Banks;

(E) The book value of paid-in Federal Reserve Bank stock;

(F) That portion of assets that is fully covered against capital loss and/or yield maintenance agreements by the Federal Savings and Loan Insurance Corporation or any successor agency.

(G) That portion of assets directly and unconditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country.

(ii) *20 percent Risk Weight (Category 2).* (A) Cash items in the process of collection;

(B) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country;

(C) That portion of assets conditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country;

(D) Securities (not including equity securities) issued by and other claims on the U.S. Government or its agencies which are not backed by the full faith and credit of the United States Government;

(E) Securities (not including equity securities) issued by, or other direct claims on, United States Government-sponsored agencies;

(F) That portion of assets guaranteed by United States Government-sponsored agencies;

(G) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies;

(H) High quality mortgage-related securities, except for those classes with residual characteristics or stripped mortgage-related securities;

(I) Claims representing general obligations of any public-sector entity in an OECD country, and that portion of any claims guaranteed by any such public-sector entity;

(J) Bonds issued by the Financing Corporation or the Resolution Funding Corporation;

(K) Balances due from and all claims on domestic depository institutions. This includes demand deposits and other transaction accounts, savings deposits and time certificates of deposit, federal funds sold, loans to other depository institutions, including overdrafts and term federal funds, holdings of the savings association's own discounted acceptances for which the account party is a depository institution, holdings of bankers acceptances of other institutions and securities issued by depository institutions, except those that qualify as capital;

(L) The book-value of paid-in Federal Home Loan Bank stock;

(M) Deposit reserves at, claims on and balances due from the Federal Home Loan Banks;

(N) Assets collateralized by cash held in a segregated deposit account by the reporting savings association.



(O) Claims on, or guaranteed by, official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.\*

(P) That portion of assets collateralized by the current market value of securities issued by official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.

(Q) All claims on depository institutions incorporated in an OECD country, and all assets backed by the full faith and credit of depository institutions incorporated in an OECD country. This includes the credit equivalent amount of participations in commitments and standby letters of credit sold to other depository institutions incorporated in an OECD country, but only if the originating bank remains liable to the customer or beneficiary for the full amount of the commitment or standby letter of credit. Also included in this category are the credit equivalent amounts of risk participations in bankers' acceptances conveyed to other depository institutions incorporated in an OECD country. However, bank-issued securities that qualify as capital of the issuing bank are not included in this category.

(R) Claims on depository institutions incorporated in a non-OECD country, as well as claims on the central bank of a non-OECD country, with a residual maturity of one year or less.

(iii) *50 percent Risk Weight (Category 3).* (A) Revenue bonds issued by any public-sector entity in an OECD country for which the underlying obligor is a public sector entity, but which are repayable solely from the revenues generated from the project financed through the issuance of the obligations;

(B) Qualifying mortgage loans and qualifying multifamily mortgage loans;

(C) Non-high quality mortgage-related securities backed by qualifying mortgage loans, except for those with residual characteristics or stripped mortgage-related securities.

(iv) *100 percent Risk Weight (Category 4).* All assets not specified above or deducted from calculations of capital pursuant to section 567.5 of this part, including, but not limited to:

- (A) Consumer loans;
- (B) Commercial loans;

- (C) Home equity loans;
- (D) Non-qualifying mortgage loans;
- (E) Non-qualifying multifamily mortgage loans;

(F) Residential construction loans;

(G) Land loans, except that portion of such loans that are in excess of 80% loan-to-value ratio;

(H) Nonresidential construction loans, except that portion of such loans that are in excess of 80% loan-to-value ratio;

(I) Obligations issued by any state or any political subdivision thereof for the benefit of a private party or enterprise where that party or enterprise, rather than the issuing state or political subdivision, is responsible for the timely payment of principal and interest on the obligations, e.g., industrial development bond;

(J) Private-issue debt securities except for those qualifying under paragraph (a)(1)(ii) of this section;

(K) Investments in fixed assets and premises;

(L) Intangible assets, including any goodwill not deducted from capital;

(M) Purchased and excess mortgage servicing rights;

(N) Any classes of a mortgage-related security with residual characteristics, regardless of the issuer or guarantor;

(O) All stripped mortgage-backed securities, including interest-only portions (IOs), principal-only portions (POs) and other similar instruments, regardless of the issuer or guarantor;

(P) That portion of equity investments not deducted pursuant to section 567.5 of this part;

(Q) The prorated assets of subsidiaries (except for the assets of includable, fully consolidated subsidiaries) to the extent such assets are included in adjusted total assets.

(v) *200 percent risk weight (Category 5).*

(A) All repossessed assets or assets that are more than 90 days past due, provided that, 1-4 family residential real estate that is more than 90 days past due is placed in the 100% risk weight category;

(B) Equity investments that the Office determines have the same risk characteristics as real estate owned by the savings association.

(vi) *Ownership interests in investment companies.* (A) Except as provided in paragraph (a)(1)(vi)(C) of this section, ownership interests in investment companies as defined in the Investment Company Act of 1940 are assigned to risk-weight categories under this section based upon the risk weight that would be assigned to the assets in the portfolio of the investment company.

(B) Where the portfolio of the investment company consists of assets

that would fall into different risk-weight categories, or contains some assets that would be deducted in calculations of total capital, the entire ownership interest of the savings association will be assigned to the category of the asset with the highest risk weight in the portfolio or excluded from assets and thus deducted from calculations of total capital, as appropriate.

(C) On a case-by-case basis, the Office may allow the savings association to assign the portfolio proportionately to the various risk categories based on the proportion in which the risk categories are represented by the composition of assets in the portfolio. Before the Office will consider a request to proportionately risk-weight such a portfolio, the savings association must have and maintain current information for the reporting period that details the composition of the portfolio of assets.

(2) *Off-Balance Sheet Activities.* Risk weights for off-balance sheet items are determined by a two-step process. First, the face amount of the off-balance sheet item must be multiplied by the appropriate credit conversion factor listed in this section. This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate risk-weight category depending on the obligor (i.e., the 20 percent risk-weight category if the obligor is a domestic depository institution or the 100 percent risk category if the obligor is a private party), provided that, the maximum risk-weight assigned to the credit-equivalent amount of an interest-rate or exchange-rate contract is 50 percent. Guarantees and other direct credit substitutes by savings associations of the obligations of their service corporations and subsidiaries that qualify as equity investments are assigned a credit-equivalent amount of the entire value of the direct credit substitute. The following are the credit conversion factors and the off-balance sheet items to which they apply:

(i) *100 percent credit conversion factor (Group A).* (A) Direct credit substitutes, including financial guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute is netted against the amount of any participations sold in that item (except as otherwise provided below). The amount retained by the savings association is converted to an on-balance sheet equivalent and assigned to the proper risk-weight

\* These institutions include, but are not limited to, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, the International Monetary Fund and the Bank for International Settlements.



category using the criteria regarding obligors, guarantors and collateral listed herein. Participations are treated as follows:

(1) If the originating savings association remains liable to the beneficiary for the full amount of the standby letter of credit, in the event the participant fails to perform under its participation agreement, the amount of participations sold are converted to an on-balance sheet credit equivalent using a credit conversion factor of 100%, with that amount then being assigned to the risk-weight category appropriate for the purchaser of the participation.

(2) If participations are such that each participant is responsible only for its pro-rata share of the risk, and there is no recourse to the originating institution, the full amount of the participations sold is excluded from the originating institution's risk-weighted assets;

(B) Risk participations purchased in bankers' acceptances and participations purchased in direct credit substitutes;

(C) Assets sold under an agreement to repurchase and the value of assets sold with recourse, to the extent these assets are not included in the savings association's total assets, except where the amount of recourse liability retained by a savings association is less than the capital requirement for credit-risk exposure, in which case capital must be maintained equal to the amount of credit-risk exposure retained. This category includes loan strips sold without direct recourse where the maturity of the participation is shorter than the maturity of the underlying loan and the ownership of the subordinated portion of a loan participation or package of loans. This category includes loans serviced by associations where the association is subject to losses on the loans, commonly referred to as "recourse servicing". (Where associations hold a participation certificate ("PC") in a mortgage loan swap with recourse or a subordinated portion as an on-balance sheet asset, the PC or subordinated portion is not to be risk-weighted for purposes of the risk-based capital requirement. Instead, the procedure outlined above is to be followed.);

(D) Forward agreements and other contingent obligations with a certain draw down, e.g., legally binding agreements to purchase assets at a specified future date. On the date an institution enters into a forward agreement or similar obligation, it should convert the principal amount of the assets to be purchased at 100 percent as of that date and then assign this amount to the risk-weight category appropriate to the obligor or guarantor

of the item, or the nature of the collateral;

(E) Indemnification of customers whose securities the savings association has lent as agent. If the customer is not indemnified against loss by the savings association, the transaction is excluded from the risk-based capital calculation. When a savings association lends its own securities, the transaction is treated as a loan. When a savings association lends its own securities or is acting as agent, agrees to indemnify a customer, the transaction is assigned to the risk weight appropriate to the obligor or collateral that is delivered to the lending or indemnifying institution or to an independent custodian acting on their behalf.

(ii) 50 percent credit conversion factor (Group B). (A) Transaction-related contingencies, including, among other things, performance bonds and performance-based standby letters of credit related to a particular transaction. To the extent permitted by law or regulation, performance-based standby letters of credit include such things as arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids;

(B) unused portions of commitments, including home equity lines of credit, with an original maturity exceeding one year except those listed in paragraph (a)(2)(iv) of this section; and

(C) Revolving underwriting facilities, note issuance facilities, and similar arrangements pursuant to which the savings association's customer can issue short-term debt obligations in its own name, but for which the savings association has a legally binding commitment to either:

(1) Purchase the obligations the customer is unable to sell by a stated date; or

(2) Advance funds to its customer, if the obligations cannot be sold.

(iii) 20 percent credit conversion factor (Group C). Trade-related contingencies, i.e., short-term, self-liquidating instruments used to finance the movement of goods and collateralized by the underlying shipment. A commercial letter of credit is an example of such an instrument.

(iv) Zero percent credit conversion factor (Group D): (A) Unused commitments with an original maturity of less than one year;

(B) Unused commitments with an original maturity of greater than one year, if:

(1) They are unconditionally cancelable by the savings association, and

(2) The savings association has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition, before each draw under the lending facility; and

(C) Unused portion of retail credit card lines that are unconditionally cancelable in accordance with applicable law by the savings association and home equity lines of credit that are unconditionally cancelable in accordance with federal law.

(v) Interest-rate and exchange rate contracts (Group E). (A) The credit equivalent amount of interest-rate and exchange rate contracts is the sum of:

(1) Current credit exposure, i.e., the replacement cost of the contract, measured in U.S. dollars, regardless of the currency specified in the contract. A savings association may net multiple contracts with a single counterparty only if those contracts are subject to novation. The term "novation" means a bilateral contract between two counterparties under which any obligation to each other to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, legally substituting one single net amount for the previous gross obligations; and

(2) Potential credit exposure, i.e., an estimate of the potential increase in credit exposure over the remaining life of the contract. The add-on is calculated by multiplying the notional principal amount of the contract by one of the following credit conversion factors, as appropriate:<sup>7</sup>

(i) Interest rate contracts:

(A) Zero percent, if the contract has a remaining maturity of one year or less, and

(B) 0.5%, for contract has a remaining maturity greater than one year;

(ii) Exchange rate contracts:

(A) 1.0%, if the contract has a remaining maturity of one year or less, and

(B) 5.0%, for contracts with a remaining maturity greater than one year.

(B) Risk weighting. The credit equivalent amount is then assigned to the proper risk-weight category using the criteria regarding obligors, guarantors, and collateral listed in this paragraph (a)(2). However, the

<sup>7</sup> No potential credit exposure is calculated for single currency floating/floating interest rate swaps; rather, the on-balance sheet credit equivalent of these contracts is evaluated solely on the basis of the amount of their current credit exposure.



maximum risk weight assigned to the credit equivalent amount of an interest rate or exchange rate contract is 50%.

(C) *Exceptions.* The following contracts are not subject to the above calculation and, therefore, are not considered part of the denominator of a savings association's risk-based capital ratio:

(1) Exchange rate contracts with an original maturity of 14 calendar days or less; and

(2) Any interest rate or exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

(b) [Reserved]

#### § 567.8 Leverage ratio.

Savings associations shall have and maintain core capital, as defined at 12 CFR 567.5(a), in an amount equal to at least 3.0% of adjusted total assets.

#### § 567.9 Tangible capital requirement.

(a) Savings associations shall have and maintain tangible capital in an amount equal to at least 1.5% of adjusted total assets.

(b) The following elements, less the amount of any deductions pursuant to paragraph (c) of this section, comprise a savings association's tangible capital:

- (1) Common stockholders' equity (including retained earnings);
- (2) Noncumulative perpetual preferred stock and related earnings;
- (3) Nonwithdrawable accounts and pledged deposits that would qualify as core capital under § 567.5 of this part; and

(4) Minority interests in the equity accounts of fully consolidated subsidiaries.

(c) *Deductions from tangible capital.* In calculating tangible capital, a savings association must deduct from assets, and, thus, from capital:

(1) Any intangible assets (except for purchased mortgage servicing rights that are includable in assets and, therefore, not deducted from tangible capital) in the lesser of the amount specified in § 567.5(a)(2)(iii)(A) of this part or any percentage specified by the Federal Deposit Insurance Corporation by regulation pursuant to section 5(t)(4)(C)(ii) of the Act; and

(2) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest), except as provided in paragraphs (c)(3) and (c)(4) of this section.

(3)(i) For investments described in paragraph (c)(2) of this section where

the subsidiary was engaged before April 12, 1989 in activities that would not fall within the scope of activities in which includable subsidiaries may engage, a savings association must deduct from assets and, thus, capital the applicable percentage set forth in paragraph (c)(3)(ii) of this section of the lesser of:

(A) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(B) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(ii) For purposes of paragraph (c)(3)(i) of this section, the applicable percentage is as follows:

For the period	The applicable percentage is:
Prior to July 1, 1990.....	0
July 1, 1990-June 30, 1991.....	10
July 1, 1991-June 30, 1992.....	25
July 1, 1992-June 30, 1993.....	40
July 1, 1993-June 30, 1994.....	60
Thereafter.....	100

(iii) A savings association that has deducted a portion of its investment in a subsidiary pursuant to paragraph (c)(3)(i) of this section must consolidate the prorated assets of the subsidiary in calculating adjusted total assets for the tangible capital requirement by multiplying those prorated assets by the following applicable percentage and adding that amount to its adjusted total assets:

For the period	The applicable percentage is:
Prior to July 1, 1990.....	100
July 1, 1990-June 30, 1991.....	90
July 1, 1991-June 30, 1992.....	75
July 1, 1992-June 30, 1993.....	60
July 1, 1993-June 30, 1994.....	40
Thereafter.....	0

(4) If a savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution the Office may, in its sole discretion upon determining that the amount of tangible capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (c)(2) and (c)(3) of this section,

consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 567.1(1) of this part.

#### § 567.10 Consequences of failure to meet capital requirements.

(a) *Prior to January 1, 1991.* (1) During the period prior to January 1, 1991, the Director may restrict the asset growth of any savings association not in compliance with capital standards; and

(2) During the period prior to January 1, 1991, the Director shall require any savings association not in compliance with capital standards to submit a plan that:

(i) Addresses the savings association's need for increased capital;

(ii) Describes the manner in which the savings association will increase capital so as to achieve compliance with capital standards;

(iii) Specifies types and levels of activities in which the savings association will engage;

(iv) Requires any increase in assets to be accompanied by increase in tangible capital not less in percentage amount than the leverage limit then applicable;

(v) Requires any increase in assets to be accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable; and

(vi) Is acceptable to the Director.

(3) To be acceptable to the Director under this section, a plan must, in addition to satisfying all of the requirements set forth in paragraphs (a)(2)(i) through (a)(2)(v) of this section, contain a certification that while the plan is under review by the Office, the savings association will not, without the prior written approval of its District Directors:

(i) Grow beyond net interest credited;

(ii) Make any capital distributions; or

(iii) Act inconsistently with any other limitations on activities established by statute, regulation or by the Office in supervisory guidance for savings associations not meeting capital standards.

(4) If the plan submitted to the Director under paragraph (a)(2) of this section is not approved by the Office, the savings association shall immediately and without any further action, be subject to the following restrictions:

(i) If may not increase its assets beyond the amount held on the day it



receives written notice of the Director's disapproval of the plan; and

(ii) It must comply with any other restrictions or limitations set forth in the written notice of the Director's disapproval of the plan.

(b) On or after January 1, 1991, the Director shall:

(1) Prohibit any asset growth by any savings association not in compliance with capital standards, except as provided in paragraph (d) of this section; and

(2) Require any savings association not in compliance with capital standards to comply with a capital directive issued by the Director which may include the restrictions contained in paragraph (e) of this section and any other restrictions the Director determines appropriate.

(c) A savings association that wishes to obtain an exemption from the sanctions in paragraph (b)(2) of this section must file a request for exemption with its District Director. Such request must include a capital plan that satisfies the requirements of paragraph (a)(2) of this section.

(d) The Director may permit any savings association that is subject to paragraph (b) of this section to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities, if:

(1) The savings association obtains the Director's prior approval;

(2) Any increase in assets is accompanied by an increase in tangible capital in an amount not less than 3% of the increase in assets;

(3) Any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standards then applicable;

(4) Any increase in assets is invested in low-risk assets; and

(5) The savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

(e) If a savings association fails to meet any of the regulatory capital requirements set in § 567.2 of this part, the Director may, through enforcement proceedings or otherwise, require such savings association to take one or more of the following corrective actions:

(1) Increase the amount of its regulatory capital to a specified level or levels;

(2) Convene a meeting or meetings with the Office's supervision staff for the purpose of accomplishing the objectives of this section;

(3) Reduce the rate of earnings that may be paid on savings accounts;

(4) Limit the receipt of deposits to those made to existing accounts;

(5) Cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;

(6) Cease or limit lending or the making of a particular type or category of loan;

(7) Cease or limit the purchase of loans or the making of specified other investments;

(8) Limit operational expenditures to specified levels;

(9) Increase liquid assets and maintain such increased liquidity at specified levels; or

(10) Take such other action or actions as the Director may deem necessary or appropriate for the safety and soundness of the savings association, or depositors or investors in the savings association.

(f) The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, written agreement undertaken or order or directive issued to comply with the requirements of this section under this section.

#### § 567.11 Reservation of authority.

(a) *Transaction for purposes of evasion.* The Director or the District Director for the region in which a savings association is located may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this section.

(b) *Average versus period-end figures.* The Office reserves the right to require a savings association to compute its capital ratios on the basis of average, rather than period-end, assets when the Office determines appropriate to carry out the purposes of this part.

(c) *Reservation of authority.* Notwithstanding the definitions of core and supplementary capital in § 567.5 of this part, the Office may find that a particular type of purchased intangible asset or a newly developed or modified capital instrument constitutes or may constitute core or supplementary capital, and the Office may permit one or more savings associations to include all or a portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes. Similarly, the Office may find that a particular asset or core or supplementary capital component has characteristics or terms that diminish its

contribution to a savings association's ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of core, supplementary, or total capital.

By the Office of Thrift Supervision,

M. Danny Wall,

Director.

[FR Doc. 26390 Filed 11-6-89, 12:03 pm]

BILLING CODE 6720-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 88-ASW-1; Amdt. 39-6379]

#### Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI) Model 222, 222B, and 222U Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action published in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain BHTI Model 222, 222B, and 222U helicopters by individual letters. The AD required a daily inspection of the main rotor (M/R) yoke. The AD was necessary to prevent helicopters from flying with a crack in the M/R yoke. This crack, if undetected, could result in failure of the M/R yoke, which would cause the loss of the M/R blade and subsequent loss of the helicopter.

**DATES:** Effective November 28, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-02-03, issued January 21, 1988, which contained this amendment.

**Compliance:** As indicated in the body of the AD.

**ADDRESSES:** Applicable AD-related material may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Bldg. 3B, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary B. Roach, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, FAA, Southwest Region, Fort Worth, Texas 76193-0170, telephone (817) 624-5179.



**SUPPLEMENTARY INFORMATION:** On January 21, 1988, Priority Letter AD 88-02-03 was issued and made effective immediately as to all known U.S. owners and operators of certain BHTI Model 222, 222B, and 222U helicopters. The AD required a daily inspection of the M/R yoke in accordance with specified BHTI Alert Service Bulletin. The AD was prompted by a report of a fatigue crack originating under the flapping bearing pillow block bushing flange. Investigation of the M/R yoke revealed that the crack was a result of fatigue initiated by fretting between the M/R yoke and the flapping bearing pillow block bushing. This crack, if undetected, could result in failure of the M/R yoke. AD action was necessary to prevent failure of the M/R Yoke, which would cause the loss of the M/R blade and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters, issued January 21, 1988, to all known U.S. owners and operators of certain BHTI Model 222, 222B, and 222U helicopters. These conditions still exist, and the AD is hereby published in the *Federal Register* as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons. The references to the BHTI Service Bulletins have been deleted from paragraph (a) of the AD, and the inspection instructions of the service documents have been added explicitly to paragraph (a). A figure 1 has also been added for additional clarity.

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 further determined 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 regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, and Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends § 39.13 of 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 11.69.

#### § 39.13 [Amended]

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

**Bell Helicopter Textron, Inc. (BHTI):** Applies to all BHTI Model 222, 222B, and 222U helicopters certificated in any category, with main rotor (M/R) yoke, part number [P/N] 222-011-102-101, installed. (Docket No. 88-ASW-1)

Compliance is required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent failure of the M/R yoke which could result in loss of a M/R blade and subsequent loss of the helicopter, accomplish the following:

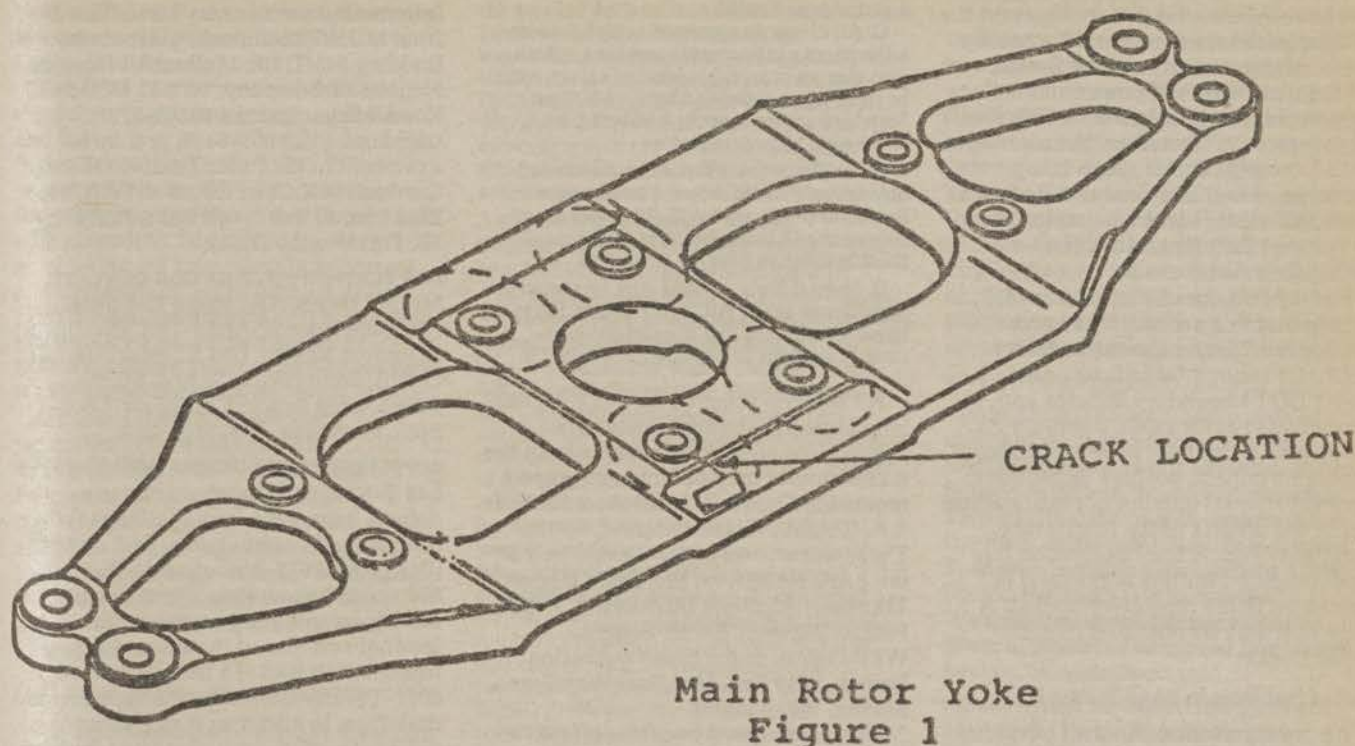
(a) Visually inspect before the first flight of each day, the main rotor yoke for crack indications in the four (4) areas around the Flapping Bearing attachment bushings as shown in Figure 1. If a crack is detected, replace the M/R yoke prior to further flight.

Note: BHTI Service Bulletin Numbers 222U-88-20 or 222-88-46, dated January 14, 1988, pertain to these inspections.

(b) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193-0170.

(c) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the inspection may be accomplished.





This amendment becomes effective November 28, 1989 as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-02-03, issued January 21, 1988, which contained this amendment.

Issued in Fort Worth, Texas, on October 24, 1989.

James D. Erickson,  
Acting Manager, Rotorcraft Directorate,  
Aircraft Certification Service.

[FR Doc. 89-26314 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-NM-122-AD; Amendment 39-6391]

#### Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model C-212 series airplanes, which requires

modification of the automatic power reserve (APR) system and revision to the Airplane Flight Manual that will provide new procedures for setting power. This amendment is prompted by reports that improper function of the APR system can cause improper thrust levels or engine overtorque. This condition, if not corrected, could, in the event of an engine failure on takeoff, result in the remaining engine exceeding maximum allowable torque levels and damage to or failure of that engine.

EFFECTIVE DATE: December 12, 1989.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas, S.A. (CASA), Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to all CASA Model C-212 series airplanes, which requires modification of the automatic power reserve (APR) system and a revision to the Airplane Flight Manual that will provide new procedures for setting power, was published in the Federal Register on August 23, 1989 (54 FR 35002).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The estimated cost for the required parts is \$350 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$25,370.



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

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

**CASA:** Applies to all Model C-212 series airplanes, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent, following an engine failure on takeoff, damage to or failure of the remaining engine caused by overtorquing, accomplish the following:

A. Modify the Automatic Power Reserve (APR) system in accordance with CASA Service Bulletin 212-72-05, Revision 1, dated June 1, 1989.

B. Upon accomplishment of the modification required by paragraph A., above, revise the FAA-approved Airplane Flight Manual to include the appropriate revision, which provides new procedures for setting power, as specified in Paragraph 1.B.

of CASA Service Bulletin 212-72-05, Revision 1, dated June 1, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. 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.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas, S.A. (CASA), Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 12, 1989.

Issued in Seattle, Washington, on October 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-26260 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-ASW-26; Amdt. 39-6392]

#### Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369 Series Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires removal and inspection for external cracks in the swaged ends on three main rotor control tubes and one tail rotor control tube, and the replacement of control tubes with those of new design on MDHC 369 Series helicopters. The AD is needed to prevent fatigue failure of the control tubes which could result in loss of control of the helicopter.

**EFFECTIVE DATE:** December 4, 1989.

**Compliance:** As indicated in the body of the AD.

**ADDRESSES:** The applicable service information notices may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797; telephone (602) 891-6484, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90808-2425; telephone (213) 988-5233.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that manufacturing defects have been found in the main rotor lateral control tubes, part number (P/N) 369A7012-BSC, on MDHC Model 369 series helicopters. These defects include longitudinal cracks on the internal surfaces of the tube, and heat-treatment to 6061-T4 temper instead of 6061-T6, as required by the type design drawings. In addition, manufacturing defects (cracks) have also been found in other control tubes, P/N's 369A7007-BSC, 369A7009-BSC, and 369A7011-BSC, made by the same vendors.

Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires removal and inspection of the four control tubes within 25 hours' additional time in service and at repetitive intervals of 100 hours' time in service on MDHC Model 369 series helicopters. The AD also requires inspection of tubes in spares inventory prior to installation in a helicopter, to determine if any exterior cracks are present, and removal of tubes from service if such cracks are found. The replacement with control tubes of modified design within 600 hours' additional time in service on MDHC Model 369 series helicopters is also required.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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 further determined 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 regulatory Regional Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional 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 part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

**McDonnell Douglas Helicopter Company (MDHC):** Applies to Model 369 series helicopters, certificated in any category, with main rotor collective tube, P/N 369A7009-BSC; longitudinal control tube, P/N 369A7011-BSC; lateral control tube, P/N 369A7012-BSC; and tail rotor control tube, P/N 369A7007-BSC. (Docket No. 89-ASW-26)

Compliance is required as indicated, unless already accomplished.

To prevent fatigue failure of the control tubes which could result in loss of control of the helicopter, accomplish the following:

(a) Within 25 hours' time in service after the effective date of this AD, and at intervals of 100 hours' time in service until the requirements of paragraph (c) are

accomplished, remove and inspect for cracks the swaged ends of each main rotor collective control tube (P/N 369A7009-BSC), longitudinal control tube (P/N 369A7011-BSC), lateral control tube (P/N 369A7012-BSC), and each tail rotor control tube (P/N 369A7007-BSC) installed on a helicopter. If external cracks are observed as a result of this inspection, replace the control tube with a serviceable unit prior to further flight.

**Note:** PART I of MDHC Service Information Notice DN-158.1, EN-48.1, FN-36.1, and HN-217.1 pertains to this AD.

(b) Prior to installation, inspect for cracks the swaged ends of each main rotor collective control tube (P/N 369A7009-BSC), longitudinal control tube (P/N 369A7011-BSC), lateral control tube (P/N 369A7012-BSC), and tail rotor control tube (P/N 369A7007-BSC) from spares inventory. Reject control tubes found to be cracked as a result of this inspection.

(c) Within 800 hours' time in service after the effective date of this AD remove and inspect each main rotor collective control tube (P/N 369A7009-BSC), longitudinal control tube (P/N 369A7011-BSC), lateral control tube (P/N 369A7012-BSC), and tail rotor control tube (P/N 369A7007-BSC) in accordance with the requirements of paragraph (a). Replace cracked tubes with BASIC (BSC) part numbers with the corresponding FAA-approved -5 configuration. Modify remaining BASIC (BSC) tubes to the corresponding FAA-approved -5 configuration before reinstallation.

**Note:** PART II of MDHC Service Information Notice DN-158, EN-48, FN-36 or HN-217 pertains to rework and reinstallation procedures.

(d) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance with the AD may be accomplished.

(e) An alternate method of compliance with this AD which provides an equivalent level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California.

This amendment becomes effective December 4, 1989.

Issued in Fort Worth, Texas, on October 27, 1989.

**James D. Erickson,**  
*Acting Manager, Rotorcraft Directorate,*  
*Aircraft Certification Service.*

[FR Doc. 89-26259 Filed 11-7-89; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-NM-65-AD; Amendment 39-6390]

#### Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

#### ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF-340A series airplanes, which requires modification of the emergency lighting activation circuit. This amendment is prompted by reports that the emergency lighting system will not illuminate automatically if normal airplane power is lost. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

**EFFECTIVE DATE:** December 12, 1989.

**ADDRESSES:** The applicable service information may be obtained from SAAB-Scania Aircraft Division, Product Support S-581 88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM-113; telephone 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to SAAB-Scania Model SF-340A series airplanes, which requires modification of the emergency lighting activation circuit, was published in the Federal Register on May 25, 1989 (54 FR 22606).

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

One commenter supported the rule.

The other commenter expressed concern that, in this proposal, the FAA is interpreting "normal electric power," as that phrase is used in Federal Aviation Regulation Section 25.1351(d), as generated power only, and that previous emergency lighting designs have been (inappropriately) approved in which the "normal electric power" did not mean that which is supplied by engine-driven generators only. The FAA acknowledges that the commenter is correct regarding other inappropriate approvals. The FAA has corrected or is in the process of issuing AD's to correct this situation on the Airbus Model A300 (see 54 FR 37470; September 11, 1989), the Fokker Model F-28 (see 53 FR 47943;



November 29, 1988), and, in this action, the SAAB Model SF-340A. In any case, the FAA's primary concern is for the need for emergency lighting when the airplane is on the ground. Once the modification required by this AD is accomplished, if the engines are turned off or stopped by some other means, and when the emergency lighting system is armed, the emergency lights will automatically activate, irrespective of the condition of the airplane battery system. In the configuration advocated by the commenter, the emergency lights, while armed, would not come on if the airplane battery system remains intact. When the normal lighting system is powered only by the generators, there would be no emergency lights turned on automatically to assist the occupants during the evacuation. This is an unacceptable situation.

The commenter stated that if normal electric power was as previously discussed and the FAA mandated modifications to reflect this interpretation, an Airplane Flight Manual (AFM) change should also be required to instruct the crew to turn off the emergency lights should all generated power fail in flight. The emergency lights would then have to be turned back on before an emergency landing is made. The commenter further stated that the added task of now turning the emergency lights on before landing would increase pilot workload and substantially reduce the level of safety currently offered.

The FAA agrees that for some systems, and under some situations, these procedures, implemented by an AFM change, may be appropriate and may increase the flight crew workload slightly. Additional battery capacity (endurance) would mitigate the need for the flight crew to turn off or on the emergency lights during high workload conditions. However, service experience has shown that loss of all generated power in flight and subsequent need for emergency lighting is a relatively remote event and, as such, an AFM requirement in this AD action is not justified at this time. Again, the FAA's primary concern is for the need for emergency lighting when the airplane is on the ground.

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

It is estimated that 79 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD

on U.S. operators is estimated to be \$25,230.

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

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

Saab-Scania: Applies to Model SF-340A series airplanes, Serial Numbers -004 through -159, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Within 60 days after the effective date of this AD, modify the emergency lighting activation circuit in accordance with SAAB Service Bulletin, SF340-33-028, Revision 1, dated January 26, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may

be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

C. 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.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania Aircraft Division, Product Support, S-581 88 Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 12, 1989.

Issued in Seattle, Washington, on October 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-26261 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-ANE-25; Amendment 39-6377]

**Airworthiness Directives; Textron Lycoming Model TIO-540-AE2A Engines (With Serial Numbers Up to and Including L9084-61A) Installed in Piper PA-46-350P Airplanes Certified in Any Category**

**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 an Airworthiness Directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Textron Lycoming engines by individual priority letter. The AD requires a functional leak check to verify integrity of the engine pump diaphragm and replacement of the pump vent tee fitting with a new restrictor type tee fitting. The AD is needed to



prevent a fuel over rich condition which could result in engine roughness and loss of engine power.

#### DATES:

**Effective:** November 30, 1989, as to all persons except those to whom it was made immediately effective by individual priority letter AD 89-15-10 issued July 26, 1989, which contained this amendment.

**Compliance:** As required in the body of the AD.

**ADDRESSES:** Lycoming Service Bulletin (SB) No. 487 may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, Pennsylvania 17701. Piper SB No. 915 may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. These documents may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

#### FOR FURTHER INFORMATION CONTACT:

P. Perrotta or N. Minniti, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, room 202, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-7421.

**SUPPLEMENTARY INFORMATION:** On July 26, 1989, Priority letter Airworthiness Directive (AD) No. 89-15-10 was issued and made effective immediately as to all known U.S. owners and operators of certain Textron Lycoming engines. The AD requires a functional leak check to verify integrity of the pump diaphragm and a replacement of the pump vent tee fitting with a new restrictor type tee fitting. There have been three incidents, on Piper PA-46-350P "Mirage" aircraft, of engine malfunction and power loss resulting from engine fuel pump diaphragm failure. A ruptured diaphragm introduces additional fuel into the engine through the nozzle vent systems causing an over rich condition and erratic engine operation, particularly when the aircraft emergency boost pump is turned on. AD action is necessary to prevent an over rich condition which could result in engine roughness and loss of engine power whenever a pump diaphragm fails. This is accomplished by the new restrictor fitting installation.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by

individual priority letter AD 89-15-10 issued July 26, 1989, to all known U.S. owners and operators of certain Textron Lycoming Engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined 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 (FAA) amends part 39 of the Federal Aviation Regulations (FAR) 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 (AD):

**Textron Lycoming:** Model TIO-540-AE2A engines (with serial numbers up to and including L9064-61A) installed in Piper PA-46-350P airplanes certified in any category.

Compliance is required within 5 hours time in service after the effective date of this AD unless already accomplished.

To prevent engine roughness and loss of engine power, accomplish the following:

(a) Perform a fuel leak check at the upper deck left nozzle vent manifold or at the fuel pump vent hose check valve in accordance with appendix I and appendix II of this AD. Observe if any fuel emerges at the disconnected line with the aircraft emergency boost pump operating. If fuel is observed, the engine pump diaphragm is considered defective. Prior to further flight, replace pump with a new or serviceable pump and repeat the above leak check.

(b) Remove tee fitting P/N AN-825-4 from the engine fuel pump vent and install restrictor type tee fitting P/N 02A21171 (Piper P/N 766-224) in accordance with appendix I and appendix II of this AD.

(c) Aircraft may be ferried in accordance with the provisions of FAR's 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 202, 181 South Franklin Avenue, Valley Stream, New York 11581.

This amendment becomes effective November 30, 1989, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 89-15-10, issued July 26, 1989, which contained this amendment.

Issued in Burlington, Massachusetts, on October 18, 1989.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

#### Appendix I—Textron Lycoming Service Bulletin No. 487, Dated July 7, 1989

1. Disconnect fuel pump vent hose from check valve or from left vent manifold.
  2. Turn on aircraft boost pump and observe for fuel from hose. If fuel is observed, fuel pump must be replaced.
  3. Re-connect hose and replace pump if necessary.
  4. Remove P/N AN-825-4 Tee from fuel pump. Install P/N 02A21171 Tee (restricted).
- Textron Lycoming through Piper Aircraft Corp. will allow 1 hour labor at posted shop rates to comply with this bulletin. After compliance with this bulletin, and appropriate logbook entry must be made.

BILLING CODE 4910-13-M



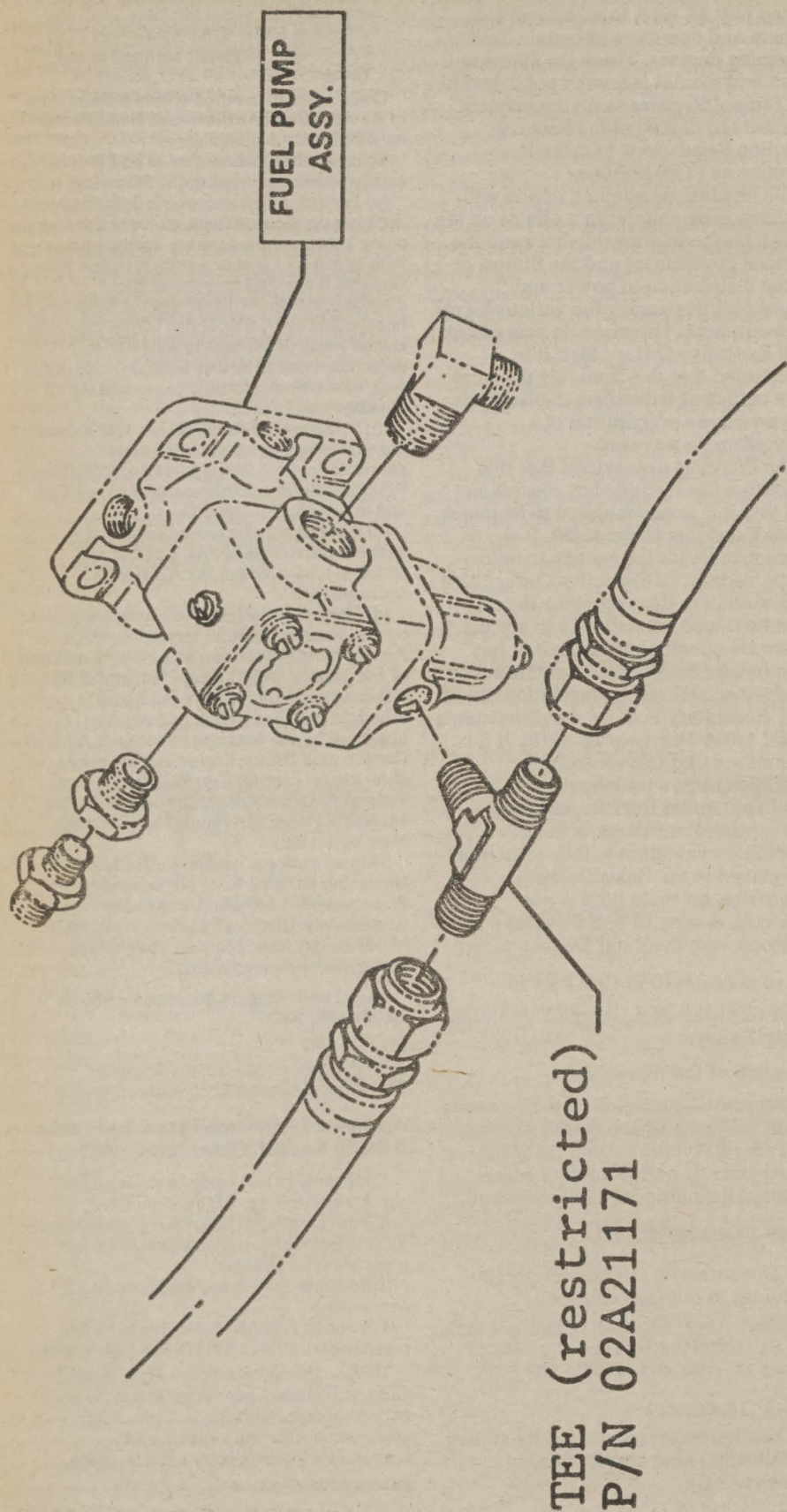


Figure 1. Fuel Pump Vent Restriction

BILLING CODE 4910-13-C



**Appendix II—Piper Service Bulletin No. 915, Dated July 8 1989**

**Instructions:**

1. Remove engine cowling.
2. Disconnect the upper deck reference line located on the left side of the engine where the upper deck reference line passes through the left engine cooling baffles next to the air conditioning freon hoses. (See Sketch A)
3. Select the throttle and mixture controls to the idle/cut off position. Ensure the fuel selector is in the ON position. Place a suitable container at the disconnected upper deck reference line coming from the engine driven fuel pump.

**Caution**

Do not perform these procedures on a hot engine. Take great care in handling and disposing of any aircraft fuel which may have come from the upper deck reference line.

4. Turn on aircraft master switch and turn on the emergency fuel pump. Observe the upper deck reference line at the disconnect. Should fuel come out of this line, the fuel pump diaphragm is bad and the fuel pump must be replaced (order new fuel pump assembly from Textron Lycoming, Part Number 62E19952). Refer to appropriate chapter of the Maintenance Manual prior to installing new pump. With new pump installed proceed to Step 5. If no fuel appears from the upper deck reference line, continue to run the emergency fuel pump for

approximately five minutes. No fuel should appear in this line.

If no fuel appeared in the upper deck reference line as above, proceed to Step 5.

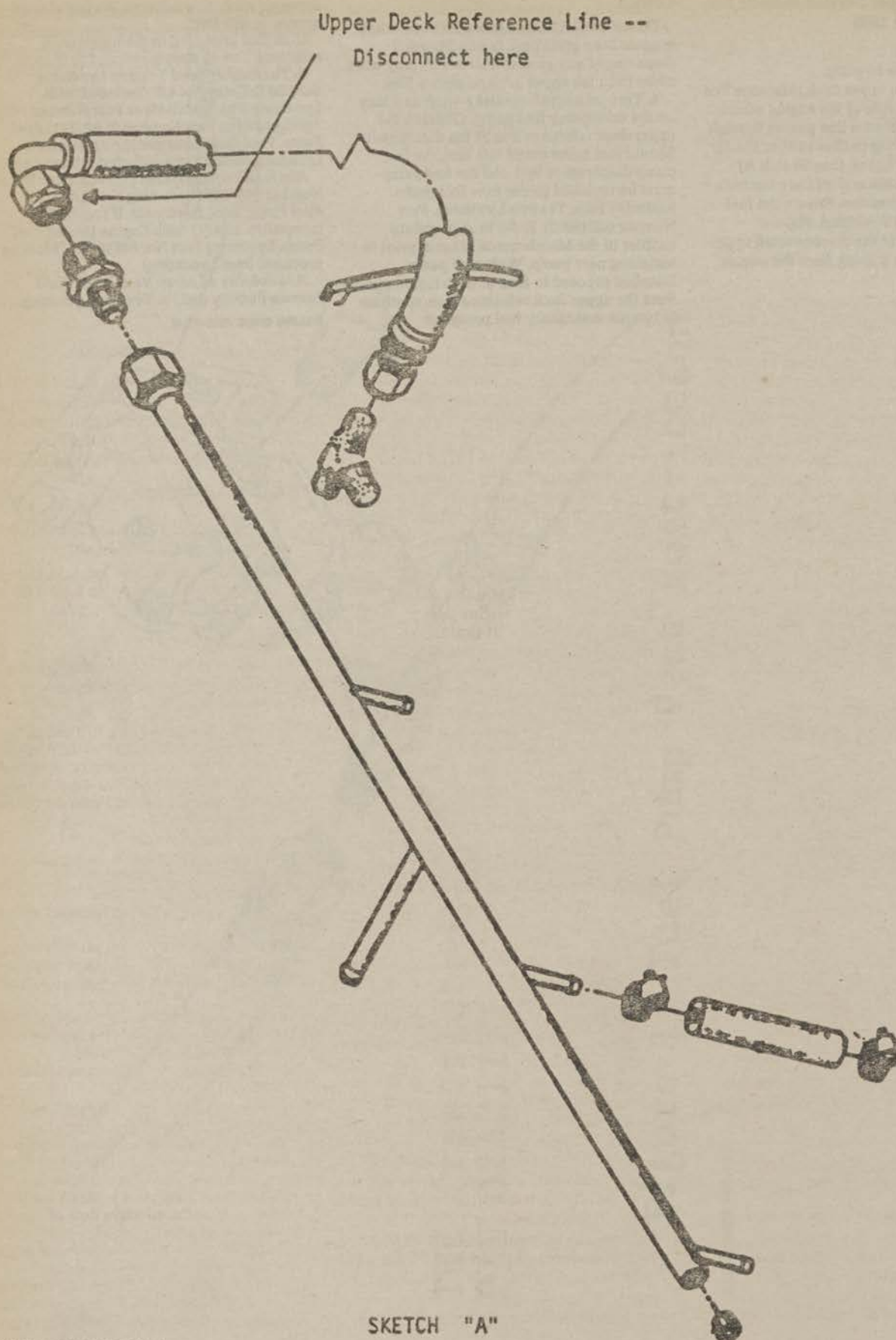
5. Thoroughly read Textron Lycoming Service Bulletin No. 487 (included with Lycoming Kit). Install Piper Part Number 766-224 (Lycoming Part Number 02A21171) *Fuel Pump Vent Restrictor* per the appropriate Lycoming instructions included with the kit.

**Material required:** One (1) each Piper Part Number 766-224 (Lycoming Kit 02A21171) *Fuel Pump Vent Restrictor*. If required by inspection, one (1) each Engine Driven Fuel Pump, Lycoming Part No. 62E19952. (Must be procured from Lycoming)

**Availability of parts:** Your Piper Field Service Facility and/or Textron Lycoming.

BILLING CODE 4910-13-M







## 14 CFR Part 39

[Docket No. 89-ANE-18; Amdt. 39-6378]

**Airworthiness Directives; Textron Lycoming Model HIO-360-D1A Engines Equipped With Bendix RSA-7AA Fuel Injectors****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 an airworthiness directive (AD) which was previously made effective to all known U.S. owners and operators of certain Textron Lycoming engines by individual priority letter AD No. 89-13-02. The AD requires the removal, inspection, and repair of affected fuel injectors. The AD is needed to prevent restriction of fuel flow which could result in loss of engine power or engine stoppage.

**DATES:** Effective November 30, 1989, as to all persons except those to whom it was made immediately effective by individual priority letter AD No. 89-13-02 issued, June 22, 1989, which contained this amendment.

**Compliance:** As indicated in the body of the AD.

**ADDRESSES:** The applicable technical information may be obtained as follows:

(a) Precision Airmotive Service Bulletin (SB) PRS-92 and Service Information Letter (SIL) #31 may be obtained from Precision Airmotive Corp., Snohomish County Airport, Everett, Washington 98204.

(b) Schweizer Aircraft Corp. Special Advisory and Service Notice N-202 may be obtained from Schweizer Aircraft Corp., P.O. Box 147, Elmira, New York 14902.

(c) Textron Lycoming SB No. 483 may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, Pennsylvania 17701.

These publications may also be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** N. Minniti, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 202, 181 South

Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-7421.

**SUPPLEMENTARY INFORMATION:** On June 22, 1989, priority letter AD No. 89-13-02 was issued and made effective immediately as to all known U.S. owners and operators of certain Textron Lycoming engines. The AD requires the removal, inspection, and repair of affected fuel injectors. Textron Lycoming reported two cases of engine roughness at Schweizer Aircraft Corporation. Schweizer later reported one case of engine stoppage on the ground on a new production helicopter. All were due to pieces of seals blocking the fuel injector passages. The O-ring seals are located on the idle shaft and mixture control shaft. Only the Model RSA-7AA injector manufactured for Bendix by Precision Airmotive in Seattle is involved. AD action was necessary to prevent an unsafe condition due to restriction of fuel flow. FAA inspectors confirmed that O ring seals were damaged during assembly at Precision Airmotive Corporation. When O ring seal pieces block the fuel injector throttle body passages or the individual fuel nozzles, engine roughness or failure can occur depending upon the extent of blockage and the engine power level.

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 priority letter AD No. 89-13-02, issued June 22, 1989, to all known U.S. owners and operators of certain Textron Lycoming engines. 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 in 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 further determined 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 (FAA) amends part 39 of the Federal Aviation Regulations (FAR) 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 (AD):

**Textron Lycoming:** Applies to Textron Lycoming Model HIO-360-D1A engines, certificated in any category, equipped with Bendix Model RSA-7AA Servo Fuel Injectors, P/N 2524347, with the following serial numbers:

70001101 through 70001110  
70001401 through 70001404  
70001602 through 70001604  
70001701 through 70001710  
70007001 through 70007110 (except 70007107, 70007108)  
70010104 through 70010110 (except 70010107)  
70013701 through 70013710 (except 70013706)  
70013802 through 70013810 (except 70013803, 70013809)  
70013903 through 70013910 (except 70013909)  
70014001 through 70014009 (except 70014002, 70014005, 70014007, 70014008)  
70014101 through 70014104 (except 70014102, 70014103)

Serial numbers followed by the letter "P" are in compliance with this AD.

These fuel injectors are installed on, but not necessarily limited to, Schweizer Aircraft Corp. Helicopter Model 269C.

Compliance is required within 5 hours time in service after the effective date of this AD, unless already accomplished.

To prevent loss of engine power or engine stoppage, accomplish the following:

(a) Remove the fuel injector unit from the engine and replace with an unaffected unit or one that has been repaired in accordance



with the accomplishment instructions in Appendix I to this AD.

**NOTE:** Injector units may be returned to Precision Airmotive Corp. or an authorized facility listed in appendix II to this AD.

(b) Install unaffected fuel servo unit or a unit repaired in accordance with appendix I to this AD, as follows:

(1) Disconnect fuel injection lines from fuel injection nozzles.

(2) Carefully remove inserts from nozzles and identify to allow the inserts to be reinstalled in the proper location.

(3) Use *CLEAN* shop air to blow out all fuel injection lines, inserts, and nozzle bodies (still installed in cylinder).

(4) Visually inspect inserts for cleanliness.

(5) Reinstall fuel injector and reconnect fuel lines to fuel injector but *do not* reconnect to nozzles.

(6) Purge fuel injector system by flowing fuel through the lines for 10 seconds with boost pump on, injector in full rich and full throttle.

(7) Reinstall inserts in original nozzle locations and torque fuel injector line nuts to 40-50 in.-lbs.

(8) Make appropriate mixture and idle adjustments per aircraft manufacturer's applicable Maintenance Manual and/or appropriate service publications.

**NOTE:** Precision Airmotive Service Bulletin (SB) PRS-92, dated May 26, 1989; Precision Airmotive Service Information Letter #31, Revision 1, dated May 26, 1989; Schweizer Aircraft Corp. Special Advisory, dated May 25, 1989; Schweizer Aircraft Corp. Service Notice N-202, dated February 23, 1989; and Textron Lycoming SB No. 405, dated June 1, 1989, contain related information.

(c) Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 202, 101 South Franklin Avenue, Valley Stream, New York 11581.

This amendment becomes effective November 30, 1989, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 89-13-02, issued June 22, 1989, which contained this amendment.

Issued in Burlington, Massachusetts, on October 18, 1989.

Jay J. Pades,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

**Appendix I—Source:** Precision Airmotive Corporation Service Information Letter #31, Rev. 1, dated May 25, 1989

**Accomplishment Instructions:** Assemble and disassemble fuel injectors in accordance

with instructions in the latest applicable overhaul manual, form number 15-520.

**Step 1:** Remove the idle and mixture control valve assemblies.

**Step 2:** Remove and inspect with 10x magnifying glass, the packings p/n 951402 (Items 190, 185 and 240, IPL Figure 2) and p/n 951403 (Items 190 and 245, IPL, Figure 2) for any evidence of damage (shaving, cuts, etc.). If there is no damage, continue with step 3 through 11. If there is damage, perform steps 12 through 20.

**Step 3:** Visually inspect bores for irregularities.

**Step 4:** Polish the bores of the throttle body for the idle and mixture control valve assemblies with paper no coarser than 800 grit.

**Step 5:** Thoroughly clean areas with calibrating fluid, Type II—MIL-C-7024B (such as Stoddard Solvent). Any bare surfaces should be treated in accordance with standard practices.

**Step 6:** Lubricate new packings p/n 951402 and p/n 951403 and bores of throttle body for idle and mixture control valve assemblies with a light coating of "vaseline" or equivalent.

**Step 7:** Install packings on idle and mixture control valve assemblies.

**Step 8:** Carefully reinstall idle and mixture control valve assemblies. **NOTE:** Valve assembly should be seated by hand before installing screws.

**Step 9:** Flow check unit per applicable flow specifications.

**Step 10:** Stamp the letter "P" on right side of date plate.

**Step 11:** Return the fuel injector servo to service.

**\*\*The following steps are to be accomplished only if O ring damage is noted.\*\***

**Step 12:** Remove metering jet, item 215, IPL, Figure 3; p/n 390188-53.

**Step 13:** Remove fuel inlet strainer.

**Step 14:** Accomplish steps 3, 4, 5, 6, 7, and 8.

**Step 15:** Supply a fuel source to outlet of fuel servo unit.

**Step 16:** Flush unit through a paint strainer or fine mesh screen while continually operating mixture control and throttle levers for a minimum period of five minutes. If further evidence of contamination is observed, continue to flush unit until no further contamination is present.

**Step 17:** Remove idle valve assembly and reinstall metering jet.

**Step 18:** Inspect packings for damage, lubricate and reinstall idle valve assembly.

**Step 19:** Install new packings, p/n 951799 (item 30, IPL, Figure 2) and p/n 951392 (item 40, IPL, Figure 2) on fuel strainer and reinstall in servo.

**Step 20:** Accomplish Steps 9, 10, and 11.

**Appendix II—Source:** List of Precision Airmotive Corporation Product Support Centers

1. AERMECCANIA, Via Vittorio, Veneto, 21015 Lonate, Pozzolo (Varese) Italy, Ph. # (39) 331668110, Telex: 843-331859+

2. AERO MERCANTIL LEAVER & CIA, Carrera 3 No. 50-19, Apartado Aereo 6781, Bogota, Columbia, Ph. # (571) 2118100, Fax: (571) 2128952, Telex: 306-44581+

3. AIR MADAGASCAR, Direction Industrielle, P.O. Box 437, Avenue De L'Independence, Antananarivo, Madagascar, Ph. # (448) 222-22417 or (448) 222-22368, Telex: 983-22232+

4. AIRMOTIVE CARBUETOR COMPANY, 475-479 Riverside Drive, Burbank, CA 91506, Ph. # (213) 849-4704, Fax: (816) 845-6329

5. AVITECH ENGINEERING CORP., 2130 Adams Ave., San Leandro, CA 94577, Ph. # (415) 562-2811, (800) 227-1850, Fax: (415) 563-5167

6. B & S AIRCRAFT PARTS AND ACCESSORIES, 1414 S. Mosley, Wichita, KS 67211, Ph. # (316) 264-2397, Fax: (316) 264-7898

7. COMBS-GATES DENVER INC., Hanger #7, Stapleton International Airport, Denver, CO 80207, Ph. # (303) 398-5400, Fax: (303) 398-2594

8. CSE AVIATION LIMITED, Oxford Airport, Kidlington, Oxford OX5 1RA England, Ph. # (44) 865-841-234, Fax: (44) 867-579-123, Telex: 851-83204+ AZTEC E

9. DUCARRA AVIATION, 1505 N. Front Street, P.O. Box 430, Niles, MI 49120, Ph. # (816) 684-4440, Fax: (816) 684-8375

10. FRANCE AVIATION, Aerodrome de Toussus-Le-Noble, F-78117 Chateaufort, France, Ph. # (33) 13 965-8050, Fax: (33) 13 956-1152, Telex: 642-896645+ FRAVIA F

11. HANTS & SUSSEX AVIATION LTD., Airport Service Road (Eastern Road), Portsmouth, Hants, England PO3 5PJ, Ph. # (44) 705 894981, Fax: (44) 705 890415, Telex: 851-86403+

12. HATFIELD AVIATION, 8109 Braniff, Houston, TX 77017, Ph. # (713) 844-2162, Fax: (713) 644-2162

13. HAWKER PACIFIC PTY. LTD., P.O. Box 172, Yagoona, New South Wales 2199, AUSTRALIA, Ph. # (61) 270 88555, Fax: (61) 270 81480, Telex: 790-121188+

14. LEAVENS AVIATION INC., 2555 Derry Road, Mississauga, Ontario, Canada L4T 1A1, Ph. # (416) 678-1234, Fax: (416) 678-7028

15. LIDER TAXI AEREO S.A., Aeroporto De Pampulha, Av. Santa Rosa 123, Belo Horizonte, M.G., Brasil, Telex: 391-311275+

16. MATTHUCK AVIATION, Airway Drive, Matthuck, NY 11952, Ph. # (516) 298-8330, Fax: (516) 298-8412

17. OSTERMANS AERO A.B., Box 422 S-175-25, Jarfalla, Sweden, Ph. # (46) 8 780-2720, Fax: (46) 8 760-8112, Telex: 854-13485+ OSTAIR S

18. PIEDMONT AVIATION INC., 3817 N. Liberty St., Winston-Salem, NC 27102, Ph. # (919) 767-5518, Fax: (919) 767-5584

19. PIERBURC LUFTFAHRTGERATE UNION, Bataverstrasse 80, 4040 Neuss Rhein, West Germany, Ph. # (49) 2101 520, Fax: (49) 2101 523445, Telex: 841-2101329+

20. PRECISION AIR INC., 3610 NW, 41st St., Miami, FL 33142, Ph. # (305) 635-5293, Fax: (305) 635-1572

21. SCANAVIATION WORKS A/S, Copenhagen Airport, Post Box 139, DK-2770 Kastrup, Denmark, Ph. # (45) 151 4222, Telex: 855-31374+



22. SCHNECK AVIATION, P.O. Box 6417, Rockford, IL 61125, Ph. # (815) 965-4001, Fax: (815) 965-4004
23. SIPER AVIACION S.A., 3 De Febrero 2080-San Fernando (1646), Buenos Aires, Argentina, Ph. # (54) 1-744-9802 or (54) 1-744-0830, Telex: 390-26082 + SIPER AR
24. TRANSAIR (SUISSE), Aeroport de Geneve-Cointrin, BP315, CH-1215 Geneve 15, Switzerland, Ph. # (41) 22 798 2400, Fax: (41) 22 798 2400, Telex: 845-23567 +
25. FIELD AVIATION, # 5 3500 19th Street NE., Calgary, Alberta T2E 8B9, Canada, Ph. # (403) 291-3460, Fax: (403) 250-1757

[FR Doc. 89-26264 Filed 11-7-89; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 89-ANM-7]

#### Alteration of VOR Federal Airway V-382; CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment alters VOR Federal Airway V-382 between Grand Junction, CO, and Durango, CO. This action will expedite air traffic arriving and departing the Telluride Regional Airport. This action will reduce controller workload and aid flight planning.

**EFFECTIVE DATE:** 0901 u.t.c., January 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

#### SUPPLEMENTARY INFORMATION:

##### History

On August 28, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter VOR Federal Airway V-382 between Grand Junction, CO, and Durango, CO (54 FR 35500). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

#### The Rule

This amendment to part 71 of the Federal Aviation Regulations alters VOR Federal Airway V-382 between Grand Junction, CO, and Durango, CO. This action will expedite air traffic departing from and landing at the Telluride Regional Airport, in the vicinity of the Cones VOR. In addition, V-382 will support the VOR/DME Runway 9 approach to the Telluride Regional Airport. This action will reduce controller workload and aid flight planning.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Aviation safety, VOR federal airways.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

#### § 71.123 [Amended]

2. Section 71.123 is amended as follows:

#### V-382 [Amended]

By removing the words "to Grand Junction, CO," and substituting the words "Grand Junction; Cones, CO; to Durango, CO."

Issued in Washington, DC, on October 27, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-26313 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 73

[Airspace Docket No. 89-ASW-28]

#### Amendment to Times of Designation for Restricted Areas at White Sands Missile Range; NM

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the times of designation for Restricted Areas R-5107F, R-5107G, R-5109A and R-5109B White Sands Missile Range, NM. This action is the result of a special use airspace review. This action more accurately reflects the actual time of use of the restricted areas and lessens the burden on the flying public.

**EFFECTIVE DATE:** 0901 u.t.c., January 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Rich Uhrich, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7635.

#### SUPPLEMENTARY INFORMATION:

##### The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the time of designation for Restricted Areas R-5107F, R-5107G, R-5109A and R-5109B, White Sands Missile Range, NM. A special use airspace review was conducted at the White Sands Missile Range, October 18-20, 1988. During the review, information was gathered which documented the published times of use which did not accurately reflect the actual use of these restricted areas. This action changes the times of use for R-5107F and R-5107G from continuous to 0001 local time Monday through 2359 local time Friday, other times by NOTAM. The times of use for R-5109A and R-5109B are changed from continuous Monday through Friday, other times as activated by NOTAM issued at least 12 hours in advance to intermittent by NOTAM. This action more accurately reflects the actual use



of these areas and lessens the burden on the flying public. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would be particularly interested. Section 73.51 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.8E dated January 3, 1989.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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 73

Aviation safety, Restricted areas.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

#### PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

#### § 73.51 [Amended]

2. Section 73.51 is amended as follows:

#### R-5107F White Sands Missile Range, NM [Amended]

By removing the word "Continuous" and substituting the words "0001 Monday through 2359 Friday, other times by NOTAM"

#### R-5107G White Sands Missile Range, NM [Amended]

By removing the word "Continuous" and substituting the words "0001 Monday through 2359 Friday, other times by NOTAM"

#### R-5109A White Sands Missile Range, NM [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent by NOTAM.

#### R-5109B White Sands Missile Range, NM [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent by NOTAM.

Issued in Washington, DC, on October 20, 1989.

Jerry W. Bell,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-26312 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 75

[Airspace Docket No. 88-AEA-6]

#### Alteration of Jet Route; NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action corrects the effective date for Airspace Docket 88-AEA-6 from November 16, 1989, to January 11, 1990. The relocated LaGuardia VOR did not pass the required flight inspection and, therefore, will not meet the criteria for charting on the November 16, 1989, charts. This action amends the effective date.

EFFECTIVE DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

#### SUPPLEMENTARY INFORMATION:

##### History

Federal Register Document 89-22998, published on September 29, 1989, altered the description of Jet Route J-42 located in the vicinity of New York (54 FR 39989). The LaGuardia VOR was relocated from Rikers Island, NY, to the LaGuardia Airport, NY. The relocated VOR did not pass the required flight check and, therefore, the effective date for charting must be delayed from November 16, 1989, to January 11, 1990.

The FAA finds good cause for making this delay of effective date effective in less than 30 days after publication since this rule is a minor amendment which simply notifies the public of a delay in the charting date and does not affect the airspace.

#### List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

#### Delay of Effective Date

Accordingly, pursuant to the authority delegated to me, Federal Register Document 89-22998, as published in the Federal Register on September 29, 1989, (54 FR 39989) is amended by changing the effective date from November 16, 1989, to January 11, 1990.

Issued in Washington, DC, on October 26, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-26310 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### FEDERAL TRADE COMMISSION

#### 16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Refrigerators, Refrigerator-freezers and Freezers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for refrigerators, refrigerator-freezers and freezers will remain in effect until new ranges are published.

EFFECTIVE DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) <sup>1</sup> requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Refrigerators, refrigerator-freezers and freezers are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a

<sup>1</sup> Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).



consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule<sup>2</sup> covering seven of the thirteen appliance categories, including refrigerators, refrigerator-freezers and freezers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all refrigerators, refrigerator-freezers and freezers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a refrigerator, refrigerator-freezer or freezer is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.<sup>3</sup> Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for refrigerators, refrigerator-freezers and freezers have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on May 16, 1989.<sup>4</sup>

In consideration of the foregoing, the present ranges for refrigerators, refrigerator-freezers and freezers will remain in effect until the Commission publishes new ranges for these products.

#### List of Subjects in 16 CFR Part 305

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

#### PART 305—[AMENDED]

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Donald S. Clark,  
Secretary.

[FR Doc. 89-26304 Filed 11-7-89; 8:45 am]

BILLING CODE 6750-01-M

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

##### 33 CFR Parts 100 and 165

[CGD 89-092]

##### Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

**SUMMARY:** This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time and limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

**DATES:** The following list includes safety zones, security zones, and special local regulations that were established between July 1, 1989 and September 30,

1989 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

**ADDRESS:** The complete text of any temporary regulation may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267-1477.

**SUPPLEMENTARY INFORMATION:** The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the Federal Register is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, Federal Register notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the Federal Register notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the Federal Register just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1989 through September 30, 1989 unless otherwise indicated.

<sup>2</sup> 44 FR 66466, 16 CFR part 305.

<sup>3</sup> Reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

<sup>4</sup> 54 FR 21051.



Docket Number	Location	Type	Date
1-89-068	Newark Bay, Port Elizabeth, NJ	Safety Zone	22 JUN 89
1-89-038	East River, New York, NY	Safety Zone	3 JUL 89
1-89-052	Norwalk Harbor, Norwalk, CT	Safety Zone	3 JUL 89
1-89-056	Lake Champlain, Burlington, VT	Safety Zone	3 JUL 89
1-89-072	Federal Turning Basin, Norwich, CT	Safety Zone	3 JUL 89
1-89-045	East River, New York, NY	Safety Zone	4 JUL 89
1-89-053	Norwalk Harbor, Norwalk, CT	Safety Zone	4 JUL 89
1-89-054	Connecticut River, CT	Special Local Regulations	4 JUL 89
1-89-061	Hudson River, Stony Point, NY	Safety Zone	4 JUL 89
1-89-073	Connecticut River, Deep River, CT	Safety Zone	4 JUL 89
1-89-074	Oyster Bay, NY	Safety Zone	4 JUL 89
1-89-075	New London Harbor, New London, CT	Safety Zone	8 JUL 89
1-89-037	Marblehead, MA	Special Local Regulations	9 JUL 89
1-89-055	Hudson River, Albany, NY	Safety Zone	15 JUL 89
1-89-059	New Haven, CT	Special Local Regulations	15 JUL 89
1-89-080	Arthur Kill, Linden, NJ	Safety Zone	19 JUL 89
1-89-057	Long Island Sound, New Rochelle, NY	Safety Zone	29 JUL 89
1-89-086	Hudson River, New York, NY	Safety Zone	1 AUG 89
1-89-081	East River, New York, NY	Safety Zone	6 AUG 89
1-89-089	Long Island Sound, Kings Point, NY	Safety Zone	8 AUG 89
1-89-083	Hudson River, Watervliet, NY	Safety Zone	12 AUG 89
1-89-085	Harlem River, Bronx, NY	Safety Zone	12 AUG 89
1-89-087	East River, New York, NY	Safety Zone	19 AUG 89
1-89-090	Harlem River, Bronx, NY	Safety Zone	20 AUG 89
1-89-096	East River, New York, NY	Safety Zone	24 AUG 89
1-89-088	East River, New York, NY	Safety Zone	26 AUG 89
1-89-084	Norwich Harbor, Norwich, CT	Safety Zone	27 AUG 89
1-89-092	East River, New York, NY	Safety Zone	3 SEP 89
1-89-102	Thames River, New London, CT	Security Zone	7 SEP 89
1-89-093	Stamford, CT	Special Local Regulations	9 SEP 89
1-89-101	Norwalk Harbor, Norwalk, CT	Safety Zone	9 SEP 89
1-89-095	Upper Bay, New York, NY	Safety Zone	13 SEP 89
1-89-112	Upper Bay, New York, NY	Safety Zone	13 SEP 89
1-89-113	East River, New York, NY	Safety Zone	13 SEP 89
1-89-114	East River, New York, NY	Safety Zone	14 SEP 89
1-89-107	Sandy Hook Bay, NJ	Safety Zone	15 SEP 89
1-89-099	Mystic River, Mystic, CT	Safety Zone	16 SEP 89
1-89-115	Hudson River, Albany, NY	Safety Zone	16 SEP 89
1-89-104	Federal Anchorage 27, NJ	Safety Zone	19 SEP 89
1-89-128	Rikers Island Channel & Flushing Bay, New York, NY	Safety Zone	20 SEP 89
1-89-106	The Upper Bay, New York Harbor	Safety Zone	24 SEP 89
1-89-118	New York Harbor, New York, NY	Security Zone	25 SEP 89
1-89-105	The Upper Bay, New York Harbor	Safety Zone	23 SEP 89
1-89-109	Guilford Harbor, Guilford, CT	Safety Zone	28 SEP 89
1-89-116	Hempstead Harbor, Long Island, NY	Safety Zone	30 SEP 89
COTP Boston, MA, Reg. 89-47	Boston Harbor, Boston Inner Harbor, Boston, MA	Safety Zone	4 JUL 89
COTP Boston, MA, Reg. 89-103	Gloucester Harbor, Gloucester, MA	Safety Zone	5 SEPT 89
COTP Providence, RI, Reg. 89-063	Horseneck Beach, Westport, MA	Safety Zone	3 JUL 89
COTP Providence, RI, Reg. 89-068	New Bedford Harbor, MA	Safety Zone	4 JUL 89
COTP Providence, RI, Reg. 89-082	East Passage, Narragansett Bay, RI	Safety Zone	12 AUG 89
COTP Providence, RI, Reg. 89-091	Great Salt Pond, Block Island, RI	Safety Zone	12 AUG 89
COTP Providence, RI, Reg. 89-094	East Passage, Narragansett Bay, RI	Safety Zone	26 AUG 89
COTP Providence, RI, Reg. 89-096	Menemsha Bight, Martha's Vineyard, MA	Safety Zone	26 AUG 89
COTP Providence, RI, Reg. 89-097	Taunton River, Fall River, MA	Safety Zone	26 AUG 89
2-89-04	USDBA/FLORENCE, Florence, AL	Special Local Regulations	19 AUG 89
2-89-08	Upper Mississippi River, Mile 663.0 to Mile 664.0	Special Local Regulations	19 AUG 89
2-89-16	Ohio River, Mile 603.2 to Mile 604.3	Special Local Regulations	26 AUG 89
2-89-11	Ohio River, Mile 449.0 to Mile 450.8	Special Local Regulations	27 AUG 89
2-89-14	Upper Mississippi River, Mile 456.2 to Mile 454.5	Special Local Regulations	1 SEP 89
2-89-10	Ohio River, Mile 170.8 to Mile 171.9	Special Local Regulations	9 SEP 89
2-89-12	Ohio River, Mile 603.0 to Mile 604.0	Special Local Regulations	9 SEP 89
2-89-06	Ohio River, Mile 483.0 to Mile 484.0	Special Local Regulations	10 SEP 89
2-89-09	Ohio River, Mile 505.5 to Mile 506.5	Special Local Regulations	16 SEP 89
2-89-15	Ohio River, Mile 127.0 to Mile 129.0	Special Local Regulations	23 SEPT 89
COTP Huntington, WV, Reg. 89-04	Ohio River, Mile 308.0 to Mile 309.5	Safety Zone	4 JUL 89
COTP Huntington, WV, Reg. 89-05	Ohio River, Mile 322.0 to Mile 323.0	Safety Zone	4 JUL 89
COTP Huntington, WV, Reg. 89-06	Kanawha River, Mile 57.5 to Mile 59.0	Safety Zone	4 JUL 89
COTP Huntington, WV, Reg. 89-07	Ohio River, Mile 183.0 to Mile 186.0	Safety Zone	22 JUL 89
COTP Huntington, WV, Reg. 89-08	Ohio River, Mile 184.0 to Mile 185.0	Safety Zone	19 AUG 89
COTP Huntington, WV, Reg. 89-09	Ohio River, Mile 355.5 to Mile 356.5	Safety Zone	3 SEP 89
COTP Louisville, KY, Reg. 89-09	Ohio River, Mile 557.3 to Mile 557.9	Safety Zone	1 JUL 89
COTP Louisville, KY, Reg. 89-13	Ohio River, Mile 603.2 to Mile 604.3	Safety Zone	1 JUL 89
COTP Louisville, KY, Reg. 89-10	Ohio River, Mile 739.0 to Mile 739.8	Safety Zone	3 JUL 89
COTP Louisville, KY, Reg. 89-11	Ohio River, Mile 603.7 to Mile 604.3	Safety Zone	4 JUL 89
COTP Louisville, KY, Reg. 89-12	Ohio River, Mile 608.1 to Mile 608.7	Safety Zone	4 JUL 89
COTP Louisville, KY, Reg. 89-15	Ohio River, Mile 792.2 to Mile 792.8	Safety Zone	4 JUL 89
COTP Louisville, KY, Reg. 89-16	Ohio River, Mile 608.1 to Mile 608.7	Safety Zone	8 JUL 89
COTP Louisville, KY, Reg. 89-18	Ohio River, Mile 603.7 to Mile 604.3	Safety Zone	4 SEP 89
COTP Louisville, KY, Reg. 89-17	Ohio River, Mile 603.2 to Mile 604.3	Safety Zone	9 SEP 89
COTP Memphis, TN, Reg. 89-02	Mississippi River, Mile 734.8 to Mile 736.7, & Wolf River Chute, Mile 0.0 to Mile 1.0	Safety Zone	4 JUL 89
COTP Memphis, TN, Reg. 89-03	Lower Mississippi River, Mile 594.5 to Mile 595.5	Safety Zone	9 AUG 89



Docket Number	Location	Type	Date
COTP Memphis, TN, Reg. 89-04	Lower Mississippi River, Mile 732.0 to Mile 734.0	Safety Zone	17 AUG 89
COTP Memphis, TN, Reg. 89-05	Lower Mississippi River, Mile 594.5 to Mile 595.5	Safety Zone	21 AUG 89
COTP Paducah, KY, Reg. 89-01	Tennessee River, Mile 255.0 to Mile 256.5	Safety Zone	4 JUL 89
COTP Pittsburgh PA, Reg. 89-07	Ohio River, Mile 104.0 to Mile 106.0	Safety Zone	20 AUG 89
COTP St. Louis, MO, Reg. 89-07	Missouri River at Mile 8.7	Safety Zone	1 MAY 89
COTP St. Louis, MO, Reg. 89-14	Upper Mississippi River, Mile 168.5 to Mile 170.3	Safety Zone	5 MAY 89
COTP St. Louis, MO, Reg. 89-10	Missouri River at Mile 268.0	Safety Zone	12 MAY 89
COTP St. Louis, MO, Reg. 89-08	Missouri River at Mile 160.0	Safety Zone	17 MAY 89
COTP St. Louis, MO, Reg. 89-09	Missouri River, Mile 131.0 to Mile 132.0	Safety Zone	22 MAY 89
COTP St. Louis, MO, Reg. 89-16	Upper Mississippi River, Mile 840.5 to Mile 840.0	Safety Zone	28 MAY 89
COTP St. Louis, MO, Reg. 89-17	Upper Mississippi River, Mile 486.0 to Mile 488.0	Safety Zone	1 JUL 89
COTP St. Louis, MO, Reg. 89-18	Upper Mississippi River, Mile 203.0 to Mile 203.4	Safety Zone	3 JUL 89
COTP St. Louis, MO, Reg. 89-19	Upper Mississippi River, Mile 581.5 to Mile 583.0	Safety Zone	3 JUL 89
COTP St. Louis, MO, Reg. 89-20	Upper Mississippi River, Mile 162.3 to Mile 162.7	Safety Zone	4 JUL 89
COTP St. Louis, MO, Reg. 89-21	Upper Mississippi River, Mile 363.8 to Mile 364.2	Safety Zone	4 JUL 89
COTP St. Louis, MO, Reg. 89-12	Upper Mississippi River, Mile 167.5 to Mile 168.5	Safety Zone	10 JUL 89
COTP St. Louis, MO, Reg. 89-15	Upper Mississippi River, Mile 164.0 to Mile 0.0	Safety Zone	12 JUL 89
COTP St. Louis, MO, Reg. 89-13	Upper Mississippi River, Mile 157.0 to Mile 159.0	Safety Zone	20 JUL 89
COTP St. Louis, MO, Reg. 89-22	Upper Mississippi River, Mile 492.0 to Mile 492.4	Safety Zone	12 AUG 89
COTP St. Louis, MO, Reg. 89-24	Upper Mississippi River, Mile 497.1 to Mile 498.1	Safety Zone	12 AUG 89
COTP St. Louis, MO, Reg. 89-25	Upper Mississippi River, Mile 110.0 to Mile 108.0	Safety Zone	14 AUG 89
COTP St. Louis, MO, Reg. 89-29	Upper Mississippi River, Mile 184.0 to Mile 0.0	Safety Zone	16 AUG 89
COTP St. Louis, MO, Reg. 89-26	Upper Mississippi River, Mile 168.5 to Mile 170.3	Safety Zone	24 AUG 89
COTP St. Louis, MO, Reg. 89-23	Upper Mississippi River, Mile 362.8 to Mile 363.8	Safety Zone	25 AUG 89
5-89-54	Fort Mifflin, Delaware River, Philadelphia, PA	Special Local Regulations	2 JUL 89
5-89-60	Pagan River, Isle of Wight County, VA	Special Local Regulations	2 JUL 89
5-89-31	Delaware River, Marcus Hook, PA	Special Local Regulations	3 JUL 89
5-89-63	Patuxent River, Johnstown, VA	Special Local Regulations	3 JUL 89
5-89-30	Approaches to Annapolis Harbor, Spa Creek, & Severn River, Annapolis, MD	Special Local Regulations	4 JUL 89
5-89-59	James River, Newport News, VA	Special Local Regulations	4 JUL 89
5-89-64	York River, Yorktown, VA	Special Local Regulations	4 JUL 89
5-89-65	Town Point Park, Elizabeth River, Norfolk, VA	Special Local Regulations	4 JUL 89
5-89-66	Patapsco River, Inner Harbor, Baltimore, MD	Special Local Regulations	4 JUL 89
5-89-71	Lafayette River, Norfolk, VA	Special Local Regulations	4 JUL 89
5-89-69	Atlantic Ocean, Virginia Beach, VA	Special Local Regulations	5 JUL 89
5-89-68	Western Branch, Elizabeth River, Portsmouth, VA	Special Local Regulations	15 JUL 89
5-89-70	Ship Channel & Great Egg Waterway, Ocean City, NJ	Special Local Regulations	15 JUL 89
5-89-46	Patapsco River, Fort McHenry, Baltimore, MD	Special Local Regulations	17 JUL 89
5-89-77	Approaches to Cape Fear River, Bald Head Island, NC	Special Local Regulations	5 AUG 89
5-89-84	Norfolk Harbor, Elizabeth River, Norfolk & Portsmouth, VA	Special Local Regulations	19 AUG 89
5-89-83	Neale Sound Cobb Island, MD	Special Local Regulations	19 AUG 89
5-89-85	Isle of Wight Bay, Ocean City, MD	Special Local Regulations	1 SEP 89
5-89-87	Fort McHenry, Baltimore, MD	Special Local Regulations	15 SEP 89
5-89-28	Chesapeake Bay, Sandy Point, MD	Special Local Regulations	16 SEP 89
5-89-80	Parker Island, Little Egg Harbor, NJ	Special Local Regulations	16 SEP 89
5-89-86	Fort McHenry, Patapsco River, Baltimore, MD	Special Local Regulations	19 SEP 89
COTP Baltimore, MD Reg. 89-03	Severn River & Annapolis Harbor, Annapolis, MD	Security Zone	29 SEP 89
COTP Hampton Roads, VA Reg. 89-38	Norfolk Harbor, James River, Hampton Roads, VA	Safety Zone	4 JUL 89
COTP Hampton Roads, VA Reg. 89-39	James River, Newport News, VA	Security Zone	4 JUL 89
COTP Philadelphia, PA Reg. 89-06	Delaware River	Safety Zone	30 JUN 89
COTP Philadelphia, PA Reg. 89-07	Delaware River	Safety Zone	31 JUN 89
COTP Wilmington, NC Reg. 89-003	Cape Fear River, Wilmington, NC	Safety Zone	4 JUL 89
COTP Charleston, SC Reg. 89-42	Ben Sawyer Bridge, Intracoastal Waterway, SC	Safety Zone	30 SEP 89
COTP Jacksonville, FL Reg. 89-32	Salt Run, St. Augustine, FL	Safety Zone	6 AUG 89
COTP Jacksonville, FL Reg. 89-33	St. Johns River, Jacksonville, FL	Safety Zone	23 SEP 89
COTP Jacksonville, FL Reg. 89-38	St. Mary's River Entrance & Cumberland Sound, GA	Security Zone	23 SEP 89
COTP Miami, FL, Reg. 89-34	Port Everglades, FL	Safety Zone	21 AUG 89
COTP Savannah, GA, Reg. 89-022	Savannah, GA	Safety Zone	3 JUL 89
COTP Savannah, GA, Reg. 89-018	Skull Creek, Hilton Head, SC	Safety Zone	4 JUL 89
COTP Tampa, FL, Reg. 89-026	Sarasota Bay & Gulf of Mexico, Sarasota, FL	Safety Zone	30 JUN 89
COTP Tampa, FL, Reg. 89-028	Headwaters of Crystal River, FL, Kings Bay, Crystal Bay	Safety Zone	30 JUN 89
COTP Tampa, FL, Reg. 89-031	Sarasota Bay, Sarasota, FL	Safety Zone	30 JUN 89
COTP Tampa, FL, Reg. 89-030	Hillsborough River, Tampa, FL	Safety Zone	29 JUL 89
COTP Tampa, FL, Reg. 89-37	Sarasota Gulf of Mexico, St. Petersburg, FL	Safety Zone	23 SEP 89
8-89-07	Clear Lake, Galveston Bay, TX	Special Local Regulations	19 MAY 89
8-89-08	Neches River, Beaumont, TX	Special Local Regulations	21 MAY 89
8-89-13	Neches River, Beaumont, TX	Special Local Regulations	16 SEP 89
COTP Corpus Christi, TX, Reg. 89-02	Brownsville Ship Channel, TX	Safety Zone	16 JUN 89
COTP Corpus Christi, TX, Reg. 89-03	Gulf Intracoastal Waterway & Corpus Christi Ship Channel	Safety Zone	21 JUN 89
COTP Galveston, TX, Reg. 89-01	Galveston Bay/Galveston Channel	Safety Zone	29 JAN 89
COTP Houston, TX, Reg. 88-09	Houston Ship Channel, from City Dock 1 to Light #89	Safety Zone	15 DEC 89
COTP Houston, TX, Reg. 89-01	Houston Ship Channel, Cargill to dayboard 142	Safety Zone	10 MAR 89
COTP Houston, TX, Reg. 89-02	Houston Ship Channel, from the Lynchburg Ferry to buoy 123	Safety Zone	19 MAY 89
COTP Mobile, AL, Reg. 89-03	Mobile Ship Channel, 50 yard radius around USS WISCONSIN	Safety Zone	2 FEB 89
COTP Mobile, AL, Reg. 89-05	Pensacola Bay, Pensacola, FL	Safety Zone	28 APR 89
COTP Mobile, AL, Reg. 89-06	Pensacola Bay, Pensacola, FL, 250 yard radius around USS LEXINGTON	Safety Zone	28 APR 89
COTP Mobile, AL, Reg. 89-07	Tombigbee River, Nanafalia, FL	Safety Zone	9 JUN 89
COTP New Orleans, LA, Reg. 88-07	Port Allen Alternate Between Mile 45 and Mile 46.5	Safety Zone	9 NOV 88



Docket Number	Location	Type	Date
COTP New Orleans, LA, Reg. 89-01	USS IOWA transiting Mississippi River, Southwest Pass to Julia Street Wharf Mile 95.3	Safety Zone	6 FEB 89
9-89-11	Lake Michigan, Sheboygan, WI	Special Local Regulations	4 JUL 89
9-89-12	Milwaukee Harbor, Milwaukee, WI	Special Local Regulations	4 JUL 89
9-89-09	Grand River, Grand Haven, MI	Special Local Regulations	4 JUL 89
9-89-20	Saginaw River	Special Local Regulations	14 JUL 89
9-89-22	St. Joseph River, St. Joseph, MI	Special Local Regulations	15 JUL 89
9-89-23	Grand River, Grand Haven, MI	Special Local Regulations	22 JUL 89
9-89-24	Presque Isle Bay, Lake Erie, Erie, PA	Special Local Regulations	19 AUG 89
9-89-25	Cuyahoga River, Cleveland, OH	Special Local Regulations	19 AUG 89
9-89-27	Buffalo Outer Harbor, Buffalo, NY	Special Local Regulations	10 SEP 89
COTP Buffalo, NY, Reg. 89-002	Buffalo Harbor, Buffalo, NY	Safety Zone	1 JUL 89
COTP Buffalo, NY, Reg. 89-003	Sodus Bay, NY	Safety Zone	3 JUL 89
COTP Cleveland, OH, Reg. 89-02	East Basin of Cleveland Inner Harbor, Lake Erie	Safety Zone	9 SEP 89
COTP Duluth, MN, Reg. 89-02	Lake Superior, Duluth, Minnesota Point	Safety Zone	21 JUL 89
COTP Pittsburgh, PA, Reg. 89-06	Ohio River, Mile 0.0 to Mile 0.8	Safety Zone	4 JUL 89
COTP LA/LB, CA, Reg. 89-05	Ports of Los Angeles/Long Beach, CA	Safety Zone	4 JUL 89
COTP LA/LB, CA, Reg. 89-07	Ports of Los Angeles/Long Beach, CA	Safety Zone	4 JUL 89
COTP LA/LB, CA, Reg. 89-08	Ports of Los Angeles/Long Beach, CA	Safety Zone	4 JUL 89
COTP LA/LB, CA, Reg. 89-11	Ports of Los Angeles/Long Beach, CA	Safety Zone	17 SEP 89
COTP San Diego, CA, Reg. 89-07	Pt. Loma, CA, Pacific Ocean	Safety Zone	3 AUG 89
13-89-12	Elliott Bay, Seattle, WA	Special Local Regulations	4 JUL 89
13-89-13	Lake Union, Seattle, WA	Special Local Regulations	4 JUL 89
13-89-14	Bellingham Bay, Bellingham, WA	Special Local Regulations	4 JUL 89
13-89-15	Commencement Bay, Tacoma, WA	Special Local Regulations	4 JUL 89
COTP Portland, OR, Reg. 89-01	Columbia River Entrance Lighted Whistle Buoy 2 & Pier 1, Astoria, OR	Security Zone	8 JUL 89
COTP Puget Sound, WA, Reg. 89-02	Buoy "SG" near West Point in Puget Sound to Seattle, WA	Safety Zone	1 AUG 89
COTP Puget Sound, WA Reg. 89-03	Seattle, WA	Safety Zone	2 AUG 89
COTP Puget Sound, WA Reg. 89-04	Seattle, WA	Safety Zone	7 AUG 89
COTP Southeast AK, Reg. 89-01	Gastineau Channel, Juneau, AK	Safety Zone	3 JUL 89
COTP Southeast AK, Reg. 89-02	Crescent Bay, Sitka, AK	Safety Zone	4 JUL 89
COTP Southeast AK, Reg. 89-03	Tongass Narrows, Ketchikan, AK	Safety Zone	4 JUL 89
COTP Southeast AK, Reg. 89-04	Ketchikan Harbor, Ketchikan, AK	Safety Zone	12 AUG 89
COTP Western AK, Reg. 89-03	Cook Inlet/Nikiski, AK	Safety Zone	20 JUL 89
COTP Western AK, Reg. 89-05	Cold Bay, Alaska Peninsula, AK	Security Zone	27 SEP 89
COTP Western AK, Reg. 89-06	Cold Bay, Alaska Peninsula, AK	Security Zone	27 SEP 89

Dated: November 1, 1989

Bruce P. Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 89-26247 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 217

## Requesting Review of National Forest Plans and Project Decisions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule amends the administrative appeal procedures at 36 CFR part 217 to provide special procedures for appealing timber sale decisions on 13 National Forests in Oregon and Washington. The rule adds a new section that provides for only one level of appeal with no discretionary review, and if a stay is granted, 45 days for the Regional Forester to issue a decision. Additionally, if a stay is granted, 15 days for intervention shall be allowed from the date a stay is granted. If a court challenge occurs before an appeal decision is issued, the appeal record will be closed and the

appeal dismissed without a decision on the merits. These special procedures will apply only to timber sale decisions made after October 23, 1989 and prior to September 30, 1990, and awarded prior to September 30, 1990, on 13 national forests in Oregon and Washington. The intended effect is to conform the present appeal procedures with the provisions of section 318 of the 1990 Appropriations Act for the Department of the Interior and Related Agencies (Pub. L. 101-121).

**EFFECTIVE DATE:** This rule is effective November 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Hauser, Office of the Deputy Chief, National Forest System, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202)382-9346.

**SUPPLEMENTARY INFORMATION:** On October 23, 1989, the President signed the Fiscal Year 1990 Appropriations Act for the Department of the Interior and Related Agencies (Pub. L. 101-121), which appropriates funds for most Forest Service programs. Section 318 of the Act establishes timber sale levels for national forests in Oregon and Washington and establishes special procedures applicable to the offering of timber for sale on 13 national forests primarily on the westside of the Cascade Range between October 24,

1989 and September 30, 1990. Section 318 also establishes special procedures for administrative appeals of decisions to offer timber on these forests.

Specifically, only one level of appeal shall be available for any timber sales affected by the legislation; if a stay is granted, the appeal decision must be issued within 45 days by the Regional Forester; and administrative remedies need not be exhausted prior to challenging a decision in court.

These special procedures conflict with the agency's rules governing appeal and review of decisions of National Forest System plans and projects set forth at 36 CFR part 217. As a result, the agency must amend those rules to account for the provisions of section 318 of the Act. Accordingly, the agency is establishing a new section at § 217.20 to clarify which decisions are subject to the provisions of section 318 and how appeals of these decisions shall be handled.

Paragraph (a) states that the procedures of § 217.20 apply to decisions to offer timber for sale made between October 24, 1989, and September 30, 1990.

Paragraph (b) lists the 13 national forests in Oregon and Washington that are covered by the special appeal procedures.



Paragraph (c) sets forth the special procedures that apply to appeals of timber sale decisions under this section. As provided by the Act, only one level of administrative appeal is allowed, and if a stay is granted, the Regional Forester has 45 days to issue a decision. Consistent with the Congress' aim of streamlining and expediting appeals of these decisions, paragraph (c)(2) provides that there shall be no discretionary review of appeal decisions rendered. Because the law establishes a different time frame for rendering an appeal decision when a stay is granted, it is necessary to establish special procedures for intervention in such cases. This rule allows 15 days for intervention from the date a stay is granted; otherwise, the normal time frames apply. Given that the Reviewing Officer has only 45 days to review the record and render a decision, 15 days is the maximum time that can be allowed for intervention without jeopardizing the 45-day decision deadline and is a reasonable period for intervenors to prepare and present their comments on the issues raised in the notice of appeal.

Finally, section 318 of the Act anticipates that lawsuits challenging these decisions may be filed in Federal court prior to rendering of an appeal decision by the Forest Service. The Act specifically provides that administrative remedies need not be exhausted prior to challenging a sale decision in court. Because § 217.18 states that the Department of Agriculture will normally argue that a legal challenge is premature prior to exhaustion of administrative remedies, it is necessary to make clear that, in cases involving decisions affected by section 318, the Department will not invoke this argument in any legal challenges of decisions covered by this rule.

Paragraph (d) provides that all other procedures of part 217 apply to appeals subject to the special procedures of this section.

Finally, the rule makes clear that the special procedures of the new section apply to decisions made after October 23, 1989, the date the act was signed, and September 30, 1990. Appeals of similar decisions filed between October 1 and October 24, 1989, will continue under the normal procedures of part 217.

#### Need for Final Rule

Because the Appropriations Act is immediately effective upon signing and the provisions of section 318 of the Act conflict with the agency's appeal rules at 36 CFR part 217, it is imperative that the Department reconcile its rules to meet the requirements of the law immediately. Failure to do so would give

rise to confusion among appellants and Forest Service employees and lead to inconsistent processing of appeals. Notice and public comment prior to implementation would be impracticable and contrary to the intent of Public Law 101-121. Moreover, this rule is of limited duration and scope since it applies to decisions on only 13 national forests. Therefore, there is good cause to issue this rule as a final rule effective upon publication.

#### Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of \$100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Environmental Impact

Based on both experience and environmental analysis, this final rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

#### Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and therefore imposes no paperwork burden on the public.

#### List of Subjects in 36 CFR Part 217

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth in the preamble, chapter II of title 36 of the Code of Federal Regulations is hereby amended as follows:

#### PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

1. The authority citation for part 217 continues to read:

Authority: 16 U.S.C. 551, 472.

2. Add a new § 217.20 to read as follows:

#### § 217.20 Special procedures applicable to appeals of certain timber sales in Oregon and Washington.

(a) Pursuant to section 318 of Public Law 101-121, decisions made in Fiscal Year 1990 to offer timber for sale on the 13 national forests in Oregon and Washington listed in paragraph (b) of this section and documented in a Decision Memo, Decision Notice, or Record of Decision shall be subject to appeal under the special procedures of this section.

(b) Decisions subject to appeal under this section are limited to decisions made to offer timber for sale between October 24, 1989, and September 30, 1990, and awarded prior to September 30, 1990, on the Deschutes, Mt. Hood, Rogue River, Siskiyou, Siuslaw, Umpqua, Willamette, Winema, Gifford Pinchot, Mt. Baker-Snoqualmie, Okanogan, Olympic, and Wenatchee National Forests.

(c) Notwithstanding other provisions of this part, the following procedures shall apply to appeals of decisions covered by this section:

(1) Only one level of appeal shall be available.

(2) An appeal decision rendered pursuant to this section shall not be subject to discretionary review (§ 217.17).

(3) If a stay is granted on any decision covered by this section, the appeal decision shall be issued by the Regional Forester 45 days from the date the stay is granted.

(4) If a stay is granted, anyone wishing to intervene shall have 15 days following the granting of a stay to file a notice of intervention and comments; otherwise, the timeframe for intervention set forth in § 217.14 of this part shall apply.

(5) In the event of a filing for Federal judicial review of a decision subject to this section prior to issuance of an appeal decision, the Department shall not invoke the policy set forth in § 217.18 of this part.

(6) If, during the pendency of an appeal, the same decision is challenged in Court, the Reviewing Officer shall close and dismiss the appeal without a decision on the merits and notify the parties to the appeal.



(d) Except as otherwise provided by, and to the extent not inconsistent with, this section, all other provisions of this part shall apply to any appeal covered by this section.

(e) The appeal procedures of this section apply to timber sale decisions made after October 23, 1989 and prior to October 1, 1990, for timber sales to be awarded prior to October 1, 1990.

Dated: November 2, 1989.

Clayton Yentler,  
Secretary.

[FR Doc. 89-26307 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-11-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-1-FRL-3678-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Non-CTG RACT Determination for Spalding Sports Worldwide Corporation in Chicopee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from certain processes at Spalding Corporation in Chicopee. The intended effect of this action is to approve a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 Ozone Attainment Plan. This action is being taken in accordance with section 110 of the Clean Air Act. **EFFECTIVE DATE:** This rule will become effective on December 8, 1989.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., room 2313, Boston, MA 02203; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Judge (617) 565-3248; FTS 835-3248.

**SUPPLEMENTARY INFORMATION:** On February 10, 1989 (54 FR 6430), EPA

published a notice of proposed rulemaking (NPR) for the Commonwealth of Massachusetts. Using parallel processing rulemaking procedures, EPA proposed approval of a conditional Plan Approval issued by the Massachusetts Department of Environmental Protection (DEP) which imposes VOC control methods as RACT for Spalding Sports Worldwide Corporation (Spalding) located in Chicopee, Massachusetts. This final rulemaking action approves the formal SIP revision submitted by the DEP on July 18, 1989.

This notice is divided into three parts:

- I. Background information
- II. Summary of SIP Revision Including the Changes Made To Secure Final EPA Approval
- III. Final Action

#### I. Background Information

On November 9, 1983 (48 FR 51488) EPA approved Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," as part of the Commonwealth of Massachusetts 1982 ozone attainment plan. This regulation requires the Massachusetts DEP to determine and impose RACT on all facilities with the potential to emit one hundred tons per year (TPY) or more of VOC that are not already subject to Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents.

On February 4, 1988 the Massachusetts DEP submitted a SIP revision for parallel processing. This SIP revision was composed of a Plan Approval for Spalding which defined VOC control requirements as RACT. On February 10, 1989, EPA proposed approval of the Plan Approval with the understanding that the DEP would amend it as outlined in the NPR prior to final rulemaking. On July 18, 1989, the DEP formally submitted an amended Plan Approval dated July 12, 1989, which amends the original Plan Approval and incorporates all the provisions required by EPA's NPR.

#### II. Summary of SIP Revision Including the Changes Made To Secure Final EPA Approval

Spalding is a non-CTG source. The SIP revision for this source includes a Plan Approval dated October 7, 1985 and an Amendment to that Plan Approval dated July 12, 1989 requiring RACT on four processes at Spalding that are not covered by a CTG. The DEP has calculated that VOC emissions at Spalding were reduced from 541.2 TPY to 126.3 TPY (a 76.7% reduction) during

the time period which RACT was imposed. The emission reductions achieved from each process are discussed in the Technical Support Document prepared for this action.

RACT is being imposed for four processes, including the manufacture and coating of golf balls, and inflated balls as well as for miscellaneous cleaning operations. The details of each RACT requirement were outlined in the NPR and will not be restated here. EPA's NPR required that five issues be addressed in the Plan Approval prior to final rulemaking. How the DEP's July 12, 1989 Plan Approval satisfies the issues of the NPR is summarized below.

(1) The July 12, 1989 amended Plan Approval requires explicit emission limits in pounds of VOC per gallon of coating (minus water and photochemically nonreactive solvents) for each coating/painting manufacturing process. The July 12, 1989 amended Plan Approval states that EPA-approved Reference Method 24 shall be used to determine compliance.

(2) The calculation method to determine compliance is attached to the July 12, 1989 amended Plan Approval as the RACT equivalency worksheet. This worksheet facilitates calculation of the actual pounds of VOC per gallon of coating (minus water) for comparison with the RACT limit.

(3) The July 12, 1989 amended Plan Approval requires that four metal parts cleaning units be installed and operated in accordance with the manufacturer's specifications. These new cleaning units will emit fewer VOC's when properly operated.

(4) The DEP has made four minor changes to the Plan Approval, as requested in the NPR.

(5) The July 12, 1989 amended Plan Approval includes the recordkeeping sheets that Spalding must maintain on a daily basis.

No public comments were received on the NPR. Other specific requirements of the RACT determination and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. Since the DEP has addressed each of the issues raised in the NPR, EPA is approving the Plan Approvals as an amendment to the Massachusetts SIP.

#### III. Final Action

EPA is approving the Massachusetts Plan Approval dated and effective October 7, 1985 and the amended Plan Approval dated and effective July 12,



1989 which impose RACT on Spalding's four non-CTG processes.

#### Final Action

EPA is approving the DEP's Plan Approval dated and effective on October 7, 1985 and the amended Plan Approval dated and effective July 12, 1989 for the four non-CTG processes at Spalding Sports Worldwide Corporation in Chicopee as a revision to the Massachusetts SIP.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 12, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

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

#### PART 52—[AMENDED]

##### Subpart W—Massachusetts

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

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

2. Section 52.1120 is amended by adding paragraph (c)(80) to read as follows:

#### § 52.1120 Identification of plan.

\* \* \*

(c) \* \* \*  
(80) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on July 13, 1989.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated July 18, 1989 submitting a revision to the Massachusetts State Implementation Plan.

(B) Amendments to the Conditional Plan Approval dated and effective July 12, 1989 and the Conditional Plan Approval dated and effective October 7, 1985 imposing reasonably available control technology on Spalding Sports Worldwide in Chicopee, Massachusetts.

3. In § 52.1167, Table 52.1167 is amended by adding an additional entry to 310 CMR 7.18(17) to read as follows:

#### § 52.1167 EPA-Approved Massachusetts State regulations.

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.18(17).....	Reasonably Available Control Technology (RACT).	July 12, 1989.	Nov. 8, 1989.	[FR citation from published date].	(80)	RACT for Spalding Corporation Plan Approval dated October 7, 1985 and amended Plan Approval dated July 12, 1989.

[FR Doc. 89-26210 Filed 11-7-89; 8:45 am]

BILLING CODE 6560-50-M



## 40 CFR Part 52

[A-1-FRL-3678]

**Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; RACT for Duro Textile Printers in Fall River****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from fabric printing operations at Duro Textile Printers (Duro) in Fall River, Massachusetts. The intended effect of this action is to approve a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken in accordance with section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on December 8, 1989.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, room 2313, Boston, MA 02203; and the Division of Air Quality Control, Department of Environmental Protection, One White Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Judge (617) 565-3248; FTS 835-3248.

**SUPPLEMENTARY INFORMATION:** On August 16, 1988 (53 FR 30850), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Massachusetts. Using parallel processing rulemaking procedures, EPA proposed approval of a conditional Plan Approval issued by the Massachusetts Department of Environmental Protection (DEP) which imposed VOC control methods as RACT for Duro Textile Printers (Duro) located in Fall River, Massachusetts. This final rulemaking action approves the formal SIP revision submittal by the DEP on August 8, 1989. This notice is divided into three parts:

**I. Background Information**  
**II. Summary of SIP Revision Including the Changes Made to Secure Final EPA Approval**  
**III. Final Action**

**I. Background Information**

On November 9, 1983 (48 FR 51480), EPA approved Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," as part of the Commonwealth of Massachusetts 1982 ozone attainment plan. This regulation requires the Massachusetts DEP to determine and impose RACT on all facilities with the potential to emit one hundred tons per year (TPY) or more of VOC that are not already subject to Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents.

On June 29, 1987, the Massachusetts DEP submitted a SIP revision for parallel processing. This SIP revision was composed of a Plan Approval dated June 30, 1987 for Duro which defined VOC control requirements as RACT. On August 16, 1988, EPA proposed approval of the Plan Approval with the understanding that the DEP would amend it as outlined in the NPR prior to final rulemaking. On August 8, 1989, the DEP formally submitted Amended Plan Approvals dated August 1, 1989 and August 8, 1989, respectively which supercede the June 30, 1987 Plan Approval and incorporate all the provisions required by EPA's NPR.

**II. Summary of SIP Revision Including the Changes Made to Secure Final EPA Approval**

Duro's emissions have been reduced from 148.5 tons per year of VOC in 1980 to 39 tons per year, resulting in a 74 percent reduction based on typical production. Duro achieved its emission reductions through process changes and reformulation of its inks. The DEP's Amended Plan Approvals enforceably require these changes and the use of the reformulated inks. The amended Plan Approvals also require that Duro only use rotary screen printers. In the June 30, 1987 Plan Approval, the DEP had imposed a daily emissions cap on Duro such that VOC emissions would not exceed 0.156 tons per day (312 pounds per day). In the NPR, EPA stated that the DEP RACT Plan Approval must also impose an emission limit on each of Duro's inks to be met at all times.

The DEP's Amended Plan Approvals satisfy the NPR's requirement for fabric printing because those Amended Plan Approvals limit each of Duro's ink to 0.5 pounds of VOC per pound of solids.

As discussed in the NPR, fabric printing is similar to graphic arts. On September 9, 1987, a memorandum from Darryl D. Tyler, Director of the Control Programs Development Division of EPA's Office of Air Quality Planning and Standards, suggested that an emission limit of 0.5 pounds of VOC per pound of solids would be equivalent to RACT for flexographic and packaging rotogravure printing industries. While this emission limit was not intended to be imposed on rotary screen fabric printing operations, Duro's production on rotary screens must replicate the quality of product achieved on roller printers no longer in use. Duro's inks have been substantially reformulated to meet this emission limit. Further, the emission reductions achieved by Duro, through process changes and reformulation is consistent with the reductions anticipated for either add-on controls or through reformulation at facilities required to meet the emission limits suggested by EPA's Graphic Arts CTG. For all of the above reasons, the DEP has imposed an emission limit of 0.5 pounds of VOC per pound of solids and an emissions cap (312 pounds per day) which, together, ensure that a 74 percent reduction in emissions is achieved each day at Duro.

**III. Final Action**

For all of the above reasons, EPA is approving the Amended Plan Approvals dated and effective August 1, 1989 (SM-85-168-IF) and August 8, 1989 (SM-85-168-IF Revision) as a revision to the Massachusetts SIP.

**Final Action**

EPA is approving Massachusetts' Amended Plan Approvals dated and effective August 1, 1989 (SM-85-168-IF) and August 8, 1989 (SM-85-168-IF Revision) as a revision to the Massachusetts SIP. The Amended Plan Approvals impose RACT consisting of an emission limit of 0.5 pound of VOC per pound of solids for each and every ink, and a daily emissions cap of 312 pounds of VOC for Duro Textile Printers in Fall River, Massachusetts.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future



request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of

Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 12, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

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

#### PART 52—[AMENDED]

##### Subpart W—Massachusetts

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

Authority: 42 U.S.C. 7401-7412.

2. Section 52.1120 is amended by adding paragraph (c)(82) to read as follows:

§ 52.1120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(82) Revision to the State Implementation Plan submitted by the

Massachusetts Department of Environmental Protection August 8, 1989.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated August 8, 1989 submitting a revision to the Massachusetts State Implementation Plan.

(B) Amended Conditional Plan Approval (SM-85-163-IF) dated and effective August 1, 1989 and an Amendment to the Amended Conditional Plan Approval (SM-85-166-IF Revision) dated and effective August 8, 1989 imposing reasonably available control technology on Duro Textile Printers, Incorporated in Fall River, Massachusetts.

3. In § 52.1167, table 52.1167 is amended by adding an additional entry to 310 CMR 7.18(17) to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

\* \* \* \* \*

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.18(17).....	Reasonably Available Control Technology (RACT).	August 8, 1989.	November 8, 1989.	[FR citation from published date].	(82)	FACT for Duro Textile Printers (SM-85-168-IF).

[FR Doc. 89-26209 Filed 11-7-89; 8:45 am]  
BILLING CODE 6560-50-M

#### 40 CFR Part 763

[OPTS-62036H; FRL-3658-6]

Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document makes corrections to the Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions final rule which appeared in the Federal Register of July 12, 1989. The Office of Management and Budget (OMB) recently approved the reporting

and recordkeeping requirements of the final rule. As a result, an OMB number is being added to § 763.178.

DATE: This technical amendment is effective November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404), TDD: (202-554-0551).

SUPPLEMENTARY INFORMATION: On July 12, 1989 (54 FR 29460), EPA issued a final rule titled "Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce." EPA discovered minor mistakes in the final rule. Accordingly, EPA is issuing this document to correct minor errors in that document. This document also adds an OMB control number to § 763.178.

In unit XI of the preamble, on page 29503, column 2, reference no. 28, first line, the following correction is made to read as follows: "USDOT, NHTS." is corrected to read "USDOT, NHTSA."

#### List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements.

Dated: October 29, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 763 is amended as follows:

#### PART 763—[AMENDED]

1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

§ 763.163 [Amended]

2. In § 763.163:

a. Under the definition of "Asbestos-cement (A/C) pipe and fittings" on page 29503, column 1, beginning of the first sentence, "Asbestos-cement (A/C) pipe and fittings" is changed to read "Asbestos-cement (A/C) pipe".

b. Under the definition of "New uses of asbestos" on page 29503, column 2, first full sentence, insert "packing."



before "reinforced plastic," and insert "specialty industrial gaskets," before "and textiles."

#### § 763.173 [Amended]

3. In § 763.173:  
 a. In paragraph (b)(3), on page 29511, column 2, the reference to "§ 763.167(b) or (c)" is changed to read "§ 763.167(b)".  
 b. In paragraph (b)(4), on page 29511, column 2, the reference to "§ 763.169(b) or (c)" is changed to read "§ 763.169(b)".  
 c. In paragraph (b)(5), on page 29511, column 2, the reference to "§ 763.167(d)" is changed to read "§ 763.167(c)".  
 d. In paragraph (b)(6), on page 29511, column 2, the reference to "§ 763.169(d)" is changed to read "§ 763.169(c)".

#### § 763.178 [Amended]

4. The following OMB number language is added at the end of § 763.178 to read as follows:

(Approved by the Office of Management and Budget under control number 2070-0082)  
 [FR Doc. 89-26340 Filed 11-7-89; 8:45 am]  
 BILLING CODE 5560-50-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 6751

[CA-940-00-4214-10; CACA-13910]

#### Partial Revocation of Secretarial Order, Dated October 19, 1920; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes a Secretarial order insofar as it affects 119.83 acres of public land withdrawn for Bureau of Reclamation's Yuma Project. The land is no longer needed for reclamation purposes. This action will open 119.83 acres to surface entry and mining. All of the land has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** December 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, BLM California State Office, Room E-2945, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated October 19, 1920, which withdrew public land for the Bureau of Reclamation's Yuma Project is hereby revoked insofar

as it affects the following described land:

**San Bernardino Meridan**

T. 6 S., R. 7 E.,  
 Sec. 8, lot 1 and N½SW¼.

The area described contains 119.83 acres in Riverside County.

2. At 10 a.m. on December 8, 1989, the land described in paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 8, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on December 8, 1989, the land described in paragraph 1 will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 31, 1989.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 89-26331 Filed 11-7-89; 8:45 am]  
 BILLING CODE 4310-40-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 89-40; RM-6571]

#### Radio Broadcasting Services; Vinton, IA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Harold A. Jahnke, allots Channel 296A to Vinton, Iowa, as the community's first local FM service. Channel 296A can be allotted to Vinton in compliance with the Commission's

minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) south to avoid a short-spacing to Station KROC-FM, Channel 295C, Rochester, Minnesota. The coordinates for this allotment are North Latitude 42-04-42 and West Longitude 92-01-18. With this action, this proceeding is terminated.

**DATES:** Effective December 18, 1989. The window period for filing applications will open on December 19, 1989, and close on January 18, 1990.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-40, adopted October 10, 1989, and released November 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding the following entry, Vinton, Iowa, Channel 296A.

Federal Communications Commission.

**Karl A. Kensinger,**

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

[FR Doc. 89-26216 Filed 11-7-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 88-573; RM-6495, RM-6684]

#### Radio Broadcasting Services; Hillman, Tawas City & Wurtsmith, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a petition filed by Tawas City Broadcasting, Inc., we shall substitute Channel 297A for Channel 269A at Tawas City, Michigan. We shall also modify the license of



Station WDBI(FM) to specify operation on Channel 297A in lieu of Channel 269A. Canadian concurrence has been obtained for this allotment. The coordinates for Channel 297A are 44-16-27 and 83-39-42. In response to a counterproposal filed by Mark A. Kilmer, we shall allot Channel 235C2 to Hillman, Michigan, as that community's first local service. To accommodate Channel 235C2 at Hillman, we shall delete Channel 235A at Wurtsmith, Michigan. Since no interest has been expressed for a channel at Wurtsmith, we shall not allot an alternate channel to that community. Canadian concurrence has been obtained for the allotment of Channel 235C2 at Hillman at coordinates 45-03-48 and 83-53-54.

**DATES:** Effective December 18, 1989. The window period for filing applications for Channel 235C2 at Hillman will open on December 19, 1989, and close on January 18, 1990.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 88-573, adopted October 10, 1989, and released November 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 Michigan, is amended by adding Hillman, Channel 235C2; removing Channel 269A and adding Channel 297A at Tawas City; and by removing Wurtsmith, Channel 235A.

Federal Communications Commission.  
Karl Kensinger,  
Chief, Allocations Branch, Policy and Rules  
Division, Mass Media Bureau.

[FR Doc. 89-26219 Filed 11-7-89; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 89-36; RM-6551 & 6771]

#### Radio Broadcasting Services; Savannah and Cameron, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 224C2 to Savannah, Missouri as that community's first local service in response to a petition filed by Columbia FM. The coordinates for Channel 224C2 are 39-57-35 and 94-54-14 which include a site restriction 6.4 kilometers west of the community.

The counterproposal filed by Radio Cameron, Inc. (RM-6771) to substitute Channel 225C2 for Channel 222A at Cameron, Missouri, has been denied. In reply comments, Radio Cameron filed a second counterproposal requesting the substitution of Channel 261C2 for Channel 222A at Cameron in order to allot channels to both communities. The counterproposal was not accepted in this proceeding but we have accepted the proposal as a new filing and a notice will be issued requesting comments on the nonadjacent upgrade. With this action, this proceeding is terminated.

**DATES:** Effective December 18, 1989; The window period for filing comments for Channel 224C2 at Savannah, Missouri, will open on December 19, 1989, and close on January 18, 1990.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-36, adopted October 10, 1989, and released November 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 Missouri is amended by adding Savannah, Channel 224C2.

Federal Communications Commission.

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

[FR Doc. 89-26218 Filed 11-7-89; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 89-33; RM-6542]

#### Radio Broadcasting Services; Petersburg, NJ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of General Electronics Development Corporation, allots Channel 274A to Petersburg, New Jersey, as the community's first local FM service. Channel 274A can be allotted to Petersburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) southeast to avoid a short-spacing to Station WMGK, Channel 275B, Philadelphia, Pennsylvania. The coordinates for this allotment are North Latitude 39-11-58 and West Longitude 74-40-34. With this action, this proceeding is terminated.

**DATES:** Effective December 18, 1989. The window period for filing applications will open on December 19, 1989, and close on January 18, 1990.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-33, adopted October 10, 1989, and released November 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding the



following entry, Petersburg, New Jersey, Channel 274A.

Federal Communications Commission.  
Karl A. Kensinger,  
Chief, Allocations Branch, Policy and Rules  
Division, Mass Media Bureau.  
[FR Doc. 89-26215 Filed 11-7-89; 8:45 am]  
BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 89-34; RM-6552]

#### Radio Broadcasting Services; Belen and Grants, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission, at the request of Brooks Broadcasting Company, Inc., substitutes Channel 249A for Channel 249C at Belen, New Mexico, modifies its license for Station KARS-FM to specify operation on the higher powered channel, substitutes Channel 265C2 for Channel 250C2 at Grants, New Mexico, and modifies the construction permit of Don R. Davis to specify the alternate Class C2 channel. Channel 249C can be allotted to Belen in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station KARS-FM. The coordinates for the Belen allotment are North Latitude 34-45-02 and West Longitude 106-39-55. Channel 265C2 can be allotted to Grants in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Davis' construction permit. The coordinates for the Grants allotment are North Latitude 35-07-09 and West Longitude 107-54-08. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** December 18, 1989.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-34, adopted October 10, 1989, and released November 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended for Belen, New Mexico, by adding Channel 249C and removing Channel 249A, and amending the entry for Grants, New Mexico, by adding Channel 265C2 and removing Channel 250C2.

Federal Communications Commission.  
Karl A. Kensinger,  
Chief, Allocations Branch, Policy and Rules  
Division, Mass Media Bureau.  
[FR Doc. 89-26221 Filed 11-7-89; 8:45 am]  
BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 89-20; RM-6574]

#### Radio Broadcasting Services; Jeffersonville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission, at the request of Edward F. Stanley, allots Channel 291A to Jeffersonville, New York, as the community's first local FM service. Channel 291A can be allotted to Jeffersonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41-46-51 and West Longitude 74-56-03. Canadian concurrence has been received since Jeffersonville is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

**DATES:** Effective December 18, 1989. The window period for filing applications will open on December 19, 1989, and close on January 18, 1990.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-20, adopted October 10, 1989, and released November 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor,

International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding the following entry, Jeffersonville, New York, Channel 291A.

Federal Communications Commission.  
Karl A. Kensinger,  
Chief, Allocations Branch, Policy and Rules  
Division, Mass Media Bureau.  
[FR Doc. 89-26217 Filed 11-7-89; 8:45 am]  
BILLING CODE 6712-01-M

#### 47 CFR Part 73

#### Correction of Part 73 of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This Order reinstates Notes 1, 2, 3, and 4 to Paragraph (m) of § 73.658 of the Commission's Rules. The notes were inadvertently removed from the text following adoption of the Report and Order in Gen. Docket No. 87-24 (53 FR 27167, July 19, 1988; FR Doc. 88-16187) and are needed to clarify the procedures set out in that Rule Section.

**EFFECTIVE DATE:** November 8, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rita McDonald, Policy and Rules Division, Mass Media Bureau (202) 254-3394.

#### SUPPLEMENTARY INFORMATION:

##### Order

Adopted: October 30, 1989.

Released: November 2, 1989.

By the Chief, Mass Media Bureau:

1. This Order amends the Commission's Rules to correct an omission in title 47 of the Code of Federal Regulations. Specifically, the Commission makes an editorial change to 47 CFR 73.658 to reinsert Notes 1, 2, 3, and 4 at the end of Paragraph (m). These notes, which are needed to clarify the procedures set forth in that section, were inadvertently deleted from the Code of Federal Regulations following Commission adoption of the Report and Order in Gen. Docket No. 87-24 (53 FR



27167, July 19, 1988). This Order makes no substantive changes that impose additional burdens or remove provisions relied upon by licensees or the public. For this reason, we believe that this revision will serve the public interest. This information is restored as part of the Agency's oversight function.

2. This amendment is implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Because this amendment only interprets and clarifies the existing language of § 73.658(m), prior notice of rule making is not required. 47 CFR 1.412(c). For this same reason, this amendment may become effective upon publication in the Federal Register. 47 CFR 1.427(b). Because a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

3. Therefore, it is ordered, That pursuant to sections 4, 5, and 303, of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, part 73 of the FCC Rules and Regulations is Amended as set forth below, effective upon publication in the Federal Register.

4. For further information on this Order, call Rita S. McDonald, Policy and Rules Division at (202) 632-5414.

#### List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

#### Amendatory Text

47 CFR part 73 is amended as follows:

#### PART 73—[AMENDED]

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

Authority: 47 U.S.C. sections 154 and 303.

2. Section 73.658 is corrected by adding Notes 1, 2, 3, and 4 at the conclusion of Paragraph (m) to read as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

(m) \* \* \*

Note 1: Contracts, arrangements, or understandings that are complete under the practices of the industry prior to August 7, 1973, will not be disturbed. Extensions or renewals of such agreements are not permitted because they would in effect be new agreements without competitive bidding. However, such agreements that were based on the broadcaster's advancing "seed money" for the production of a specific program or series that specify two time periods—a tryout period and period

thereafter for general exhibition—may be extended or renewed as contemplated in the basic agreement.

Note 2: It is intended that the top 100 major television markets listed in § 76.51 of this chapter shall be used for the purposes of this rule and that the listing of the top 100 television markets appearing in the ARB Television Market Analysis shall not be used. The reference in this rule to the listing of markets in the ARB Television Market Analysis refers to hyphenated markets below the top-100 markets contained in the ARB Television Market Analysis. If a community is listed in a hyphenated market in § 76.51 and is also listed in one of the markets in the ARB listing, the listing in § 76.51 shall govern.

Note 3: The provisions of this paragraph apply only to U.S. commercial television broadcast stations in the 50 states, and not to stations in Puerto Rico or the Virgin Islands, foreign stations or noncommercial educational television or "public" television stations (either by way of restrictions on their exclusivity or on exclusivity against them).

Note 4: New stations authorized in any community of a hyphenated market listed in § 76.51 of this chapter or in any community of a hyphenated market listed in the ARB Television Market Analysis (for markets below the top-100 markets) are subject to the same rules as previously existing stations therein. New stations authorized in other communities are considered stations in separate markets unless and until § 76.51 is amended by Commission action, or the ARB listing is changed.

[FR Doc. 89-26220 Filed 11-7-89; 8:45 am]

BILLING CODE 6712-01-M

#### DEPARTMENT OF DEFENSE

#### 48 CFR Part 204

[Defense Acquisition Circular 88-6]

#### Department of Defense Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule (Defense Acquisition Circular 88-6) which was published in the Federal Register on April 21, 1989 (54 FR 16111). This action is necessary to correct amendatory language and to add text which was inadvertently omitted. The correction is only for CFR clarification and does not affect text in the DoD FAR Supplement.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR part 204 as follows:

#### 204.671-5 [Corrected]

1. On page 16115, in lines 7 and 14 of paragraph 6 of the amendatory language, paragraph "(i)(D)" is corrected to read "(ii)(D)" in both places.

#### 204.804-5 [Corrected]

2. On page 16116, section 204.804-5 is corrected by adding, immediately following the asterisks and preceding paragraph 11 of the amendatory language, paragraph (b)(1) to read as follows:

(b) \* \* \*

(1) Provide the purchasing office with an interim contract completion statement (See 204.804-5(a)(S-70)). Upon receipt of the notice of physical completion, the PCO should inform the ACO of any impending actions which may cause delays in the closeout procedures.

\* \* \* \* \*

[FR Doc. 89-26043 Filed 11-7-89; 8:45 am]

BILLING CODE 3810-01-M

#### 48 CFR Parts 205 and 252

[Defense Acquisition Circular 88-4]

#### Department of Defense Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule (Defense Acquisition Circular 88-4) which was published in the Federal Register on February 21, 1989 (54 FR 7425). This action is necessary to correct amendatory language and to add text which was previously inadvertently omitted. This correction is only for CFR clarification and does not affect text in the DoD FAR Supplement.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR parts 205 and 252 as follows:

1. On page 7427, the heading "205.470 [Amended]" is removed and paragraph 5 of the amendatory language is corrected as follows:

5. Section 205.470 is amended by revising paragraph (a) to read as follows:



205.470 Contractor information to be provided to cooperative agreement holders.

(e) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into Cooperative Agreements with: state or local governments; private, nonprofit organizations; tribal organizations (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450(c)); or economic enterprises as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e)), whether such economic enterprise is organized for profit or nonprofit purposes.

2. On page 7429, the heading "252.205-7000 [Amended]" is removed and paragraph 22 of the amendatory language is corrected to read as follows:

22. Section 252.205-7000 is amended by changing the date of the clause to read "FEB 1989" in lieu of "MAR 1988" and by revising paragraph (a) of the clause to read as follows:

252.205-7000 Release of information to cooperative agreement holders.

(a) Definition. As used in this clause, the term "Cooperative Agreement Holder" means: a state or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450(c)); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))), whether such economic enterprise is organized for profit or nonprofit purposes, which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

[FR Doc. 89-28041 Filed 11-7-89; 8:45 am]

BILLING CODE 3810-01-M

#### 48 CFR Part 245

[Defense Acquisition Circular 88-1]

#### Department of Defense Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

**SUMMARY:** This document corrects a final rule (Defense Acquisition Circular 88-1) which was published in the Federal Register on November 17, 1988 (53 FR 46455). This action is necessary to reflect the correct amendatory language with respect to change of address for the Defense Reutilization and Marketing Service. This correction is only for CFR clarification and does not affect text in the DoD FAR Supplement.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,  
Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR part 245 as follows:

#### 245.607-72 [Corrected]

1. On page 46459, paragraph 10 of the amendatory language is corrected to read as follows:

10. Section 245.607-72 is amended by substituting in paragraph (e) the address for the Defense Reutilization and Marketing Service to read "ATTN: DRMS-OCR, 74 N. Washington Avenue, Battle Creek, Michigan 49017-3092" in lieu of "(DRMS-R), Federal Center, Battle Creek, Michigan 49017-33091".

#### 245.610-1 [Corrected]

2. On page 46459, paragraph 12 of the amendatory language is corrected to read as follows:

12. Section 245.610-1 is amended by substituting in the second sentence of paragraph (a)(1)(viii) the address for the Defense Reutilization and Marketing Service to read "ATTN: DRMS-OCR, 74 N. Washington Avenue, Battle Creek, Michigan 49017-3092" in lieu of "(DRMS-R), Federal Center, Battle Creek, Michigan 49016".

[FR Doc. 89-28040 Filed 11-7-89; 8:45 am]

BILLING CODE 3810-01-M

#### 48 CFR Chapter 2

[Defense Acquisition Circular 88-5]

#### Department of Defense Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

**SUMMARY:** This document corrects a final rule (Defense Acquisition Circular

88-5) which was published in the Federal Register on March 22, 1989 (54 FR 11722). This action is necessary to change the amendatory language and to add text to Appendix I for clarification. The correction is only for CFR clarification and does not affect text in the DoD FAR Supplement.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,  
Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR appendix I as follows:

#### Appendix I to Chapter 2 [Corrected]

On page 11729, paragraph 27 of the amendatory language is corrected to read as follows:

27. Appendix I-301 is amended by revising the instruction entitled "Block 19" to read as follows:

#### I-301 Preparation Instructions

Block 19—UNIT PRICE. The contractor may, at his option, enter unit prices on all MIRR copies, except as minimum:

(a) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government-Furnished Property (GFP). The unit price shall be obtained from section B of the contract or, if not available, the unit price shall be estimated. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

(b) On Navy procurements, the two copies of the MIRR addressed to the consignee via mail shall be priced using actual prices. If actual price is not available, leave blank. Contractors shall make every effort to ensure that actual prices are entered on the MIRR. However, shipments shall not be delayed solely because required prices are not available.

(c) When the MIRR is used as an invoice, see I-308.

(d) For clothing and textile contracts containing a bailment clause, enter the cited Government-Furnished Property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(e) All copies of DD 250s for FMS shipments shall be priced using actual, or if not available, estimated prices. When the price is estimated, enter an "E" after the price.

[FR Doc. 89-28042 Filed 11-7-89; 8:45 am]

BILLING CODE 3810-01-M



# Proposed Rules

Federal Register

Vol. 54, No. 215

Wednesday, November 8, 1989

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 919

[Docket No. FV 90-103PR]

#### Peaches Grown in Mesa County, Colorado; Proposed 1989-90 Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This rule proposes authorizing expenditures for the 1989-90 fiscal period for the Peach Administrative Committee (committee), established under Marketing Order No. 919. This proposed action is needed by the committee to pay anticipated marketing order expenses. The proposed action would enable the committee to continue to perform its duties and administer the order.

**DATES:** Comments must be received by November 20, 1989.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material must be submitted. A copy will be made available for public inspection in the office of the docket clerk during regular business hours. All Comments should reference the docket number and the date and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-475-3818.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement and Marketing Order No. 919, both as amended (7 CFR part 919),

regulating the handling of peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are about 28 handlers subject to regulation under the marketing order for peaches grown in Mesa County. Small agricultural services firms have been defined by the Small business Administration (SBA) as those having annual average gross revenues for the last three years of less than \$3,500,000. Likewise, there are about 260 peach producers in Mesa County. Small agricultural producers have been defined by the SBA as those having annual average gross revenues for the last three years of less than \$500,000. The majority of the Mesa County peach handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of Mesa County peaches. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to

participate and provide input into the committee's budget recommendation.

An assessment rate is normally recommended by the committee as part of its proposed budget recommendation. However, an assessment rate is not recommended with this proposed budget because a freeze in March, 1989, so severely damaged the Colorado peach crop that there is no assessable production this season.

Until March, 1989, the Federal program had operated jointly with a State marketing order for Mesa County peaches. The State marketing order accounted for more than 95 percent of the assessments and expenses of the two orders. After the State marketing order failed a State-run continuance referendum last January, the committee requested an increase in the 1988-89 Federal expenses and assessment rate. The recommended increases were necessary to cover operating expenses for the last quarter of the fiscal period. The \$12,248.70 revised budget required an increase in the assessment rate from one cent to just over four cents per bushel and included some funds transferred from the terminated State order (54 FR 20514).

In order for the committee to maintain its operations this year and be in a position to serve the industry next year the committee met on September 19, 1989, and unanimously recommended approval of expenditures of \$26,572 for the 1989-90 fiscal period. Major proposed expenditure items for 1989-90, compared with the Federal order's increased expenses for 1988-89, are as follows:

	1989-90	1988-89
Program operations (salary, rent, etc.)	\$8,751.00	\$4,930.97
Committee expenses (per diem, etc.)	450.00	90.00
Compliance	1,000.00	
Market research and development	5,224.00	7,227.73
Contingency (Reserve)	11,147.00	
Total	26,572.00	12,248.70

Because of the total loss of the crop after the freeze, income to cover the 1989-90 proposed budget would not be raised through assessments. Rather,



income would be raised from the following source:

- \$2,107 carried over from the 1988-89 operating budget,
- \$4,365 in 1988-89 assessments paid by handlers after June 30, 1989,
- \$15,900 voluntary contributions (refunds from the State program donated by industry members),
- \$3,700 miscellaneous income, including payments by the State government for services rendered by the committee, and
- \$500 unexpended funds from the State promotion program.

The voluntary contributions represent money refunded to industry handlers and subsequently donated to the committee after the State marketing order program was terminated.

This proposed action will not impose any additional direct costs on handlers. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Comment period of less than 30 days is deemed appropriate for this action. Because committee expenses are incurred on a continuous basis during the entire fiscal period, approval of the expenditures must be expedited.

#### List of Subjects in 7 CFR Part 919

Colorado, Marketing agreements and orders, Peaches.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 919 be amended as follows:

1. The authority citation for 7 CFR part 919 continues to read as follows:

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

2. Section 919.228 is added to read as follows:

#### PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

##### § 919.228 Expenses.

Expenses of \$26,572 are authorized to be incurred by the Administrative Committee for the fiscal period ending June 30, 1990. Unexpended funds from the 1988-89 fiscal period may be carried over as a reserve.

Dated: November 3, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-26325 Filed 11-7-89 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

[Docket Nos. AO-160-A65-R01, etc.; DA-89-028]

#### Milk in the Middle Atlantic and Certain Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1004	Middle Atlantic.....	AO-160-A65-R01
1001	New England.....	AO-14-A62-R01
1002	New York-New Jersey.....	AO-71-A77-R01
1005	Carolina.....	AO-388-A1-R01
1006	Upper Florida.....	AO-358-A27
1007	Georgia.....	AO-366-A30
1011	Tennessee Valley.....	AO-251-A33
1012	Tampa Bay.....	AO-347-A30
1013	Southeastern Florida.....	AO-286-A37
1030	Chicago Regional.....	AO-361-A26
1032	Southern Illinois.....	
	Eastern Missouri.....	AO-313-A37
1033	Ohio Valley.....	AO-166-A58
1036	Eastern Ohio-Western Pennsylvania.....	AO-179-A53
1040	Southern Michigan.....	AO-225-A40
1046	Louisville-Lexington-Evansville.....	AO-123-A59
1049	Indiana.....	AO-319-A36
1050	Central Illinois.....	AO-355-A25
1064	Greater Kansas City.....	AO-23-A58
1065	Nebraska-Western Iowa.....	AO-88-A45
1068	Upper Midwest.....	AO-178-A42
1076	Eastern South Dakota.....	AO-260-A28
1079	Iowa.....	AO-295-A39
1093	Alabama-West Florida.....	AO-386-A8
1094	New Orleans-Mississippi.....	AO-103-A50
1096	Greater Louisiana.....	AO-257-A37
1097	Memphis, Tennessee.....	AO-219-A44
1098	Nashville, Tennessee.....	AO-184-A53
1099	Paducah, Kentucky.....	AO-183-A43
1106	Southwest Plains.....	AO-210-A49
1108	Central Arkansas.....	AO-243-A40
1120	Lubbock-Plainview, Texas.....	AO-328-A27
1124	Pacific Northwest.....	AO-368-A17
1126	Texas.....	AO-231-A57
1131	Central Arizona.....	AO-271-A27
1132	Texas Panhandle.....	AO-282-A37
1134	Western Colorado.....	AO-301-A20
1135	Southwestern Idaho-Eastern Oregon.....	AO-380-A7
1137	Eastern Colorado.....	AO-326-A28
1138	Rio Grande Valley.....	AO-335-A24
1139	Great Basin.....	AO-309-A33

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This decision recommends certain changes in those orders that currently provide tentative and final price announcements for Class II milk based on industry proposals considered at a public hearing held August 22, 1989. The current method of announcing a tentative Class II milk price for each month on or before the 15th of the preceding month, with a final Class II milk price for the month being determined and announced on the fifth day of the following month, would be changed. Instead, the Class II milk price announced by the 15th of each month would be the final or effective Class II milk price for the following month. The Class II milk price would not be retroactively revised. The objective of the current pricing arrangement whereby the Class II milk price would be not less than the Minnesota-Wisconsin (M-W) manufacturing grade milk price, or Class III milk price in most Federal orders, would be maintained in principle. Therefore, to the extent that the announced Class II price for a given month is less than the Class III price for that same month, the difference would be included in computing the second succeeding month's Class II milk price.

**DATES:** Comments are due on or before November 24, 1989.

**ADDRESSES:** Comments (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendment(s) would reduce the regulatory burden of handlers while minimizing the economic impact on producers.

Prior document in this proceeding: *Notice of Hearing*: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).



### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic and Certain Other Marketing Areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 15th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

This proceeding reopened the hearings previously held on proposed amendments to the New England, New York-New Jersey, and Middle Atlantic orders. Similarly, an earlier hearing on a proposed new order for the Carolina marketing area also was reopened in this proceeding. This Recommended Decision does not include specific findings for those orders. Findings pertaining to Class II prices, if appropriate, will be made in the Recommended Decisions to be issued for those orders.

The proposed amendments set forth below are based on the record of a public hearing held at Alexandria, Virginia, on August 22, 1989, pursuant to a notice of hearing issued August 16, 1989 (54 FR 33709).

The material issue on the record of the hearing relates to:

1. Changing the manner in which the Class II milk price is determined and announced in most Federal milk orders.

### Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

The orders involved in this proceeding that now provide for tentative and final Class II price announcements should be amended to provide that the Class II price will be announced on or before the 15th day of the preceding month. Once announced, the Class II price would not be revised. Nevertheless, the objective of the current pricing

arrangement, whereby the Class II price would not be less than the Class III price for the month, should be maintained in principle. Therefore, to the extent that the announced Class II price without adjustment for any prior month is less than the Class III price (or the basic formula price in some orders such as the two-class Florida orders) for the month, such difference would be included in computing subsequent months' Class II price.

For example, the Class II price for January would be announced on December 15th. On February 5, the January Class III price would be announced. If the January Class II price was less than the Class III price for January, that difference would be included in computing the Class III price for March, which would be announced on February 15. Thus, handlers would pay essentially a Class II price that would be floored by the Class III price. However, if the Class II price is less than the Class III price (or the basic formula price in some orders), the adjustment to reflect this difference would not be returned to producers until they receive payment for milk produced in the second succeeding month. This provision, as adopted therein, reflects the proposal by the Milk Industry Foundation (MIF) and the International Ice Cream Association (IICA), with a modification proposed by the National Milk Producers Federation (NMPF), and by Agri-Mark Inc., Eastern Milk Producers Cooperative Association Inc., and Dairy Lea Cooperative, Inc. (Agri-Mark, et al.), which are dairy farmer cooperatives.

MIF is a national trade association representing 1,000 dairy processing plants nationwide and accounts for about 80 percent of the fluid milk and related products produced in the United States. IICA is a trade association that represents 210 member companies who distribute about 85 percent of the ice cream and related frozen desserts consumed in the United States. The NMPF is an organization representing most of the dairy farmer cooperatives in the United States.

Handlers who utilize milk in Class II uses, such as cottage cheese, ice cream and yogurt, want to know in advance what the cost of the raw milk will be. It was for this purpose that the orders were amended in 1981 to provide for determination and announcement of a tentative Class II price on the 15th day of the preceding month. However, if the Class III price, which is announced some 50 days later on the fifth day of the following month, is higher than the tentative Class II price, then the Class III price also becomes the final Class II

price. In such cases, the final Class II price is not known until after the month is over. From October 1981 through June 1989 (93 months), there have been 22 months when the final Class II price was increased after the month was over due to this feature of the current order provisions. One of the exhibits introduced at the hearing indicates that the increased value of Class II milk due to changes from the tentative Class II prices to the final Class II prices from March 1984 amounted to more than 23.5 million dollars. It is this retroactive price adjustment aspect of the current Class II pricing provisions that handlers proposed to change through this proceeding.

The increases from the tentative Class II prices to the final Class II prices on the 22 occasions noted above have varied from two cents per hundredweight to 74 cents per hundredweight. The reason handlers find these changes to be a burden is because by the time they know how much the increase is, they have already received the milk, made the products, and perhaps priced and sold most of the products to their customers. These factors were cited by all witnesses supporting the MIF/IICA proposal for final forward pricing. Obviously, handlers would much prefer to know the raw product cost before they establish selling prices for the products they make from the milk. The record indicates that handlers believe that they cannot do an effective job of determining product prices to their customers under the current Class II pricing provisions. Moreover, they are unable to recover after-the-fact increases in the prices for Class II milk.

Under the MIF/IICA proposal, when the Class III price for the month is higher than the Class II price announced on the 15th of the preceding month, the difference would be added in future months in increments not to exceed 25 cents per hundredweight for each prior month. This proposed "catch-up" feature is intended to not cause a reduction in producer returns, while at the same time avoiding large month-to-month price increases at times when milk prices are rapidly increasing. The witness testifying on behalf of the MIF/IICA said that it would be desirable to avoid large increases in the Class II prices from month to month. This view was also supported in testimony by witnesses representing the Borden Company, MorningStar Foods, Inc., Marigold Foods, Inc., the Kroger Co., and Dean Foods, Co.

On the other hand, NMPF and Agri-Mark, et al., separately proposed a



modification of the "catch-up" so that the entire difference between the announced Class II price and the Class III price for the month would be included in computing the Class II price at the next opportunity. This modification was intended to minimize any impact upon producer returns that might result from elimination of the final Class II price announcement. With this change, there would be minimal delay in returning to producers the full value of their milk at the prescribed Class II price level. Both the NMPF and Agri-Mark, et al, supported adoption of the MIF/IICA proposal if it was modified as they suggested.

An alternative mechanism for determining the Class II price was proposed by the Milk Foundation of Indiana (MFI). As proposed, the Class II price each month would be the Minnesota-Wisconsin (M-W) price for the second preceding month plus the appropriate differential, such as 10 cents, plus or minus the average difference between the M-W price for the second preceding month and the current month in each of the preceding three years. According to the proponent's spokesman, this method of determining the Class II price would result in less price volatility over time, and would reduce the seasonal distortion of advance pricing. Under this proposal there would be no "catch-up" adjustments.

The proponent's witness supported elimination of retroactive Class II pricing but expressed his view that the MFI proposal represented an effort to retain the current targeted level of price differential, place all class prices on the same base, lessen the contra-seasonal aspect of advance pricing, and to provide meaningful advance notice of the Class II price. He stated that the proposal would result in a class price that lags below the M-W price if the M-W price increases more sharply in the current year than it increased in three previous years. He also noted that the resulting price would stay above the M-W price in years where the rate of change is approximately the same or less than in previous years and that the reverse would be true in those months when the M-W price moves are downward. He explained that over the long run this method would yield a return to producers for Class II milk that would average 10 cents over the Class III price.

MFI filed a brief in support of its proposed advanced pricing method. In its brief, MFI urged that any method of computing the Class II price that results from this proceeding should focus on

advance notice of a final price and not violate the premise of classified pricing.

The brief further states that there is nothing in the factors that the Secretary must consider in fixing a price for each classification that allows an increase in a price in a month " \* \* just because the producers would have received a higher return had their milk gone into a different class use in the previous month than it actual[ly] did." Accordingly, the brief urges the Secretary to adopt proposal No. 2 rather than proposal No. 1 because proposal No. 2 would adhere to those principles and would provide more stable prices than any of the other proposals.

Another alternative approach was suggested by a witness who testified on behalf of Prairie Farms Dairy, Inc. (PED). While indicating support for elimination of retroactive pricing for Class II milk, he proposed a modified approach that would combine certain aspects of proposal Nos. 1 and 2. Under his proposed modification, the Class II price would be determined using a portion of proposal No. 2, and the adjustment feature of proposal No. 1 would be used to adjust the Class II price in subsequent months if the Class III price for the current month exceeded the Class II price. He stated that this modified approach would have several advantages over either proposal No. 1 or proposal No. 2. In his view, such a provision would eliminate retroactive Class II pricing, be simple and easy to understand, permit announcing all class prices on a single date each month, and have little, if any, effect on returns to producers.

Under PFD's proposed modification, the Class II price each month would be the M-W price for the second preceding month plus 10 cents. If such price was less than the Class III price for the second preceding month, the difference in increments of 25 cents would be added to the Class II price in subsequent months until the difference was made up. PFD's representative also testified that perhaps the Class II price should be the Class III price plus as much as 50 cents.

Central Milk Producers Cooperative (CMPC), a federation of 14 cooperatives, whose members collectively price milk to fluid milk buyers regulated under the Chicago Regional milk order, submitted a brief in support of proposals 1 and 2 as proposed to be modified by PFD.

In particular, the CMPC brief indicates support for pricing Class II milk at the M-W price for the second preceding month plus 50 cents, plus a single catch-up adjustment if the announced Class II price was less than the Class III price

for the month. The brief cites some of the same advantages as noted by the PFD spokesman.

The proposal submitted by the MIF/IICA, with the modification proposed by NMPF and Agri-Mark, et al., offers a reasonable approach to deal with the retroactive pricing problem in the current Class II pricing provisions. First, it does not change the basic method of determining the Class II price level. When the tentative Class II price provisions were adopted, the decision to do so clearly indicated an objective of the proponents to maintain a Class II price level at ten cents above the Class III price.

An analysis of the prices that would have been in effect had the provisions adopted herein been in effect from 1983 through 1988 indicates almost no difference, on an annual basis, from the prices obtained under the current provisions, ranging from a minus five cents per hundredweight in 1988 to no difference in 1983. Due to the "catch-up" feature of the new procedure, there is greater variation when prices under the proposed and current provisions are compared on a monthly basis. However, the basic Class II price level essentially will be maintained while at the same time the problems of retroactive pricing now faced by handlers will be alleviated.

Elimination of the retroactive pricing aspect of the current Class II pricing provisions was recognized as a desirable goal by all participants at the hearing, although one dairy farmer cooperative did oppose the two particular proposals that are under consideration in this proceeding. The National Farmers Organization (NFO), a multi-commodity collective bargaining organization for farmers that operates bargaining and marketing programs for dairy farmers pooled in approximately 21 Federal milk orders, opposed both the MIF/IICA and the MFI proposals. NFO preferred that no changes be made in the current method of Class II milk pricing. An NFO representative expressed the view that the MIF/IICA proposal created extreme fluctuations in the Class II price. He also maintained that the MFI proposed price, by rolling forward for three years the price declines over the last several years, results in a price for Class II milk that was unacceptably low. Simply stated, NFO opposed both proposals on the basis that neither one would yield an acceptable Class II price.

Each of the proposals and proposed modifications of the proposals was analyzed. The current Class II pricing provisions of the orders were intended



to yield a Class II price that, over time, would approximate the M-W price plus 10 cents, or in some orders, plus 15 cents or 25 cents. It was with this goal in mind that the proposals under consideration in this proceeding were evaluated. The pricing procedure proposed by the MIF-IICA, as proposed to be modified by the NMPF, comes the closest over the period from January 1983 through July 1989, to having provided the same prices as those that were final Class II prices. Moreover, it is clear that this approach has widespread support within the industry. Certain handler representatives in fact indicated that they had no objection to the modification proposed by the NMPF, even though its application could result in some larger month-to-month price increases than otherwise would have resulted from the MIF-IICA's unmodified proposal.

With the exception of NFO, no other representatives expressed opposition to this approach. Even NFO's should be somewhat addressed in that producers will receive the full value for their Class II milk with less delay under the provision adopted herein than under any of the other proposals.

Some of the testimony indicated that it is desirable to minimize the size of the month-to-month changes in the prices for Class II milk. From a handler's standpoint, this probably is true. Nevertheless, we see no basis in this record for favoring one proposed method of establishing prices over another just because one has less price variations than another. More particularly, there is no basis here to conclude that there should be more concern in this regard for changes in the Class II price than there is with regard to changes in the Class I and/or Class III prices. Those prices change by whatever amount the Minnesota-Wisconsin price changes from month to month.

Under the provisions adopted herein, if the announced Class II price for a month (before adjustments) is less than the Class III price for that month, the difference (in all but one possible case) would be included in computing the Class II price for the second succeeding month. This reflects a long-standing Class II pricing intent that the value for Class II milk should not be less than the value for Class III milk. The one possible exception would be where the announced Class II price had been lower than the Class III price for the first month that an order to incorporate these proposed amendments would be in effect. In that case, the "catch-up" feature of the provisions adopted herein

would not become effective until the second month after its implementation.

The Pacific Northwest order provides that the Class III price will be the M-W price, or a butter-powder formula price, whichever is lower. Accordingly, a companion provision provides that if the butter-powder formula price is the Class III price, then the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent that the Class II price would not be less than the Class III price. The order language adopted herein will preserve that price relationship between the Class II and Class III prices.

In one of the briefs filed, a question was raised over whether the factors that must be considered by the Secretary in fixing minimum class prices under an order included pricing to reflect the milk's value had it been used differently in a preceding month. We think this question misses the mark in its focus on pricing milk as if it had been used in another class. What is intended here is that the pricing method still places the same value on Class II milk as before, but it may delay passing some of that value to producers until a subsequent month. What will happen is that the value of the Class II milk each month will be based on the price announced on the 15th day of the preceding month. In addition, the pooled value may include an additional amount to reflect the fact the price announced on the 15th of an earlier month failed to provide the intended Class II price level. It is true that the dollars involved might not come out exactly the same because there are some variations in the volumes of Class II milk from month to month. Nevertheless, such variations are expected to be small, and the value differences even smaller. We believe that the provisions adopted herein achieve the intent to eliminate retroactive Class II milk pricing, while at the same time preserving the basic concept of pricing Class II milk that now is reflected in the orders.

NFO's brief restated its objections to adoption of either of the proposals included in the hearing notice. NFO also opposed any expedited action in this proceeding, and urged again that no action be taken until the proposal that it submitted for consideration, and possibly others, have been included in a supplemental hearing notice and all such proposals have been heard. The brief further states that price timing, price level, and price are inextricably interwoven and that the Secretary cannot have a full record to establish "price timing" without testimony about

the price level. NFO's brief also asked that official notice be taken of the Federal Court proceeding, including the Judge's decision, in *NFO v. Lyng*, No. 88-1718 (D.C.D.C.).

Prior to the announcement of the hearing held in this proceeding, NFO and others submitted additional proposals that they wanted to have included in the Notice. NFO and Farmers Union Milk Marketing Cooperative, for example, proposed that the Class II milk price be established at a price level \$.60 to \$1.00 over the second preceding month's M-W price. Several other proposals were received, including some proposals to change the uses of milk that would be identified as Class II utilization.

In response, we would point out that although these other proposals, including those submitted by NFO, were not included in the notice for this proceeding, they remain under consideration for possible inclusion in a hearing notice if it is determined that another hearing should be held on a broader range of Class II issues. This being the case, we see no reason why it would be helpful to take Official Notice of a court proceeding that has no immediate bearing on the issues before the Secretary in this proceeding. Accordingly, the request for Official Notice is denied.

#### Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

#### General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:



(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner, as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

#### Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Middle Atlantic and Certain Other Marketing Areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders, Milk, Dairy products.

1. The authority citation for 7 CFR parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 801-874.

#### PART 1006—MILK IN UPPER FLORIDA MARKETING AREA

2. In § 1006.50(b), the introductory text is revised to read as follows:

##### § 1006.50 Class prices.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1006.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

3. Section 1006.53 is revised to read as follows:

##### § 1006.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1006.50(b).

#### PART 1007—MILK IN GEORGIA MARKETING AREA

4. In § 1007.50(b), the introductory text is revised to read as follows:

##### § 1007.50 Class prices.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1007.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

5. Section 1007.53 is revised to read as follows:

##### § 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

#### PART 1011—MILK IN TENNESSEE VALLEY MARKETING AREA

6. In § 1011.50(b), the introductory text is revised to read as follows:

##### § 1011.50 Class prices.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1011.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class II price for the second preceding month.

7. Section 1011.53 is revised to read as follows:

##### § 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1011.50(b).

#### PART 1012—MILK IN TAMPA BAY MARKETING AREA

8. In § 1012.50(b), the introductory text is revised to read as follows:

##### § 1012.50 Class prices.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1012.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed



pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

9. Section 1012.53 is revised to read as follows:

**§ 1012.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1012.50(b).

**PART 1013—MILK IN SOUTHEASTERN FLORIDA MARKETING AREA**

10. In § 1013.50(b), the introductory text is revised to read as follows:

**§ 1013.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1013.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the Class II price for the second preceding month was less than the Class III price for the second preceding month.

11. Section 1013.53 is revised to read as follows:

**§ 1013.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1013.50(b).

**PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA**

12. In § 1030.50(b), the introductory text is revised to read as follows:

**§ 1030.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the

Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1030.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

13. Section 1030.53 is revised to read as follows:

**§ 1030.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1030.50(b).

**PART 1032—MILK IN SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA**

14. In § 1032.50(b), the introductory text is revised to read as follows:

**§ 1032.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1032.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

15. Section 1032.53 is revised to read as follows:

**§ 1032.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the

Class II price for the following month computed pursuant to § 1032.50(b).

**PART 1033—MILK IN OHIO VALLEY MARKETING AREA**

16. In § 1033.27, paragraphs (k)(1) and (k)(3) are revised to read as follows:

**§ 1033.27 Additional duties of the market administrator.**

- (k) Publicly announce on or before:
  - (1) The 5th day of each month:
    - (i) The Class I price for the following month;
    - (ii) The Class III price for the preceding month;
    - (iii) The butterfat differential for the preceding month;

- (3) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.51(b)

17. In § 1033.51(b), the introductory text is revised to read as follows:

**§ 1033.51 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1033.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

**PART 1036—MILK IN EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA**

18. In § 1036.50(b), the introductory text is revised to read as follows:

**§ 1036.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1036.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this



section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

19. Section 1036.53 is revised to read as follows:

**§ 1036.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1036.50(b).

**PART 1040—MILK IN SOUTHERN MICHIGAN MARKETING AREA**

20. In § 1040.50(b), the introductory text is revised to read as follows:

**§ 1040.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1040.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

21. Section 1040.53 is revised to read as follows:

**§ 1040.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class II price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1040.50(b).

**PART 1046—MILK IN LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA**

22. In § 1046.50(b), the introductory text is revised to read as follows:

**§ 1046.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1046.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

23. Section 1046.53 is revised to read as follows:

**§ 1046.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1046.50(b).

**PART 1049—MILK IN INDIANA MARKETING AREA**

24. In Section 1049.50(b), the introductory text is revised to read as follows:

**§ 1049.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1049.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

25. Section 1049.53 is revised to read as follows:

**§ 1049.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for

the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1049.50(b).

**PART 1050—MILK IN CENTRAL ILLINOIS MARKETING AREA**

26. In Section 1050.50(b), the introductory text is revised to read as follows:

**§ 1050.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1050.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

27. Section 1050.53 is revised to read as follows:

**§ 1050.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1050.50(b).

**PART 1064—MILK IN GREATER KANSAS CITY MARKETING AREA**

28. In § 1064.50(b), the introductory text is revised to read as follows:

**§ 1064.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1064.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the



second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

29. Section 1064.53 is revised to read as follows:

**§ 1064.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1064.50(b).

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

30. In § 1065.50(b), the introductory text is revised to read as follows:

**§ 1065.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1065.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

31. Section 1065.53 is revised to read as follows:

**§ 1065.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1065.50(b).

**PART 1068—MILK IN UPPER MIDWEST MARKETING AREA**

32. In § 1068.50(b), the introductory text is revised to read as follows:

**§ 1068.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the

15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1068.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

33. Section 1068.53 is revised to read as follows:

**§ 1068.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1068.50(b).

**PART 1076—MILK IN EASTERN SOUTH DAKOTA MARKETING AREA**

34. In § 1076.50(b), the introductory text is revised to read as follows:

**§ 1076.50 Class Prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1076.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

35. Section 1076.53 is revised to read as follows:

**§ 1076.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1076.50(b).

**PART 1079—MILK IN IOWA MARKETING AREA**

36. In § 1079.50(b), the introductory text is revised to read as follows:

**§ 1079.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and Transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1079.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

37. Section 1079.53 is revised to read as follows:

**§ 1079.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1079.50(b).

**PART 1093—MILK IN ALABAMA-WEST FLORIDA MARKETING AREA**

38. In § 1093.50(b), the introductory text is revised to read as follows:

**§ 1093.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1093.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

39. Section 1093.53 is revised to read as follows:



**§ 1093.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the class II price for the following month computed pursuant to § 1093.50(b).

**PART 1094—MILK IN NEW ORLEANS-MISSISSIPPI MARKETING AREA**

40. In § 1094.50(b), the introductory text is revised to read as follows:

**§ 1094.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1094.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

41. Section 1094.53 is revised to read as follows:

**§ 1094.53 Announcement of class prices.**

The price administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

**PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA**

42. In § 1096.50(b), the introductory text is revised to read as follows:

**§ 1096.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1096.51a for the month plus the amount that the value computed to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any

amount by which the Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

43. Section 1096.53 is revised to read as follows:

**§ 1096.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1096.50(b).

**PART 1097—MILK IN MEMPHIS, TENNESSEE MARKETING AREA**

44. In § 1097.50(b), the introductory text is revised to read as follows:

**§ 1097.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula computed pursuant to § 1097.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

45. Section 1097.53 is revised to read as follows:

**§ 1097.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1097.50(b).

**PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA**

46. In § 1098.50(b), the introductory text is revised to read as follows:

**§ 1098.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the

Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula computed pursuant to § 1098.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

47. In § 1098.53 is revised to read as follows:

**§ 1098.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1098.50(b).

**PART 1099—MILK IN PADUCAH, KENTUCKY MARKETING AREA**

48. In § 1099.50(b), the introductory text is revised to read as follows:

**§ 1099.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula computed pursuant to § 1099.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

49. Section 1099.53 is revised to read as follows:

**§ 1099.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1099.50(b).



**PART 1106—MILK IN SOUTHWEST PLAINS MARKETING AREA**

50. In § 1106.50(b), the introductory text is revised to read as follows:

**§ 1106.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1106.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

51. Section 1106.53 is revised to read as follows:

**§ 1106.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1106.50(b).

**PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA**

52. In § 1108.50(b), the introductory text is revised to read as follows:

**§ 1108.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1108.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

53. Section 1108.53 is revised to read as follows:

**§ 1108.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1108.50(b).

**PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA**

54. In § 1120.50(b), the introductory text is revised to read as follows:

**§ 1120.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1120.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

55. Section 1120.53 is revised to read as follows:

**§ 1120.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1120.50(b).

**PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA**

56. In § 1124.50(b), the introductory text is revised to read as follows:

**§ 1124.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed

pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

57. Section 1124.53 is revised to read as follows:

**§ 1124.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

**PART 1126—MILK IN THE TEXAS MARKETING AREA**

58. In § 1126.50(b), the introductory text is revised to read as follows:

**§ 1126.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1126.51(a) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

59. Section 1126.53 is revised to read as follows:

**§ 1126.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1126.50(b).

**PART 1131—MILK IN CENTRAL ARIZONA MARKETING AREA**

60. In Section 1131.50(b), the introductory text is revised to read as follows:



**§ 1131.50 Class prices**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the Class II formula price computed pursuant to § 1131.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

61. Section 1131.53 is revised to read as follows:

**§ 1131.53 Announcement to class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1131.50(b).

**PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA**

62. In § 1132.50(b), the introductory text is revised to read as follows:

**§ 1132.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1132.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

63. Section 1132.53 is revised to read as follows:

**§ 1132.53 Announcement to class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price

for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1132.50(b).

**PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA**

64. In Section 1134.50(b), the introductory text is revised to read as follows:

**§ 1134.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the Class II formula price computed pursuant to § 1134.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

65. Section 1134.53 is revised to read as follows:

**§ 1134.53 Announcement to class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1134.50(b).

**PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA**

66. In § 1135.50(b), the introductory text is revised to read as follows:

**§ 1135.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1135.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted

pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

67. Section 1135.53 is revised to read as follows:

**§ 1135.53 Announcement to class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1135.50(b).

**PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA**

68. In § 1137.50(b), the introductory text is revised to read as follows:

**§ 1137.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1137.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

69. Section 1137.53 is revised to read as follows:

**§ 1137.53 Announcement to class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1137.50(b).

**PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA**

70. In § 1138.50(b), the introductory text is revised to read as follows:

**§ 1138.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the



15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1138.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

71. Section 1138.53 is revised to read as follows:

**§ 1138.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1138.50(b).

**PART 1139—MILK IN THE GREAT BASIN MARKETING AREA**

72. In § 1139.50(b), the introductory text is revised to read as follows:

**§ 1139.50 Class prices.**

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1139.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

73. Section 1139.53 is revised to read as follows:

**§ 1139.53 Announcement of class and component prices.**

The market administrator shall announce on or before:

- (a) The 5th day of each month, the Class I price for the following month;
- (b) The 15th of each month, the Class II price for the following month computed pursuant to § 1139.50(b); and
- (c) The 5th day after the end of each month, the Class III price and the prices for butterfat, milk protein and skim milk

computed pursuant to § 1139.50 (d), (e), and (f) for each month.

**PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA**

**PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA**

**PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA**

**PART 1005—MILK IN THE CAROLINA MARKETING AREA (PROPOSED)**

Note: There are no proposed amendments to these parts at this time.

Signed at Washington, DC, on October 31, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-26024 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-02-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 89-NM-83-AD]

**Airworthiness Directives: Boeing Model 727 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would have required repetitive inspections and repair, if necessary, of the inboard trailing edge flaps inboard track. That proposal was prompted by reports of corrosion and/or cracking of the flap tracks. This condition, if not corrected, could lead to failure of the flap track and possible separation of the inboard trailing edge flap. This action revises the proposed rule by requiring inspections of certain repaired flap tracks, and adding inspections for loose mounting bolts and migrating shims at the flap track to main landing gear beam interface.

**DATE:** Comments must be received no later than December 12, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-83-AD, 17900 Pacific Highway South, C-

68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89-NM-83-AD." The postcard will be date/time stamped and returned to the commenter.

**Discussion**

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, which would have required inspection of the inboard trailing edge flaps inboard track, and repair, if necessary, was published in the Federal Register on June 21, 1989 (54 FR 26048).



That action was prompted by several incidents involving corrosion and/or cracking of the inboard trailing edge flaps inboard track on Model 727 airplanes. These conditions, if not corrected, could lead to failure of the flap track and possible separation of the affected inboard trailing edge flap.

Since issuance of the proposal, the following new information has been received:

1. Test data shows that flap tracks repaired with a splice plate may experience cracking and must be repetitively inspected.

2. Reports of loose and broken flap track to main landing gear beam mounting bolts support the need to require an inspection of the bolts.

3. The laminated shim installed in accordance with the original release of Boeing Service Bulletin 727-57-0178 dated May 5, 1988, has been reported to be migrating. This can contribute to loose and broken mounting bolts.

Since these conditions are likely to exist or develop on other airplanes of the same type design, the FAA has determined that the original Notice must be revised to include a repetitive inspection of repaired flap tracks; and inspection for loose bolts, and tightening, if necessary; and an inspection of the laminated shim, and reinstallation, if necessary, in accordance with the service bulletin described below. Since these new proposed requirements go beyond the scope of those originally proposed, the comment period has been reopened to provide additional time for public comment.

The FAA has reviewed and approved Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, which describes procedures for inspection, modification, and repair of the inboard trailing edge flaps inboard track.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 29 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,359,520.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 amending the notice of proposed rulemaking, Docket 89-NM-83-D, FR Doc. 89-14624, which was published in the Federal Register on June 21, 1989 (54 FR 26048), as follows:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent separation of an inboard trailing edge flap due to corrosion or cracking of the inboard track, accomplish the following:

A. For airplanes with flap tracks that have neither the repair nor the preventative modification installed, as specified in Boeing Service Bulletin 727-57-117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

##### 1. Inspection

a. Accomplish the initial inspections required by paragraphs A.1.b., A.1.c., and A.1.d., below, prior to (1) or (2), below, whichever occurs later:

(1) Prior to the accumulation of 7,000 flight cycles or 5 years since manufacture, whichever occurs first; or

(2) Within the next 1,000 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Accomplish either of the following inspections:

(1) Perform a close visual inspection for cracks and corrosion of the inboard trailing edge flaps inboard track in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

(2) Remove the flap track from the airplane, and perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. Repeat these inspections at intervals not to exceed 9,000 flight cycles or 6 years, whichever occurs first.

c. Inspect the inboard trailing edge flaps inboard track for loose mounting bolts. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

d. If the track has a laminated shim installed in accordance with Boeing Service Bulletin 727-57-0178, Revision New, dated May 5, 1988, visually inspect the laminated shim for correct location, in accordance with Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

##### 2. Repair

a. If cracks with or without corrosion are detected as a result of the inspections required by paragraph A.1.b., above, and do not exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, prior to further flight, repair in accordance with the service bulletin. If the crack extends into the flap track web, inspect the crack using a borescope at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or A.2.b., below. If only corrosion is detected and it does not exceed limits specified in Figure 3 of the service bulletin, repair in accordance with the service bulletin within 12 months. If the crack does not extend into the flap track web, repairs made in accordance with this paragraph terminate the repetitive inspections required by paragraph A.1.b., above.

b. If cracks or corrosion are detected which exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, replace the flap track prior to further flight.

c. If loose mounting bolts are detected as a result of the inspections required by paragraph A.1.c., above, prior to further flight, retorquer the bolts in accordance with Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. Modification or repair, in accordance with Figures 2, 3, 4, or 5 of the service bulletin, terminates the repetitive inspections required by paragraph A.1.c., above.



d. If the track is repaired with a splice plate in accordance with Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, or earlier revisions, within 12,000 flight cycles since repair or 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform a close visual inspection for cracks of the inboard trailing edge flaps inboard track at the aft splice plate fasteners, in accordance with the Accomplishment Instructions of the service bulletin. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. If cracks are detected, replace the flap track prior to further flight.

e. If a mislocated laminated shim is detected as a result of the inspections required by paragraph A.1.d., above, and the mislocation exceeds the limits specified in the Accomplishment Instructions of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, prior to further flight, reinstall the shim or replace the shim in accordance with the service bulletin. Replacement of the shim terminates the repetitive inspections required by paragraph A.1.d., above.

B. For airplanes with flap tracks which have the preventative modification installed in accordance with Boeing Service Bulletin 727-57-117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

#### 1. Inspection

a. Accomplish the initial inspections required by paragraphs B.1.b. and B.1.c., below, prior to (1) or (2), below, whichever occurs later:

- (1) Within 9,000 flight cycles since modification or 8 years since modification, whichever occurs first; or
- (2) Within the next 1,000 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Accomplish either of the following inspections:

- (1) Perform a close visual inspection for cracks and corrosion of the inboard trailing edge flaps inboard track, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.
- (2) Remove the flap track from the airplane, and perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. Repeat these inspections at intervals not to exceed 9,000 flight cycles or 6 years, whichever occurs first.

c. Inspect the inboard trailing edge flaps inboard track for loose mounting bolts. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

#### 2. Repair

a. If cracks with or without corrosion are detected as a result of the inspections required by paragraphs B.1.b., above, and do not exceed the limits specified in Figures 1 or

3 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, prior to further flight, repair in accordance with the service bulletin. If the crack extends into the flap track web, inspect the crack using a borescope, at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or B.2.b., below. If only corrosion is detected, and it does not exceed the limits specified in Figure 3 of the service bulletin, repair in accordance with the service bulletin within 12 months. If the crack does not extend into the flap track web, repairs made in accordance with this paragraph terminate the repetitive inspections required by paragraph B.1.b., above.

b. If cracks or corrosion are detected which exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, replace the flap track prior to further flight.

c. If loose mounting bolts are detected as a result of the inspections required by paragraph B.1.c., above, prior to further flight, retorque the bolt in accordance with Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. Modification or repair in accordance with Figures 2, 3, 4, or 5 of the service bulletin terminates the repetitive inspections required by paragraph B.1.c., above.

d. If the track is repaired with a splice plate in accordance with Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, within 12,000 flight cycles since repair or 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform a close visual inspection for cracks of the inboard trailing edge flaps inboard track at the aft splice plate fasteners, in accordance with the service bulletin. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. If cracks are detected, replace the flap track prior to further flight.

C. For airplanes with flap tracks that have been repaired with the splice plate in accordance with Boeing Service Bulletin 727-57-117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

#### 1. Inspection

a. Accomplish the initial inspections required by paragraphs C.1.b., C.1.c., and C.1.d., below, prior to (1) or (2), below, whichever occurs later:

- (1) Within 12,000 flight cycles since repair or 8 years since repair, whichever occurs first; or
- (2) Within the next 1,000 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Remove the flap track from the airplane, and perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. Repeat these inspections at intervals not to exceed 9,000 flight cycles or 8 years, whichever occurs first.

c. Inspect the inboard trailing edge flaps inboard track for loose mounting bolts. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months.

d. Perform a close visual inspection for cracks of the inboard trailing edge flaps inboard track at the aft splice plate fasteners, in accordance with the service bulletin. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. If cracks are detected, replace the flap track prior to further flight.

#### 2. Repair

a. If new cracks, crack growth, or corrosion are detected as a result of the inspections required by paragraph C.1.b., above, and do not exceed the limits specified in paragraph C.2.b., below, prior to further flight, repair in accordance with Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989. If the crack extends into the flap track web, inspect the crack using a borescope at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or C.2.b., below. If the crack does not extend into the flap track web, repairs made in accordance with this paragraph terminate the repetitive inspections required by paragraph C.1.b., above.

b. Replace the flap track prior to further flight if any of the following occur:

- (1) The crack length is within the short limits specified in Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, and the crack runs toward the flap track integral rib.
- (2) The crack length exceeds the short limits specified in Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989.
- (3) The corrosion exceeds the limits specified in Figure 3 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989.

c. If loose mounting bolts are detected as a result of the inspections required by paragraph C.1.c., above, prior to further flight, retorque the bolts in accordance with the service bulletin. Repair in accordance with Figures 3 or 4 of the service bulletin terminates the repetitive inspections required by paragraph C.1.c., above.

d. If the track is repaired with a splice plate in accordance with Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989, perform a close visual inspection for cracks of the inboard trailing edge flaps inboard track at the aft splice plate fasteners, in accordance with the service bulletin. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. If cracks are detected, replace the flap track prior to further flight.

D. The following constitutes terminating action for the inspection requirements of this AD:

1. Modification in accordance with Figure 2 of Boeing Service Bulletin 727-57-0178, Revision 2, dated September 7, 1989; or
2. Repair in accordance with Figure 3 of the service bulletin, if no splice plate is installed.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.



**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 27, 1989.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-26262 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 89-ASO-41]

#### Proposed Revocation of Control Zone, Moultrie, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revoke the Moultrie, GA Control Zone. One of the requirements for the continued designation of the control zone is hourly and special weather observations being transmitted to the air traffic control facility having jurisdiction over that control zone. Weather observations have not been available for the Moultrie Municipal Airport for several months. No plans exist to reestablish weather reporting service at the airport. The intended effect of this action is to raise the floor of controlled airspace from the surface to 700 feet above ground level.

**DATES:** Comments must be received on or before December 4, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-41, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief

Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rule-making by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 89-ASO-41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Moultrie, GA control zone. Hourly and special weather reports are requirements for continued designation of a control zone. There is no weather reporting service at the Moultrie Municipal Airport and no plans exist to reestablish the service. This proposed action would raise the floor of controlled airspace in vicinity of the airport from the surface to 700 feet above ground level. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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 71

Aviation safety, Control zone.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1342(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

#### § 71.171 [Amended]

2. § 71.171 is amended as follows:



**Moultrie, GA [Removed]**

Issued in East Point, Georgia, on October 10, 1989.

Don Cass,

Acting Manager, Air Traffic Division  
Southern Region.

[FR Doc. 89-26311 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 435

[FRL-3678-5]

#### Oil and Gas Extraction Point Source Category Coastal and Stripper Subcategories Effluent Limitations Guidelines and New Source Performance Standards; Request for Comments

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Request for comments.

**SUMMARY:** EPA is currently considering initiating the development of revisions and additions to existing regulations under the Clean Water Act that limit effluent discharges to waters of the United States from coastal oil and gas extraction facilities. These revisions would establish effluent limitations guidelines based on the best available technology economically achievable (BAT) and the best conventional pollutant control technology (BCT), and also would establish new source performance standards (NSPS).

Today's notice (1) presents the approaches the Agency would take in developing BAT and BCT effluent limitations guidelines and NSPS for the coastal subcategory of the oil and gas extraction point source category; (2) presents a possible modification to the current definition of the coastal subcategory; (3) discusses whether regulations covering stripper oil wells and marginal gas wells should continue to be included in the coastal subcategory regulations or whether those stripper oil wells and marginal gas wells located within the coastal geographic area should be regulated separately; (4) presents the approach the Agency would take in analyzing the costs and economic impacts of regulations in the coastal subcategory; (5) discusses potential control technologies for use in evaluating BCT, BAT and NSPS requirements; and (6) outlines possible future data collection activities. This notice also requests

comments and/or data covering all aspects of the presented material in addition to specific items identified in section XIII of the Notice.

**DATES:** Comments must be received on or before January 8, 1990.

**ADDRESSES:** Comments should be sent to Ms. Karen Troy, Office of Water Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The supporting information and data described in this notice are available for inspection and copying at the EPA Public Information Reference Unit, Room M2904 (Rear of EPA Library), 401 M Street, SW., Washington, DC 20460. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Troy at the above address, or call (202) 382-7115.

#### SUPPLEMENTARY INFORMATION:

##### Organization of this Notice

- I. Introduction
- II. Summary of Legal Background
  - A. Best Practicable Control Technology Currently Available (BPT)
  - B. Best Available Technology Economically Achievable (BAT)
  - C. Best Conventional Pollutant Control Technology (BCT)
  - D. New Source Performance Standards (NSPS)
  - E. Pretreatment Standards
- III. Current and Previous Coastal Subcategory Regulations
- IV. Modifications to the Coastal Definition
  - A. Introduction
  - B. New Coastal Subcategory Candidate Definitions
    1. Alternatives Considered
    2. Preferred Approach: "Water Classification" Definition
- V. Coastal Subcategory Profile Approach
  - A. Description of Field Data
  - B. Estimation Procedures for Profiling the Coastal Subcategory
  - C. Model Facilities
- VI. Stripper Oil Wells and Marginal Gas Wells
  - A. Introduction
  - B. Stripper Oil Wells
  - C. Marginal Gas Wells
- VII. Environmental Concerns
- VIII. Technological Approaches to Controlling Discharges in the Coastal and Stripper Subcategories
  - A. Production Operations: Produced Water
    1. Reinjection Option
    2. Produced Water Filtration
    3. Induced Oil/Water Separation
    4. Carbon Adsorption

5. Desalination by Reverse Osmosis
- B. Development Operations
  1. Muds/Cuttings Thermal Technologies
  2. Muds/Cuttings Solvent Extraction Technology
  3. Muds/Cuttings Disposal Methods
  4. Product Substitution
- IX. Non-Water Quality Environmental Impacts
- X. Future Data Collection Activities
- XI. Regulatory Impact Analysis
- XII. Regulatory Flexibility Analysis
- XIII. Solicitation of Comments
- Appendix A—Glossary
- Appendix B—States and Respective Counties Included in Profile
- Appendix C—Coastal County Analyses of Oil and Gas Production Facilities

#### I. Introduction

EPA is currently collecting information to be used as a basis for potential redefinition of the coastal subcategory and development of effluent limitations guidelines and standards covering the produced water, drilling fluids, drill cuttings, and miscellaneous waste streams in the coastal subcategory of the oil and gas extraction point source category. These regulations would apply to discharges from facilities involved in exploration, development, and production operations. Such activities are included in Standard Industrial Classification (SIC) Major Group 13. Any regulation issued could affect not only the coastal subcategory but also the onshore subcategory, because some facilities that are currently classified as coastal could be reclassified as onshore. The Agency is also considering whether regulations covering stripper oil wells and marginal gas wells should be included in the coastal subcategory regulations and is considering a definition of marginal gas wells for purposes of regulating these facilities.

The current definition of coastal encompasses facilities in any water body landward of the inner boundary of the territorial seas regardless of any water characteristics such as salinity. This means, for example, that a facility located in the Great Lakes is currently classified as a coastal facility. The Agency is examining a possible redefinition of the coastal subcategory that is based on the salinity of the water in which the facility is located.

This notice presents key issues involved in the development of effluent limitations guidelines and discusses the steps that would need to be taken to develop sufficient information to propose new regulations. After discussing the legal authority for



rulemaking in the coastal subcategory (Section II) and summarizing current and previous coastal subcategory regulations (Section III), today's notice presents options for definition of the coastal subcategory (Section IV). The Agency's preliminary profile of coastal facilities is outlined in Section V, and its plans for developing the final profile are also presented. Stripper oil wells and marginal gas wells are discussed in Section VI. Preliminary information about the environmental characteristics of the coastal geographical water areas are presented in Section VII. A discussion of pollution control technologies which may be applicable to the coastal and stripper subcategories is included in Section VIII. Major non-water quality environmental impacts which will be addressed by the Agency are discussed in Section IX.

Further information and data will be needed by the Agency to determine the technological feasibility and economic achievability of the various pollution control technologies to be considered if the Agency proceeds with rulemaking in the coastal subcategory. Data collection efforts would include the use of a survey of coastal facilities under Section 308 of the Clean Water Act; details are presented in Section X. A glossary of pertinent terms is included at the end of this notice in Appendix A.

On August 25, 1988 EPA published a notice announcing its proposed plans for promulgating new effluent guidelines to implement section 304(m) of the Clean Water Act (53 FR 32584). The coastal subcategory was identified in that notice as a potential candidate for new guidelines. EPA is currently preparing its final plans for implementing section 304(m) and expects to publish them in a final notice this fall. That notice will announce whether or not EPA has identified the coastal subcategory as one for which new guidelines will be prepared.

The Agency is requesting comment on the information, analyses, and potential approaches to controlling discharges from coastal, stripper oil, and marginal gas well facilities that are discussed in today's notice. The comments received will be considered in the development of coastal regulations should the Agency decide to undertake rulemaking in the coastal subcategory.

## II. Summary of Legal Background

The regulations described in this notice are being developed under the authority of sections 301, 304 (b), (c), and (e), 306, 307, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of

1977 and the Water Quality Act of 1987 and the Water Quality Act of 1987) (the Act), 33 U.S.C. 1311, 1314 (b), (c), and (e), 1315, 1317, and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-215; 101 Stat. 7, Pub. L. 100-4 ("the Act").

The Clean Water Act establishes a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." [Section 101(a)]. To implement the Act, EPA is to issue technology based effluent limitations guidelines, new source performance standards and pretreatment standards for industrial dischargers. The levels of control associated with these effluent limitations guidelines and standards are summarized briefly below.

### A. Best Practicable Control Technology Currently Available (BPT)

BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category of subcategory.

In establishing BPT limitations, EPA considers the total cost in relation to the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies and nonwater quality environmental impacts (including energy requirements). The total cost of applying the technology is considered in relation to the effluent reduction benefits.

### B. Best Available Technology Economically Achievable (BAT)

BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as a principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters. In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the costs and economic impact of achieving such effluent reduction, and nonwater quality environmental impacts. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

### C. Best Conventional Pollutant Control Technology (BCT)

The 1977 Amendments added section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as

conventional pollutants: Biochemical oxygen demanding pollutants (BOD5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be established in light of a two part "cost-reasonableness" test. *American Paper Institute v. EPA*, 660 F.2d 954 (4th Cir. 1981). EPA first published its methodology for carrying out the BCT analysis on August 19, 1979 (44 FR 50372).

A revised methodology for the general development of BCT limitations was proposed on October 29, 1982 (47 FR 49176), and became effective on August 22, 1986 (51 FR 24974; July 9, 1986).

### D. New Source Performance Standards (NSPS)

NSPS are based on the best available demonstrated technology (BDT). New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

### E. Pretreatment Standards

The Act also directs EPA to promulgate Pretreatment Standards for Existing and New Sources (PSES and PSNS) to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of a publicly-owned treatment works (POTW).

## III. Current and Previous Coastal Subcategory Regulations

The coastal subcategory is one of five subcategories of the oil and gas extraction industry that are established in EPA's regulations at 40 CFR part 435. (The other subcategories are Offshore, Onshore, Agricultural and Wildlife Water Use (formerly Beneficial Use) and Stripper.) The current coastal subcategory regulations were promulgated on April 13, 1979 (44 FR 22069). They include effluent limitations guidelines at the BPT level of control only.

The existing BPT guidelines limit the discharge of oil and grease in produced water to 72 mg/L as a daily maximum and 48 mg/L as a 30-day average. The discharge of free oil in deck drainage, drilling fluids, drill cuttings, and well treatment fluids is prohibited. Minimum



daily residual chlorine content in sanitary discharges from those facilities continuously manned by ten or more persons is limited to 1 mg/L. The discharge of floating solids in sanitary and domestic wastes is prohibited. 40 CFR 435.42(a). The current coastal subcategory regulations in 40 CFR 435.40 apply to:

\* \* \* facilities engaged in production, field exploration, drilling, well completion and well treatment in areas defined as coastal.

The term "coastal" is defined at 40 CFR 435.41(e) as:

(1) any body of water landward of the territorial seas as defined at 40 CFR 125.1(gg) or (2) any wetlands adjacent to such waters.

The term "wetlands" is defined at 40 CFR 435.41(f) as:

\* \* \* those surface areas which are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Thus, the coast subcategory regulations currently apply to oil and gas development and production facilities throughout the United States that are landward of the inner boundary of the territorial seas and that are located in water or adjacent wetlands. The regulations do not differentiate between freshwater and saline water for purposes of defining the geographic scope of the coastal subcategory.

The Agency promulgated the current definition of the coastal subcategory after reconsidering and rejecting a previous definition that was included in interim final BPT regulations for the coastal subcategory. (41 FR 44942-48; October 13, 1976). The 1976 interim final rules defined coastal to mean all land and water areas landward from the inner boundary of the territorial seas and eastward of the point defined by 89 degrees 45 minutes W. Longitude and 29 degrees 46 minutes N. Latitude and continuing west of that point through a series of longitude and latitude coordinates (the Chapman line) to the point 97 degrees 19 minutes W. Longitude and continuing southward from that point to the U.S.-Mexican border. This included Louisiana and Texas Gulf coast areas as well as other areas along the Gulf coast. The 1976 definition was intended to include all facilities of which the Agency was aware that were both landward of the inner boundary of the territorial seas and that were located in the waters of states that permitted the discharge of produced water.

The Agency rejected this approach when it adopted the current definition in 1979 for four reasons. First, industry identified a significant number of facilities near coastlines that nevertheless were not included within the regulatory scope of the subcategory. Second, certain platforms in Upper Cook inlet, Alaska were not included in the subcategory. Third, the 1976 definition of the coastal subcategory required the Agency to reassess the existing boundaries of the coastal subcategory whenever industry explored new areas that might have been considered coastal. Finally, the 1976 definition classified in the coastal subcategory an estimated 1700 wells which were operated on land but which discharged into coastal waters.

Under the final BPT regulations issued on April 13, 1979, approximately 1200 of these wells were reclassified into the onshore subcategory and the remainder were reclassified as stripper wells, depending on their rate of production. The wells that were reclassified as onshore were required to attain zero discharge. Industry challenged the 1979 final rule in the United States Court of Appeals for the Fifth Circuit, arguing among other things that the Agency had failed to adequately consider the costs to the reclassified facilities of attaining zero discharge. As a result of the court's decision [*American Petroleum Institute v. EPA*, 661 F.2d 340 (5th Cir. 1981)], EPA suspended the applicability of the onshore subcategory regulations to the reclassified facilities and to any wells in the 1976 geographic coastal area that came into existence after the issuance of the 1979 final rules. (47 FR 31455; July 21, 1982). Such facilities continue to be regulated under the coastal subcategory regulations.

#### IV. Modifications to the Coastal Definition

##### A. Introduction

Should EPA decide to proceed with this rulemaking, the Agency is considering proposing a new definition of the coastal subcategory that is based upon a water classification system developed by the U.S. Fish and Wildlife Service, United States Department of Interior, in the "Classification of Wetlands and Deepwater Habitats of the United States," December 1979, FWS/OBS-79/31. As a part of this water classification system, wetlands and deepwater habitats have been identified. In general terms, wetlands are lands where saturation with water (or at least periodic saturation) is the dominant factor in determining the types of plant and animal communities living

in the soil or on its surface. Deepwater habitats, however, are permanently flooded lands, that are often deep, so that water rather than air is the principal medium within which the dominant organisms live. Wetlands and deepwater habitats have been and are being identified and mapped according to the following procedure.

Through the use of the National Altitude Photography program, aerial photographs are taken either in spring (April-May) or in the fall at the time when the trees have no leaves (October-November). These aerial photos are interpreted by identifying the flora and fauna which appear in them. From this, the water classification of the area in the photo can be determined. In addition to the photos, ancillary information is used to further define an area. Sources of such ancillary information include: U.S. Geologic Survey stream monitoring reports which verify salinity values, US Soil Conservation Service county soil surveys, and actual field work data. The aerial photographs undergo two quality assurance reviews before they are superimposed on the USGS topographic maps. The results are 1:24000 scale "draft" wetland maps. These draft maps are distributed for review and comment to Federal, State, local and private organizations and to anyone who may have an opportunity to field check the wetland delineations. These users are able to make field observations and provide comments before the final wetlands maps are produced. These maps clearly show the different water types as they have been classified and are readily available for use.

In classifying the wetlands and deepwater habitats, the U.S. Fish and Wildlife Service has used terms *marine system* and *estuarine system*. The following are general descriptions of these terms. (The exact definitions of these terms and others are presented in the glossary located at the end of this notice in appendix A.)

##### Marine System

This term is generally applied to the open ocean and its associated coastline. It is mostly a deepwater habitat system, with marine wetlands limited to intertidal areas like beaches, rocky shores and some coral reefs. In subsequent sections of this notice, the term *marine water* means the same as *marine system*.

##### Estuarine System

This term is generally applied to coastal wetlands (e.g., tidal marshes), mangrove swamps, and intertidal flats, as well as deepwater bays, sounds and



coastal rivers. In subsection sections of this notice, the term *estuarine water* means the same as *estuarine system*.

#### B. New Coastal Subcategory Candidate Definitions

The Agency has re-evaluated the current definition of the coastal subcategory and has examined two alternative definitions that are explained below. The Agency has tentatively concluded that salinity of the waters in which the wellhead of the regulated facilities is located should be the basis for any new definition of the coastal subcategory. The Agency currently intends to include a definition of coastal based on salinity (referred to as the *water classification definition*) if it formally proposes rules in this subcategory. Through the use of USFWS maps, a *salinity line* can be drawn to delineate freshwater from marine and estuarine waters. Over time, the salinity line will change due to variations in salinity. To keep the salinity line fixed, the applicability of the coastal geographical area would be defined by a set distance from the coast line or possibly by a set of longitude and latitude coordinates. Facilities located in freshwater would be regulated separately or reclassified into the onshore subcategory.

#### 1. Alternatives Considered

a. "*Water Classification*" Definition. The Agency has considered a definition of the coastal subcategory based upon the USFWS water classification system described above. Under this approach, the coastal subcategory would be defined to include facilities located landward of the inner boundary of the territorial seas and located in marine waters or estuarine waters.

The inner boundary of the territorial seas is defined at section 502(8) of the Clean Water Act as:

\* \* \* the line of ordinary low water along that portion of the coastal which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

The classification of the facility would be based upon the wellhead location.

The final definition would exclude those facilities over freshwater. It would also exclude facilities located in inland saline and fresh waters. Such facilities would be placed in the onshore subcategory or possibly a new subcategory.

b. "*Tidal Influence*" Definition. Tidal influence also was considered as the basis for a possible redefinition of the coastal subcategory. Tidal bodies of water landward of the inner boundary of territorial seas would include bays,

estuaries, sounds, mudflats, sloughs, wetlands and similar areas. Some states have defined the inland limits of tidal influence based on flux indicators (e.g., segment identification maps for Texas River and coastal basins, Texas Water Commission 1985.) Defining coastal in terms of the tidal influence would result in freshwater, marine and estuarine waters being included in the same classification.

Like the current definition, a tidal influence definition would make no distinction between freshwater and marine and estuarine waters for regulatory purposes, nor would it take into account their dissimilarities. Therefore, the Agency tentatively has rejected "tidal influence" as a candidate basis for a revised coastal subcategory definition.

#### 2. Preferred Approach: "Water Classification" Definition

The Agency prefers to redefine the coastal subcategory according to the water classification definition. While the Agency would be using the chemical characteristics of water as a basis for defining the geographical area to be considered as coastal, these chemical characteristics would not be used as the basis for determining the treatment technologies to be considered or for developing technology-based effluent guidelines in the coastal subcategory.

Differences in salinity are reflected in the species composition of plants and animals in marine, estuarine and freshwater. Marine and estuarine waters are a complex solution of salts dominated by sodium chloride (NaCl). Marine water has salinity values which exceed 30 parts per thousand with little or no dilution except outside the mouths of estuaries, whereas the salinity of estuarine waters salinities range from greater than 40 parts per thousand to 0.5 parts per thousand. In any given area, salinity of estuarine water may be variable or it may be relatively stable. Freshwater, however, exhibits no such changes in its composition with respect to salinity. Although the salinity of estuarine water varies, it is restrained to a given range of values and does not become freshwater.

Marine and estuarine waters also differ in hydrographic characteristics that are of great biological significance. The hydrographic characteristics are: salinity stratification, oxygen depletion and accumulation of hydrogen sulfide in the deeper stratification layers. The term *salinity stratification* refers to the formation of layers of water that differ in salinity. At the same temperature, water with higher salt content is heavier than less concentrated water. If waters

of different salt content are in contact with one another, the water with the higher salt concentration will sink to the bottom. Even with turbulent mixing of the waters and diffusion of the salt, the formation of several layers of differing salt content still occurs. Haline (the term haline refers to ocean salts) stratification does not occur in freshwater but does occur in both marine and estuarine waters. In marine waters, salinity differences can be one part per thousand for every 100 meters depth, whereas in estuarine waters, salinity gradients can rise to 10-70 times that amount. Haline stratification prevents the vertical exchange of water masses, which leads to oxygen deficiency and an abundance of hydrogen sulfide in the lower layers. Oxygen depletion and the accumulation of hydrogen sulfide occur when haline stratification is permanent or persists over long periods of time.

The Agency's preferred definition of the coastal subcategory would exclude inland saline waters from the coastal subcategory because the chemistry of saline inland water differs appreciably from that of marine and estuarine sea water. Facilities located in inland saline water would be reclassified, possibly to the onshore subcategory. Inland waters have ionic ratios which usually differ appreciably from those in the sea. They exhibit great chemical diversity, a wide variation in physical conditions such as temperature, and often possess a relative impermanence of surface water. The salinity of inland water is dominated by four major cations (positively charged ions), calcium, magnesium, sodium, and potassium; and three major anions (negatively charged ions), carbonate, sulfate, and chloride. The salinity of inland waters is affected by the interactions among precipitation, surface runoff, groundwater flow, evaporation and sometimes evapotranspiration by plants. Freshwater inland lakes and wetlands (e.g., the Great Lakes) would not be included in the coastal subcategory. The Agency currently knows of no oil and gas activity in saline inland lakes but solicits comment on the existence of facilities which are.

If the Agency adopts its preferred definition, facilities that are located in freshwater and are currently classified as coastal would be reclassified as onshore, unless the Agency regulates them in a new subcategory. The Agency is aware of cases in which produced waters, which are saline, have caused documented environmental damage when discharged into freshwater bodies. The introduction of this saline water



into freshwater brings about a distinct change in the environment for the flora and fauna which inhabit freshwater areas. Documented damage has included the severe degradation of the water and damage to native fish and vegetation. In one particular case discharges into Petronilla Creek in Texas were allowed. All freshwater species of fish and vegetation died as a result of exposure to the produced waters. As a result of such severe environmental damage, in 1986, the Texas Railroad Commission ordered a halt to the discharge of produced water in Petronilla Creek.

Facilities located in freshwater may have a greater availability of treatment options as a result of their location adjacent to or near land. If such facilities have the same treatment technologies available to them as onshore facilities, then they could be considered for inclusion in the onshore subcategory. If the Agency proceeds with this rulemaking, it will examine the technological and economic achievability of such a regulatory classification. The Agency solicits comment on this approach.

### 3. Facilities on Islands

There are facilities on islands (man-made and natural) that are surrounded by marine or estuarine water. In the Beaufort Sea, man-made islands exist but are not permanent structure. In other areas of Alaska, there are gravel islands which are not necessarily permanent but are also surrounded by marine or estuarine waters. The Agency is considering classifying these facilities as onshore because such facilities have the same technologies available to them as onshore facilities.

### 4. Transport of Waste Streams Across Subcategory Boundaries

In most instances the location of an affected facility and the point of discharge of pollutants from that facility will be within the same subcategory. However, in some instances the facility may be located in the geographic area covered by one subcategory of the oil and gas extraction regulations but its waste streams are discharged in a geographic area covered by a different subcategory. For example, an oil well located in estuarine waters could have a separation unit located onshore. Similarly, the produced water from an onshore well could be transferred to a coastal treatment unit and then discharged.

The Agency is considering adopting a regulatory approach that would make the more stringent subcategory regulations applicable in circumstances

where pollutants are transported across subcategory boundaries. The Agency solicits comment on this approach.

### 5. Possible Subdivisions of the Coastal Subcategory

Subdivision of the coastal subcategory may be appropriate based on factors that affect the use of a given technology which are not controllable by the operator. These may include depth to which salt water injection is economically feasible, number and suitability of saltwater strata available for reinjection or other factors.

A second alternative for a subcategory division could be based upon water depth in certain geographic areas. For example, facilities in Cook Inlet, Alaska would be considered coastal under the Agency preferred definition. These facilities are located in approximately 18 to 38 m of water (i.e., water depths of 50 feet or more) and like offshore facilities, can achieve land disposal only through barging.

EPA is specifically inviting comments on whether such subdivisions are necessary or appropriate.

### V. Coastal Subcategory Profile Approach

This section describes the steps that the Agency has already taken to develop a preliminary profile of the coastal oil and gas extraction industry (based upon the water classification definition.) This profile was developed to aid the Agency in characterizing such aspects of the industry as the number of facilities located in marine and estuarine water, the distribution of facilities by state, amounts of oil, gas and water that are produced by facilities in this subcategory, as well as other physical characteristics.

If EPA proceeds with this rulemaking, it will use this profile and information included in public comments received on this notice to assist in developing a definition of the coastal subcategory. This section also outlines the Agency's plans to further characterize coastal facilities through the use of U.S. Fish and Wildlife Service maps. The Agency solicits comment on additional sources of data that could be used in future profiling efforts and on the preliminary profile results that are presented by the Agency.

#### A. Description of Field Data

The Agency has purchased from Petroleum Information Inc., annual data for the years 1978 to 1986 for oil and gas fields in the counties which border the coasts of; Alabama, Alaska, California, Florida, Louisiana, Mississippi, and Texas. The Agency's preferred

definition, however, would apply to all states located along the Atlantic, Pacific, and Gulf coasts, as well as Alaska and Hawaii. The Agency is aware that there may be facilities located in the coastal counties of other states and will be collecting additional information on these facilities. In addition, the Agency solicits information on the existence of facilities in coastal counties which were not included in the preliminary profile.

The Agency has used these data to develop a preliminary profile of the wells which would be affected by any rulemaking in the coastal subcategory and will continue to use the data in further analyses of the coastal subcategory. To supplement the data obtained from Petroleum Information Inc. and other sources, the Agency would issue a questionnaire to the industry under section 308 of the Clean Water Act if it proceeds with this rulemaking.

The Petroleum Information, Inc. database generally contains information on the following list of attributes for each oil and gas field:

state code,  
district code,  
field code,  
production year,  
county code,  
operator code,  
county name,  
state name,  
field reservoir name,  
field/reservoir centroid (by longitude and latitude),  
year production began,  
number of oil wells in field,  
number of gas wells in field,  
annual oil production,  
annual gas production,  
annual water production,  
cumulative oil produced during lifetime of well,  
cumulative gas produced during lifetime of well,  
cumulative water produced during lifetime of well,  
year of first production, and  
average well depth.

#### B. Estimation Procedures for Profiling the Coastal Subcategory

The Agency's initial analysis of the coastal subcategory has involved the identification of oil and gas extraction fields in the coastal counties of states which border the Atlantic, Pacific and Gulf coasts including Alaska and Hawaii. Through the use of the Agency's STORET computer system, the center of each field/reservoir (centroid) by longitude and latitude is contained in the Petroleum Information Inc. data base and have been plotted on maps. These maps show rivers, lakes and streams as well as counties. These maps, however,



do not indicate the water quality characteristics (such as salinity) of the water bodies. USFWS has produced a series of the 1:24000 scale which clearly delineate the various water systems (e.g., marine, estuarine.) The Agency intends to conduct further work to identify activities within the coastal subcategory based upon the most recent USFWS 1:24000 scale maps and comments received on this notice.

For the purposes of developing a preliminary profile, the Agency has performed a coastal county-by-county analysis of oil and gas activities. The profile indicates that there are 23,891 oil wells and 8,777 gas wells in these counties. The county-by-county analyses do not differentiate between onshore and coastal segments (i.e., freshwater, marine water or estuarine water) or between stripper oil wells and marginal gas wells. The Agency is aware that the county analyses generate an overestimate of the actual number of facilities which would be considered coastal under its preferred definition.

The list of states and counties which the Agency believes contain coastal oil and gas facilities (under the Agency's preferred definition) is included in appendix B. County-by-county information regarding oil and gas facilities is presented in appendix C. The Agency solicits comment on the county data presented and on the existence of any counties in which coastal oil and gas activities take place (under the Agency's preferred definition of coastal), but which have not been included in this profile.

#### C. Model Facilities

The Agency often uses model facilities to estimate industry compliance costs and economic impacts of regulations. The number of model facilities will be determined as the profile of existing facilities nears completion. If the Agency proceeds with this rulemaking, it will define model facilities in terms of characteristics likely to influence compliance costs and economic impacts. The characteristics of a model facility may not be the same for estimating compliance costs for drilling muds and cuttings and produced water. Accordingly, it is likely that there will be several model facilities for each different waste stream as well as separate model facilities for stripper and marginal gas wells.

For muds and cuttings, model facilities may be individual wells or fields of various sizes. Some factors influencing costs (other than control technologies) are the volume of material to be controlled (e.g., barrels of muds and

cuttings) and the transport distances involved. The model facilities will take into consideration economies of scale that result from (1) the number of wells per field; and (2) the regional location of the facilities, e.g., Gulf coast, California, Alaska, where these regional locations affect the choice and cost of technologies and the economic impacts.

For produced water, the model facility may be the oil-water separation unit. At a maximum there would be a separation facility for each well. Typically, a facility with several wells or a group of facilities is serviced by a single separation facility. For example, there may be a separation facility for each field, or each operator, or each reservoir.

The Agency has received some information on the industry's use of muds and cuttings treatment, disposal and oil-water separation facilities including features that determine the number of wells serviced by a separation unit. In previous offshore rulemakings, the Agency has estimated compliance costs on a per-platform basis with respect to the platform's size (e.g., 4-well, 12-well and the like.) See 53 FR 41358 (October 21, 1988) and 50 FR 34593 (August 26, 1985). The Agency solicits comment on the applicability of this offshore information to rulemaking for the coastal subcategory. The Agency solicits information on the similarities between the coastal, offshore and onshore industries as well as characteristics which make coastal facilities unique.

#### VI. Stripper Oil Wells and Marginal Gas Wells

##### A. Stripper Oil Wells

Stripper oil wells are currently defined at 40 CFR 435.60 as:

\* \* \* those onshore facilities which produce 10 barrels per well per calendar day or less of crude oil and which are operating at the maximum feasible rate of production and in accordance with recognized conservation practices.

The term onshore for this subcategory was defined as:

\* \* \* all lands areas landward of the inner boundary of the territorial seas as defined in 40 CFR 125.1(gg).

The onshore subcategory regulations specifically exempt stripper oil wells from the zero discharge requirement that applies to other onshore facilities (40 CFR 435.30), whereas stripper oil wells covered by the coastal subcategory are not exempted from the discharge requirements for the coastal activities (40 CFR 435.40 and 40 CFR 435.60). Although the Agency's regulations describe the stripper subcategory, no

specific effluent limitations guidelines for this subcategory have ever been promulgated.

State and EPA regional offices have expressed concern over the lack of federal regulation of stripper oil wells. State and regional agencies receive reports of frequent and extensive damage to wildlife, vegetation, crops and livestock caused by discharges from stripper oil wells.

Stripper oil wells produce relatively small amounts of oil on an individual well basis; however, collectively stripper oil wells comprise a large percentage of all currently producing oil wells. In 1987, there were 451,787 stripper oil wells which produced 446.8 million barrels of crude oil. Assuming a ratio of nine barrels of produced water for every one barrel of oil produced by stripper oil wells, in 1987 4.0 billion barrels of water were produced by such facilities.

It has been reported to the Agency that in some regions an estimated 70% of the stripper oil wells discharge produced water directly to surface waters or dispose of the produced water in settling ponds which in many cases overflow. In other regions, however, it has been reported that stripper oil wells reinject their produced water. The Agency solicits information about the treatment technologies and the disposal methods used for the produced water waste stream from stripper oil wells.

As part of this potential rulemaking, the Agency is considering whether (1) all stripper oil wells should be classified and regulated in their own subcategory regardless of their geographic location or whether (2) stripper oil wells should be regulated under geographic subcategory regulations. If the latter approach were selected, stripper oil wells in the coastal geographical area would be classified and regulated in the coastal subcategory, those in the onshore geographical area would be classified and regulated in the onshore subcategory, and those in the agricultural and wildlife water use geographical area would be classified and regulated in that subcategory. The latter approach would eliminate the now separate Stripper Subcategory, but effluent limitations guidelines would be established for stripper oil wells in each subcategory if the Agency proceeds to develop new guidelines applicable to stripper oil wells.

##### B. Marginal Gas Wells

The same classification and regulation questions are applicable to marginal gas wells. Marginal gas wells (sometimes referred to as stripper gas wells) are not



included in the stripper subcategory, and they are not separately defined in any other subcategory. Therefore, marginal gas wells are not exempt from any applicable regulations. For example, onshore marginal gas wells are subject to the zero discharge requirement. In *American Petroleum Institute v. EPA*, 661 F.2d 340, (5th Cir. 1981), American Petroleum Institute asserted that the criteria upon which EPA relied to describe the stripper subcategory for oil wells apply equally to marginal gas wells, and that marginal gas wells should not have been excluded from the stripper subcategory.

The court decided that:

EPA should examine once again the problem of stripper gas wells and consider adding them to the final Guidelines for stripper oil wells. *Id.* at 357.

In 1987, nine trade associations representing oil and gas operators in seven Appalachian states petitioned the Agency to, among other things, reconsider the zero discharge requirement applicable to marginal gas wells in those states.

As part of this potential rulemaking, the Agency would define marginal gas wells and then decide how to classify and regulate them, i.e., (1) to include them in the stripper subcategory; (2) to classify and regulate them in their own subcategory; or (3) to classify and regulate marginal gas wells under each geographical subcategory.

Since the definition of stripper well in the 1979 BPT regulation did not encompass marginal gas wells, the Agency is considering possible definitions of the term marginal gas well. One possible definition appears at section 108(b)(1) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3318 (b)(1), which defines "stripper well natural gas" as gas from a well which produces "nonassociated natural gas" (i.e., natural gas not produced in association with crude oil) at its maximum efficient rate of flow and at a rate not exceeding an average of 60,000 cubic feet (Mcf) per production day during the preceding 90-day production period. One advantage of this definition is that the number, production, locations, and operators of every marginal gas well meeting the above criteria are known to the Federal Energy Regulatory Commission (FERC). FERC has recorded these data on computer tapes that contain well determinations under the Natural Gas Policy Act. These tapes would assist EPA in establishing the number of marginal gas wells.

Currently, marginal gas wells in the onshore geographic areas are subject to the zero discharge requirement and in

the coastal geographic area are subject to certain discharge requirements. It it proceeds with this rulemaking, the Agency may consider the appropriateness of this requirement for such facilities. The Agency would also examine the cost and effect on production if there were a zero discharge requirement for marginal gas wells located in the coastal geographic area.

The Agency solicits comment on the possible definition of marginal gas wells, an appropriate subcategory classification, and wastewater characteristics and environmental impacts of the produced water from marginal gas wells.

## VII. Environmental Concerns

Estuaries and other coastal waters serve as the critical habitat to many species of fish and wildlife. While estuaries and associated coastal waters comprise less than 1% of the ocean environment, these areas represent the biological foundation of the entire marine ecosystem. They provide food, shelter, and spawning grounds for commercial fisheries worth an estimated 5.5 billion dollars to the GNP in 1986, and support 17 million recreational fishermen who also spend 13.5 billion dollars per year according to NOAA, 1987, "NOAA Estuarine Research Program Development," Estuarine Program Office, National Oceanic Atmospheric Administration, U.S. Department of Commerce.

Seven of the ten most valuable commercial fisheries depend on coastal waters for reproduction and survival. These include the Gulf shrimp, South Atlantic shrimp, menhaden, sockeye salmon, pink salmon, oyster, and blue crab fisheries. Seventy percent of the Nation's commercial fishery resources are estuarine-dependent. Commercial fisheries in the major coastal oil and gas areas are no exception: in the Gulf of Mexico as much as 98% of the fishery resource is estuarine-dependent, in Alaska about 76% and in California 18%. Sport fishing is also estuarine-dependent.

Oil and gas drilling and production activities can cause a loss of habitat for aquatic life in estuaries and other coastal waters. These activities can also introduce large quantities of petroleum hydrocarbons and other organic and inorganic pollutants which have the potential to affect estuarine-dependent species at their most sensitive life stages. Oil and gas production has been identified as one of two primary causes of non-support of designated uses in Alaska's estuarine waterways at North Slope and Kenai Peninsula, and as a

contributing factor to the water quality decline in coastal regions of Louisiana and Texas.

The direct and indirect exposure of humans to pollutant contamination from oil and gas discharges also has the potential to occur in coastal areas. The coastal environment is intensively used for recreational activities such as boating, swimming, fishing, shrimping, and crabbing and some people in coastal areas base a large proportion of their diet on subsistence catch which many be contaminated.

The Agency is gathering more information regarding the effects of produced water or drilling discharges on wetland vegetation as the potential for degradation of wetlands is great. Interrelationships between the wetlands and shallow water habitats are important in determining the productivity of these habitats for estuarine-dependent fishery resources.

A number of factors may contribute to the effect of oil and gas discharges on wetlands. The rate of dispersion is a critical determinant of the distribution of materials in the water column, and the effects on pelagic and benthic biota. The fate of material discharged is influenced heavily by the dispersive and transport energy of the ocean and other water bodies at drilling and production sites. In coastal environments, petroleum hydrocarbons resulting from oil and gas drilling and production discharges are likely to reach the seabed and be incorporated in bottom sediments. In shallow coastal waters with smaller volumes of water available for dilution and with sediment loads higher than in deeper offshore areas, the potential for contamination of bottom sediments by these discharges is much greater.

Field studies have shown that the severity of impacts of drilling fluids and cuttings is directly related to the amount of material accumulating in the substrate. The accumulation is, in turn, related to the amount and physical character of materials being discharged, and to ambient conditions, such as current, speed, and water depth at the discharge site. In high energy environments, less accumulation of muds and cuttings occurs, and the impact on the benthos is not as severe and is of shorter duration than in the low coastal environments. In the coastal area, more material accumulates and there is a potential for reduction in the abundance of some benthic species resulting from burial and chemical toxicity of the drilling fluids and cuttings.

Coastal areas include diverse and complex biological communities and are



subject to a wide range of changing physical, chemical, and biological conditions. The living resource communities present in the coastal area will depend upon the habitat available in the region. Because coastal areas include land/seawater/freshwater interfaces, the variety of available habitats and biological communities is considerable. The physical and chemical characteristics of a given coastal area are dependent on the amount of fresh water input, depth, substrate type, hydrology, tidal action, and other factors including human activities.

The Agency is gathering background information on biological, chemical, and physical environments of the coastal regions impacted by oil and gas activities. The conceptual models that have been identified to assess potential impacts of discharges offshore is most cases will not be appropriate for the shallow waters of the coastal area. Ambient conditions found in the coastal environment affect dilution, transport, sinks, and biogeochemical availability of effluent constituents differently from ambient conditions in the offshore area. The coastal area will more likely require marine models, estuarine and bay models, in addition to river and stream models.

If the Agency proceeds with this rulemaking, the Agency will project the potential environmental impacts of oil and gas extraction in the coastal regions and pollution reduction benefits. In that connection, the Agency solicits information related to the fate and transport of oil and gas pollutants in the coastal environment and on the impact of these discharges on estuarine fish and wildlife. Appropriate models for assessing impacts on coastal areas must also be identified and developed if the Agency proceeds with this rulemaking. The Agency is therefore soliciting information on the characteristics of oil and gas exploration and production in the coastal environment as well as on appropriate models to assess the potential impacts of these activities and benefits expected of the regulation.

#### VIII. Technological Approaches to Controlling Discharges in the Coastal and Stripper Subcategories

The Technological approaches to controlling discharges in the coastal and stripper subcategories are divided into two sections in order to distinguish between the major waste streams associated with oil and gas production.

The first section is entitled "Production Operations: Produced Water." The technologies presented are those specifically considered for the produced water waste stream of the

coastal and stripper subcategories. Such technologies include: reinjection, induced oil/water separation, carbon adsorption and desalination by reverse osmosis.

The second section is entitled "Development Operations", and deals with the muds and cuttings waste streams for the coastal and stripper subcategories. The technologies which are presented include: thermal technologies (e.g., thermal distillation and thermal oxidation), solvent extraction, disposal methods, and product substitution.

##### A. Production Operations: Produced Water

The Agency, in considering BAT, BCT, and NSPS, would assess pollutant control technologies available for use to reduce toxic, conventional and non-conventional pollutant levels in the produced water waste stream for both coastal and stripper facilities.

##### 1. Reinjection Option

Reinjection technology for produced water typically consists of injecting the produced water under pressure to subsurface strata or formations. Treatment of the waters prior to injection is usually necessary. Such treatment may include removal of free oils and suspended matter by oil-water separation and filtration technologies. The removal of suspended matter prior to injection is usually performed to prevent pressure build-up and plugging of the receiving formation or strata. Biocides and corrosion inhibitors are typically added to the waters to minimize clogging of the subsurface strata or formation and to minimize corrosion of equipment. Reinjection technology results in no discharge to surface waters.

The Agency conducted two workshops with state regulatory authorities regarding existing BPT effluent limitations guidelines for the onshore subcategory of the oil and gas extraction industry. In these workshops, the Agency was made aware of problems encountered with the implementation of the zero discharge requirement for produced waters through the use of reinjection. The workshop presentations illustrated that wastewater management issues, regulatory approaches and operator practices vary by location. Diverse climates, precipitation/evaporation rates, geological formations and other factors exist from state to state, and even with areas of the same state. One example of such variation is in West Virginia, where general permits for treatment and discharge of air drilling

pit fluids differ by county as a result of differences in geological formations. Similar factors may affect the coastal subcategory, e.g., reinjection might be possible in one coastal area while in another area the geologic conditions would make reinjection infeasible. The Agency solicits comment on such factors as those mentioned above which may affect the applicability of the reinjection technology for produced waters in the coastal and stripper subcategories.

##### 2. Produced Water Filtration

Filtration is the separation of a fluid-solid mixture involving passage of most of the fluid through a porous barrier which retains most of the solid particles contained in the mixture. In mixed or granular media filtration, beds of solids like sand or coal are used as filter media to clarify water or chemical solutions containing small quantities of suspended particles. Oil and gas extraction facilities employ filtration as a technique to remove suspended matter from produced waters both as an add-on technology to existing technologies and as a stand alone technology. As an add-on technology to BPT treatment of offshore and coastal produced water, this type of filtration is incapable of removing soluble materials. Produced water, however, contains priority pollutants which may be in solution or in a soluble form and are not removed by filtration. Therefore, quantifiable reductions in priority pollutants due to filtration alone may not be achievable. Reductions in total suspended solids, insoluble inorganics, and oil and grease beyond the BPT level of control can be expected through the use of filtration.

Filtration technology was costed for the 1985 offshore proposal (50 FR 34802; August 26, 1985). For NSPS, the Agency determined filtration to be technologically feasible for the control of conventional pollutants but not effective in reducing dissolved priority pollutants. It was also determined that filtration warranted further consideration.

The Agency has received some information regarding produced water filtration processes on offshore facilities. In addition, the Agency plans to perform some on-site sampling and analysis programs at offshore sites to examine pollutant reductions, equipment requirements, toxicity tests and filter run times. The collection and analysis of such performance data could result in the development of a regulatory option that could be considered as an alternative to zero discharge. The Agency plans to use these data from offshore facilities and apply them to any



regulatory development in the coastal subcategory. The Agency solicits comment on the applicability of this approach.

### 3. Induced Oil/Water Separation

Induced oil/water separation, which uses hydrocyclone principles, is reportedly effective in the reduction of oils and organics. Preliminary results indicate that through the use of this technology, oil and grease levels in treated produced water can be reduced to a range of 10 to 20 ppm. Induced oil/water separation is one of the best expensive alternatives to zero discharge which achieves significant reduction of oil and the associated toxics beyond BPT. This process is a possible technological alternative to reinjection of produced water. It is currently being used on a full-scale basis overseas (for example, in the North Sea and Australia) and is being tested and implemented by some companies in the United States.

If the Agency proceeds with this rulemaking, the performance of induced oil/water separation will be characterized with sampling and analysis during test runs which would be performed by the Agency. In addition to the performance data, the technological and economic achievability of the process as a basis for oil and grease and/or toxic limitations will be examined.

### 4. Carbon Adsorption

The purpose of carbon adsorption is to reduce the levels of priority organic pollutants in produced water. Adsorbents are natural or synthetic materials or amorphous (not crystallized) or microcrystalline structures; those used on a large scale include activated carbon, activated alumina, silica gel, clays or molecular sieves. At ordinary temperatures, adsorption is usually caused by intermolecular forces rather than formation of new chemical bonds. This control technology was addressed in the 1985 offshore proposal but was not selected at that time as a basis for proposed effluent limitations.

Since that time, at least one domestic oil company has been using full-scale carbon adsorption at an offshore platform. It is being used to comply with the BPT oil and grease limit with reportedly good success. Performance data thus far demonstrate that it has reduced oil and grease levels in produced water to the 20 ppm range in addition to reducing the soluble organics content of produced water. The Agency will evaluate this process as a possible technology for treatment of produced

water for the coastal and stripper subcategories if it proceeds with this rulemaking.

### 5. Desalination by Reverse Osmosis

In the reverse osmosis method of desalination, water is separated from dissolved salts through the use of a membrane that is permeable to the passage of water but not of dissolved salts. In an osmosis process when the membrane is placed between a brine solution and fresh water, the tendency to equalize concentrations on each side would cause the fresh water to flow through the membrane into the brine solution. This flow may be countered by applying a pressure on the side of the brine solution. If this pressure is great enough, the flow will be stopped altogether. The pressure required to balance the tendency of water to flow across the membrane is called the osmotic pressure.

In reverse osmosis processes, if the pressure on the brine solution is increased beyond the osmotic pressure, the direction in which the water tends to flow across the membrane is reversed and the freshwater passes from the brine solution to the freshwater side. To achieve this reverse osmosis, brine solution can be pumped at high pressures into tubes lined with semi-permeable membranes, e.g., cellulose acetate. As the water passes across the membrane, the local concentration of salt at the wall of the membrane increases. This causes the osmotic pressure to increase and the flow of fresh water to decrease. To prevent this from occurring, the brine solution must be continually pumped through the tubes. The flow of fresh water through the membrane is proportional to the applied pressure although the maximum pressure that can be applied is limited by the characteristics of the membrane.

It has been reported to the Agency that reverse osmosis is a process that has been used on a mobile unit basis. The Agency solicits information regarding the extent of use of reverse osmosis by the oil and gas industry in the treatment of produced water both at producing sites either by mobile units or fixed units and by centralized waste treaters off-site.

### B. Development Operations

Technologies applicable to development operations that are discussed in this section are currently being evaluated by the Agency for application to offshore facilities. The Agency believes that these technologies would be applicable for use in the coastal subcategory. A brief explanation of the technologies is presented; further

explanation of these processes has been published in the Offshore Notice of Data Availability (53 FR 41358; October 21, 1988).

### 1. Muds/Cuttings Thermal Technologies

Since the 1985 proposal of offshore rules, EPA has received comments and collected additional data on methods to control the oil and toxics content of drilling wastes. Two types of thermal technologies have been identified for potential use to reduce the oil and toxics content of drilling wastes: thermal distillation and thermal oxidation.

The thermal distillation process has been adapted for use with some variations by vendors in the industry. A brief description follows.

Some thermal distillation processes involve exposing drilling wastes to direct heat sources such as electricity heated chambers or passage through dryers while others employ indirect heat sources. Upon heating, the hydrocarbons and water present in the wastes volatilize. The processed wastes are then cooled and slurried with seawater and are then discharged into the ocean. The volatilized hydrocarbons and water are condensed and separated. The recovered hydrocarbons can potentially either be recycled for use in the active mud system subject to meeting the specifications for oil additives to the mud or they can be marketed for other purposes (e.g., heating fuel). If the recovered water meets effluent limitations for produced water, it could be suitable for discharge. If the recovered water does not meet these effluent limitations, it may be appropriate to introduce it to the produced water treatment system. If there are no production facilities at the site, the recovered water may need to be transported to another facility for adequate treatment or handling.

Thermal distillation units are mobile and can be installed and operated on a rig to process wastes onsite. Some full-size thermal distillation units have been operated and tested on offshore facilities while others have only been pilot-tested. Observations to date have indicated that this type of technology can achieve significant reduction in the oil and toxics content of drilling cuttings.

In addition to the hydrocarbon content from this technology, a dry solid residual is also generated. The dried solids produced are reportedly suitable for use as aggregates or fill materials. The hydrocarbons produced from the solid wastes are partially oxidized and complete oxidation (combustion) can be obtained by passing the hydrocarbons



through an oxidation chamber (afterburner).

Direct thermal oxidation can also be accomplished by passing the production wastes through a direct-fired countercurrent rotary kiln. Kilns are used in place of ordinary rotary dryers when the wall temperature will exceed that tolerable by bare sheet metal (710.6 °F to 800 °F for carbon steel.) In this process, the production wastes are thermally oxidized at temperatures typically in the range of 1600 °F to 2500 °F.

Due to the scale of the equipment required, use of the thermal oxidation process may not be possible for coastal facilities nor may it be able to be moved from site to site. However, the drilling wastes could be transported to a land-based facility for processing.

## 2. Muds/Cuttings Solvent Extraction Technology

Solvent extraction technology has been developed to treat drilling wastes. Drilling wastes enter an extraction column and are contacted with solvent to extract the oil. The oil-laden solvent flows from the extractor column to an evaporator, a separation column, and a separator where the oil and solvent are separated. The oil phase flows to the fluidizing oil holding tank and the solvent is recycled to the process.

Two types of solvent identified by the Agency have been used in the solvent extraction processes, chlorofluorocarbons and carbon dioxide. Either type of solvent will reportedly serve the operational needs of the process. Although the solvents are used and recovered in a closed-type system, there is potential for some solvent loss to the atmosphere.

The Agency is particularly concerned about the potential for losses of chlorofluorocarbon-type solvents from these processes to the atmosphere because they contribute to depletion of the stratospheric ozone layer, and the Agency has recently limited their production (53 FR 30566; August 12, 1988). The Agency is therefore soliciting comment and additional information to assess this potential, to quantify the rate and amounts of such losses, and to determine whether there are acceptable alternatives to use instead of chlorofluorocarbon-type solvents in these processes. The Agency will particularly focus on solvent extraction technology that does not employ chlorofluorocarbons as the extraction medium.

## 3. Muds/Cuttings Disposal Methods

If the Agency proceeds with this rulemaking, it will consider the transport

of drilling wastes for land disposal as a basis for coastal subcategory effluent limitations. The Agency will consider such factors as land availability, the capacity of available landfills, distance of landfills from the drilling sites, impacts on groundwater quality as well as non-water quality impacts, and the trends toward more stringent solid waste regulations at the federal, state and local levels in its investigation of land disposal technology.

## 4. Product Substitution

Recent studies have sought to identify drilling fluid formulations and drilling fluid additives which exhibit low toxicity in the marine environment and which can be discharged directly to marine waters. The Agency and the oil and gas industry have conducted programs to determine the relative toxicity of certain generic muds.

Similarly, the Agency and industry have investigated the use of low-toxicity substitutes for diesel oil. Research has been performed to identify materials that could perform the specific functions of diesel oil and also be acceptable for discharge to the marine environment. Low toxicity (e.g., mineral) oils have been generally found to serve as acceptable substitutes for diesel oil in drilling fluids. A significant difference between diesel and mineral oil from an environmental standpoint is the relatively low aromatic hydrocarbon content of mineral oil. The aromatic hydrocarbon components of these oils have been found to be the components most toxic to marine life.

The Agency intends to further consider the use of low toxicity drilling fluid components and additives as a basis for limitations for the control of toxic pollutants from drilling waste discharges.

## IX. Non-Water Quality Environmental Impacts

The utilization of many treatment technologies results in secondary environmental effects such as additional energy use for pumps and mechanical treatment equipment, the emission of combustion products from incineration processes, the generation of a concentrated waste stream or the generation of some amount of solid waste. Sections 304(b)(2)(B), 304(b)(3)(B), 304(b)(4)(B), and 306(b)(1)(B) of the Clean Water Act require the Agency to consider non-water quality environmental impacts (including energy requirements) in assessing candidate treatment technologies when setting effluent limitation guidelines at the BAT, BCT and NSPS levels of control. Other such

factors relevant to the treatment technologies discussed in today's notice include air emission increases, and solid waste generation. A discussion of the Agency's preliminary assessment of these factors is provided below and the Agency solicits comment on these discussions.

## A. Energy Use

The treatment technologies discussed in today's notice each require energy for equipment such as pumps, centrifuges, filtration systems, and thermal oxidation systems. Total energy use will depend on the technology selected and its total use. It is likely that the increase in energy use will constitute a small share of the energy potential produced by the facilities affected and will not have a significant effect on energy supplies.

## B. Air Emission Increases

The operation of several of the technologies being considered would result in increased air emissions of hydrocarbons, hydrogen sulfide and combustion products. These emissions are both controlled and fugitive. Fugitive emissions could result from leaks and ventilation from diesel and/or gas engines, oil/water separators, gas flotation systems, storage tank breathing and from piping and connections. Controlled emissions are likely to result from the thermal technologies and solvent extraction technologies. The Agency will further assess the air emission impacts if and when control technologies are selected for proposal.

## C. Solid Waste

The technologies being considered would result in a minimal increase in solid waste, primarily filtration and flotation system waste. The land disposal of drilling muds and drill cuttings would not increase the quantity of these waste streams but will require additional disposal facility resources. Section 3001(b)(2) of the Resource Conservation and Recovery Act (RCRA) exempts "drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or thermal energy" from subtitle C regulation under RCRA pending a determination by the Administrator either to promulgate regulations covering those wastes or that such regulations are unwarranted. On July 6, 1988, the Agency published a determination that subtitle C regulations for drilling fluids, produced waters and associated wastes are not warranted (53 FR 25446). These wastes are, however, currently regulated under subtitle D of



RCRA and, in many cases, under state law. The Agency is planning to develop new subtitle D requirements tailored to the special problems posed by oil and gas waste disposal facilities.

The Agency considers the availability of adequate disposal facilities an important issue in assessing the feasibility of a land disposal option for drilling muds and cuttings and will consider this aspect in more detail prior to proposal.

#### X. Future Data Collection Activities

If the Agency proceeds with this rulemaking, it would undertake a one-time survey under section 308 of the Clean Water Act for that portion of the oil and gas extraction industry that would be affected by the new regulations in the coastal and stripper subcategories. From the Agency's preliminary research, it appears that, unlike data relating to the offshore and onshore oil and gas industry, data specific to the coastal and stripper industry is not collected by the federal or state governments or by trade associations. Although the coastal industry may be included in data collected by these organizations, the data specific to coastal, stripper and marginal gas well facilities is not easily isolated. Additionally, the economic impact analysis for this rulemaking would require gathering information not only for major corporations, but also for many small, privately held companies involved in the production of coastal and stripper oil and marginal gas. A questionnaire would be distributed to operators of coastal and stripper oil and gas facilities for the purposes of:

- Updating and supplementing the current industry profile,
- Establishing the quantity and quality of generated waste streams,
- Identifying the methods currently used to treat and/or dispose of waste streams,
- Obtaining data on the performance and cost of existing control/treatment-pretreatment technologies, and
- Gathering data to analyze economic impact issues.

Prior to issuing any questionnaire, the Agency would identify the companies/individuals involved in coastal, stripper oil and marginal gas production, and would search for all available data sources to collect publicly available information on the environmental and economic issues as well as on control technologies that may be applicable to this industry. These technologies may be from other industries or from other subcategories of the oil and gas extraction industry. The Agency solicits sources of publicly available

information for use in the potential rulemaking.

Candidate treatment technologies and waste handling technologies would be investigated, along with others found applicable, to determine treatment efficiency, treatment cost and non-water quality impacts. This information would then be used to determine the applicability of these treatment technologies for use with the waste streams in question.

The collection of technical data would include field sampling of existing operating facilities to characterize all treated and untreated waste streams. The information would then be used to assess treatment performance for the purpose of regulatory development, environmental impact assessment and economic analyses. The sampling and analysis program would be for appropriate contaminants as listed on the EPA-ITD 1987 List of Analytes. The analytes on this list are the analytes that the Industrial Technology Division (ITD) of EPA's Office of Water would test for in its analytical programs, and include organic and inorganic analytes and various pollution parameters.

For the coastal subcategory produced water and drilling waste streams and the stripper subcategory produced water waste stream, the Agency would perform analyses to test for the presence of radionuclides. The Agency has preliminary information indicating that produced fluids can contain radionuclides. The Agency, however, lacks sufficient data at this time to evaluate the extent and levels of radionuclides in produced fluids. The Agency also lacks information regarding the likelihood of radionuclide levels in drilling wastes (i.e., drill cuttings and drilling fluids). The Agency will be conducting extensive analyses of these types of wastes to determine the extent of radionuclide content for the offshore subcategory and these results would be applied to the coastal and stripper subcategories. The Agency solicits information on radionuclide levels in the produced water and drilling waste streams and also any additional sources of information.

Data would also be collected on the type of drilling muds used in the coastal subcategory. This information would then be used to formulate a mud use profile. This profile would be compared with the muds used in the onshore and offshore subcategories to examine the similarities and differences to assess if data previously developed for the other subcategories is appropriate for use in the coastal database.

#### XI. Regulatory Impact Analysis

Executive Order 12291 requires a regulatory impact analysis (RIA) be conducted if certain criteria are met, such as an annual economic impact of a proposed rule totaling \$100 million. Since no regulations are proposed in this notice, EPA has not determined whether an RIA is necessary. If formal proposals are developed, the Agency will consider the question of the necessity for an RIA.

#### XII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires an analysis of any significant impact of proposed and final regulations on small entities. Since the Agency is not proposing any rules in this notice, EPA has not developed an RFA analysis. If EPA develops formal proposals, the Agency will reconsider the question of the necessity for an RFA.

#### XIII. Solicitation of Comments

The Agency invites comment on all aspects of today's notice. The Agency particularly invites comments on the following items:

- (1) The appropriateness of defining coastal in terms of the water classification system developed by United States Fish and Wildlife Service.
- (2) The appropriateness of further subdivision of the coastal subcategory based on regional factors that affect the use of a given technology.
- (3) The appropriateness of regulating discharges in the more stringent subcategory when the pollutants are transferred across subcategory boundaries.
- (4) Whether facilities located on man-made or natural islands surrounded by marine or estuarine water should be classified as coastal or onshore.
- (5) The industry's use of separation facilities, what factors determined the number of wells serviced by a separation unit, and the average number of wells serviced by a separation unit.
- (6) Whether estimating compliance costs on a per-facility basis by the facility's size (e.g., 4-well, 12-well and the like) is appropriate for the coastal subcategory.
- (7) Additional sources of publicly available information such as mailing lists of coastal and stripper facilities, waste stream characterization, and cost and economic data for coastal facilities.
- (8) Geological and any other characteristics that may affect the feasibility of a zero discharge requirement for all coastal areas.
- (9) The use of alternatives to chlorofluorocarbons in the solvent extraction processes and also the



potential for losses of chlorofluorocarbon type solvents in solvent extraction technologies.

(10) The non-water quality environmental impacts which are important in assessing candidate treatment technologies when developing guidelines covering the coastal subcategory.

(11) The availability of adequate disposal facilities in order to assess the feasibility of a land disposal option for drilling muds and cuttings.

(12) The presence of radionuclides in produced fluids and whether they are significant or not. The Agency requests any data or information regarding the levels of radionuclides in drilling wastes.

(13) The types of muds used in the coastal subcategory, sampling data on muds and cuttings and sampling data on produced water from coastal facilities including marginal gas wells and stripper oil wells.

(14) The appropriateness of reclassifying freshwater facilities into the onshore subcategory or a separate subcategory.

(15) The appropriateness of EPA's use of the definition of marginal gas wells as defined by the Natural Gas Policy Act of 1978 for purposes of defining marginal gas wells in regulations under the Clean Water Act.

(16) In the instances where produced water from stripper wells is co-treated with producer water from higher rate production facilities, the Agency solicits comment on whether the discharge from the co-treatment facility should be regulated based upon the limitations applying to the full-scale facility.

(17) At the present time the Agency is unaware of any offshore stripper oil wells or marginal production gas wells but solicits information on their existence.

(18) The appropriateness of classifying all Onshore, Coastal and Agriculture and Wildlife Water Use stripper oil wells into one subcategory for separate regulation.

(19) The appropriateness of including marginal gas wells in the same subcategory as stripper oil wells.

(20) The appropriateness of applying information and data regarding offshore facilities received through industry and on-site sampling and analysis to those facilities in the coastal subcategory.

Dated: October 20, 1989.

Rebecca Hanmer,

Acting Assistant Administrator for Water.

#### Appendix A—glossary

##### Marine System

The Marine System is defined by the U.S. Fish and Wildlife Service in the "Classification of Wetlands and Deepwater Habitats of the United States" (1979) to have the following limits:

"\* \* \* extends from the outer edge of the continental shelf shoreward to one of three lines: (1) the landward limit to tidal inundation (extreme high water of spring tides), including the splash zone from breaking waves; (2) the seaward limit of wetland emergents, trees, or shrubs; or (3) the seaward limit of the Estuarine System, where this limit is determined by factors other than vegetation. Deepwater habitats lying beyond the seaward limit of the Marine System are outside the scope of this classification system."

In this notice, the term *marine water* means the same as *marine system*.

##### Estuarine System

The Estuarine System is defined by the U.S. Fish and Wildlife Service in the "Classification of Wetlands and Deepwater Habitats of the United States" (1979) to have the following limits:

"\* \* \* extends (1) upstream and landward to where ocean-derived salts measure less than 0.5 parts per thousand during the period of average annual low flow; (2) to an imaginary line closing the mouth of a river, bay or sound; and (3) to the seaward limit of wetland emergents, shrubs, or trees where they are not included in (2)."

This definition is consistent with the definition of the term *estuarine zones* in the Water Quality Act of 1987 Section 104(n)(4) but contains more detail.

The Estuarine System includes both estuaries and lagoons. In this notice, the term *estuarine water* means the same as *estuarine system*.

##### Estuary

The Clean Water Act defines estuary in Section 104(n)(4) as:

"\* \* \* all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which the sea-water is measurably diluted with fresh water derived from land drainage."

##### Fresh

As defined by the U.S. Fish and Wildlife Service in the "Classification of Wetlands and Deepwater Habitats of the United States" (1979) this term is applied to water with salinity less than 0.5 ppt dissolved salts. The systems classified by USFWS which are considered to be freshwater systems are: the Riverine system, the Lacustrine system, and the Palustrine system.

##### Facilities

Facilities would be defined as anything used to explore, develop, or produce oil and gas and would include wells, platforms, booster pumps, gathering lines within a field, catch tanks, separation units, and equipment for storage. Transportation facilities for interfield transportation such as pipelines and pipeline pumping stations would not be

included in the definition of coastal oil and gas facilities.

#### Appendix B—States and Respective Counties Included in Profile

The following is a state-by-state listing of the coastal counties/parishes for which the Agency has purchased data and were included in the preliminary profile.

##### Alabama

Baldwin  
Mobile

##### Alaska

Kenai-Cook Inlet

##### California

Alameda  
Contra Costa  
Los Angeles  
Monterey  
Orange  
San Luis Obispo  
San Mateo  
Santa Barbara  
Solano  
Sonoma  
Ventura

##### Florida

Collier  
Lee  
Santa Rosa

##### Louisiana

Cameron  
Iberia  
Jefferson  
LaFourche  
Orleans  
Plaquemines  
St. Bernard  
St. Martin (Lower)  
St. Mary  
St. Tammany  
Terrebonne  
Vermillion

##### Mississippi

Hancock

##### Texas

Aransas  
Brazoria  
Calhoun  
Cameron  
Chambers  
Galveston  
Jefferson  
Kenedy  
Kleberg  
Matagorda  
Nueces  
Refugio  
San Patricio  
Willacy

#### Appendix C—Coastal County Analyses of Oil and Gas Production Facilities

This appendix presents a summary of oil and gas production data for each county which is believed to have coastal oil and gas facilities. These data were obtained from Petroleum Information Incorporated (PI), a private oil industry information service.



These summary data include counts of oil and gas wells and production figures for each field. These figures, i.e., the total number of wells and amount of production, are used as estimates for the number of coastal wells and amount of coastal production by county. The PI data base provides only well and production data by county without identifying wells that would be considered coastal freshwater, or onshore by any definition. Therefore, use of the PI summary data to estimate the number of coastal wells and the amount of coastal production results in overestimates of the actual numbers.

In order to estimate the percentage of fields located in coastal counties which appear to fit the coastal definition preferred by the Agency, computer mapping was done for oil and gas fields selected at random from within the coastal counties of each state. Although this method has not yet been refined to the point of providing detailed estimates of the number of coastal wells and amount of coastal production, it can be used to estimate an upper limit for the percentage of coastal oil and gas fields, under the definition preferred by the Agency, which are included in the coastal county summary. The computer mapping was done using the Agency Storage Retrieval (STORET) data base of lakes, rivers, and streams along with the latitudes and longitudes of the centroids for oil and gas fields provided by Petroleum Information Incorporated. The PI data base for 1988 contains 2,587 oil and gas fields in the coastal counties which are included in the coastal county summary. Longitudes and latitudes are associated with 2,100 of these fields, which means that 19% of the data base does not contain detailed location information. Because a large percentage of the data base does not contain detailed location information, a conservative approach toward estimating the percentage of coastal fields in coastal counties was selected.

The conservative approach was to estimate the percentage of fields which appear to be onshore and to then use the percentage of fields remaining as an estimate of the percentage of fields which are coastal. A random sample, stratified by state, of the 2,100 fields with latitudes and longitudes were plotted on maps. Maps for California, Texas, Louisiana, Mississippi, Alabama, and Florida were plotted at a scale of one inch equals 16 miles and any field whose centroid appeared, by visual inspection, to be more than one mile away from any known body of water was considered to be onshore. The map for Alaska was plotted at a scale of one inch equals 52 miles and any field whose centroid appeared to be more than three miles away from any known body of water was considered to be onshore. Alaska was plotted at the smaller scale because rivers, streams, and lakes were not available and because those field which were not over the available water bodies were clearly not over those water bodies. Using the foregoing definitions of onshore, the estimate of the percentage of fields in the attached coastal county summary which are onshore is between 39% and 47% with 95% confidence. This implies that no more than 61% of the fields in the attached coastal county

summary would be coastal under the Agency preferred definition. However, many of these remaining 61% will contain inactive fields, freshwater facilities, stripper oil wells, and marginal gas wells.

A detailed coastal profile will be developed through comments received from this Notice, through more extensive computer mapping, and through the use of 1:24,000 scale United States Fish and Wildlife Service maps which delineate freshwater from marine and estuarine water. The Agency solicits comment on the accuracy of the information contained within this county-by-county summary, the number of facilities which may actually be coastal in the county, the number of stripper oil wells in the county, and the number of marginal gas wells in the county. The Agency also requests information from those counties not included in the preliminary profile in which there are coastal facilities under the Agency preferred definition.

In these analyses, the term *inactive fields* refers to those fields which had no oil and no gas production during the year of 1988. The term "inactive oil well" refers to an oil well that was producing oil during the year 1988 and was later shut in during that same year while the term *active oil well* refers to an oil well that produced oil in 1988 and continued to produce oil throughout the year.

An *inactive gas well* is a gas well that was producing gas during the year 1988 and was later shut in during that year while an "active gas well" is one that produced gas in 1988 and continued to produce gas throughout the year.

#### Alaska:

County Name: Kenai-Cook Inlet  
County Code: 133,733

Total Number of Fields (Active and Inactive).....	12
Number of Inactive Fields.....	4
Number of Fields with Oil and Gas Production.....	6
Number of Fields with Oil Production Only.....	0
Number of Fields with Gas Production Only.....	2
Number of Oil Wells (Active).....	230
Number of Fields with Active Oil Wells.....	6
Annual Oil Production of Active Wells (bbbls).....	17,619,355
Number of Fields with Inactive Oil Wells.....	0
Annual Oil Production of Inactive Wells (bbbls).....	17,619,355
Total Annual Oil Production During 1986 (bbbls).....	17,619,355
Number of Gas Wells (Active).....	74
Number of Fields with Active Gas Wells.....	6
Annual Gas Production of Active Wells (Mcf).....	117,026,396
Number of Fields with Inactive Gas Wells.....	2
Annual Gas Production of Inactive Wells (Mcf).....	97,498,002
Total Annual Gas Production During 1986 (Mcf).....	214,524,398
Total Annual Water Production During 1986 (bbbls).....	32,982,262
(7 Fields Reporting)	

#### Alabama:

County Name: Baldwin

County Code: 003

Total Number of Fields (Active and Inactive).....	16
Number of Inactive Fields.....	2
Number of Fields with Oil and Gas Production.....	4
Number of Fields with Oil Production Only.....	0
Number of Fields with Gas Production Only.....	10
Number of Oil Wells (Active).....	11
Number of Fields with Active Oil Wells.....	4
Annual Oil Production of Active Wells (bbbls).....	523,116
Number of Fields with Inactive Oil Wells.....	0
Annual Oil Production of Inactive Wells (bbbls).....	0
Total Annual Oil Production During 1986 (bbbls).....	523,116
Number of Gas Wells (Active).....	37
Number of Fields with Active Gas Wells.....	10
Annual Gas Production of Active Wells (Mcf).....	1,547,322
Number of Fields with Inactive Gas Wells.....	4
Annual Gas Production of Inactive Wells (Mcf).....	329,909
Total Annual Gas Production During 1986 (Mcf).....	1,877,231
Total Annual Water Production During 1986 (bbbls).....	0
(0 Fields Reporting)	

County Name: Mobile

County Code: 097

Total Number of Fields (Active and Inactive).....	18
Number of Inactive Fields.....	1
Number of Fields with Oil and Gas Production.....	6
Number of Fields with Oil Production Only.....	0
Number of Fields with Gas Production Only.....	11
Number of Oil Wells (Active).....	452
Number of Fields with Active Oil Wells.....	4
Annual Oil Production of Active Wells (bbbls).....	2,376,238
Number of Fields with Inactive Oil Wells.....	2
Annual Oil Production of Inactive Wells (bbbls).....	6,999,481
Total Annual Oil Production During 1986 (bbbls).....	9,375,719
Number of Gas Wells (Active).....	65
Number of Fields with Active Gas Wells.....	13
Annual Gas Production of Active Wells (Mcf).....	28,488,599
Number of Fields with Inactive Gas Wells.....	4
Annual Gas Production of Inactive Wells (Mcf).....	504,075
Total Annual Gas Production During 1986 (Mcf).....	28,992,674
Total Annual Water Production During 1986 (bbbls).....	0
(0 Fields Reporting)	

#### California:

County Name: Alameda

County Code: 001

Total Number of Fields (Active and Inactive).....	1
Number of Inactive Fields.....	0
Number of Fields with Oil and Gas Production.....	0
Number of Fields with Oil Production Only.....	1
Number of Fields with Gas Production Only.....	0



Number of Oil Wells (Active).....	11	Number of Fields with Active Gas Wells.....	3	County Name: San Luis Obispo	
Number of Fields with Active Oil Wells.....	1	Annual Gas Production of Active Wells (Mcf).....	1,903,159	County Code: 079	
Annual Oil Production of Active Wells (bbbls).....	24,278	Number of Fields with Inactive Gas Wells.....	81	Total Number of Fields (Active and Inactive).....	8
Number of Fields with Inactive Oil Wells.....	0	Annual Gas Production of Inactive Wells (Mcf).....	19,867,886	Number of Inactive Fields.....	2
Annual Oil Production of Inactive Wells (bbbls).....	0	Total Annual Gas Production During 1986 (Mcf).....	21,771,045	Number of Fields with Oil and Gas Production.....	1
Total Annual Oil Production During 1986 (bbbls).....	24,278	Total Annual Water Production During 1986 (bbbls).....	463,632,089	Number of Fields with Oil Production Only.....	5
Number of Gas Wells (Active).....	0	(89 Fields Reporting)		Number of Fields with Gas Production Only.....	0
Number of Fields with Active Gas Wells.....	0	County Name: Monterey		Number of Oil Wells (Active).....	284
Annual Gas Production of Active Wells (Mcf).....	0	County Code: 053		Number of Fields with Active Oil Wells.....	6
Number of Fields with Inactive Gas Wells.....	0	Total Number of Fields (Active and Inactive).....	9	Annual Oil Production of Active Wells (bbbls).....	1,259,865
Annual Gas Production of Inactive Wells (Mcf).....	0	Number of Inactive Fields.....	5	Number of Fields with Inactive Oil Wells.....	0
Total Annual Gas Production During 1986 (Mcf).....	0	Number of Fields with Oil and Gas Production.....	0	Annual Oil Production of Inactive Wells (bbbls).....	0
Total Annual Water Production During 1986 (bbbls).....	34,407	Number of Fields with Oil Production Only.....	4	Total Annual Oil Production During 1986 (bbbls).....	1,259,865
(1 Field Reporting)		Number of Fields with Gas Production Only.....	0	Number of Gas Wells (Active).....	0
County Name: Contra Costa		Number of Oil Wells (Active).....	708	Number of Fields with Active Gas Wells.....	0
County Code: 013		Number of Fields with Active Oil Wells.....	4	Annual Gas Production of Active Wells (Mcf).....	0
Total Number of Fields (Active and Inactive).....	17	Annual Oil Production of Active Wells (bbbls).....	6,913,542	Number of Fields with Inactive Gas Wells.....	1
Number of Inactive Fields.....	6	Number of Fields with Inactive Oil Wells.....	0	Annual Gas Production of Inactive Wells (Mcf).....	1,036,991
Number of Fields with Oil and Gas Production.....	9	Annual Oil Production of Inactive Wells (bbbls).....	0	Total Annual Gas Production During 1986 (Mcf).....	1,036,991
Number of Fields with Oil Production Only.....	0	Total Annual Oil Production During 1986 (bbbls).....	6,913,542	Total Annual Water Production During 1986 (bbbls).....	5,198,822
Number of Fields with Gas Production Only.....	2	Number of Gas Wells (Active).....	0	(6 Fields Reporting)	
Number of Oil Wells (Active).....	42	Number of Fields with Active Gas Wells.....	0	County Name: San Mateo	
Number of Fields with Active Oil Wells.....	31	Annual Gas Production of Active Wells (Mcf).....	0	County Code: 081	
Annual Oil Production of Active Wells (bbbls).....	155,693	Number of Fields with Inactive Gas Wells.....	0	Total Number of Fields (Active and Inactive).....	4
Number of Fields with Inactive Oil Wells.....	6	Annual Gas Production of Inactive Wells (Mcf).....	0	Number of Inactive Fields.....	0
Annual Oil Production of Inactive Wells (bbbls).....	3,149	Total Annual Gas Production During 1986 (Mcf).....	0	Number of Fields with Oil and Gas Production.....	2
Total Annual Oil Production During 1986 (bbbls).....	158,842	Total Annual Water Production During 1986 (bbbls).....	80,423,543	Number of Fields with Oil Production Only.....	2
Number of Gas Wells (Active).....	68	(4 Fields Reporting)		Number of Fields with Gas Production Only.....	0
Number of Fields with Active Gas Wells.....	9	County Name: Orange		Number of Oil Wells (Active).....	29
Annual Gas Production of Active Wells (Mcf).....	5,705,147	County Code: 059		Number of Fields with Active Oil Wells.....	4
Number of Fields with Inactive Gas Wells.....	2	Total Number of Fields (Active and Inactive).....	15	Annual Oil Production of Active Wells (bbbls).....	16,075
Annual Gas Production of Inactive Wells (Mcf).....	226,211	Number of Inactive Fields.....	1	Number of Fields with Inactive Oil Wells.....	0
Total Annual Gas Production During 1986 (Mcf).....	5,931,358	Number of Fields with Oil and Gas Production.....	8	Annual Oil Production of Inactive Wells (bbbls).....	0
Total Annual Water Production During 1986 (bbbls).....	2,868,604	Number of Fields with Oil Production Only.....	5	Total Annual Oil Production During 1986 (bbbls).....	16,075
(11 Fields Reporting)		Number of Fields with Gas Production Only.....	1	Number of Gas Wells (Active).....	0
County Name: Los Angeles		Number of Oil Wells (Active).....	2,130	Number of Fields with Active Gas Wells.....	0
County Code: 037		Number of Fields with Active Oil Wells.....	13	Annual Gas Production of Active Wells (Mcf).....	0
Total Number of Fields (Active and Inactive).....	112	Annual Oil Production of Active Wells (bbbls).....	8,580,546	Number of Fields with Inactive Gas Wells.....	2
Number of Inactive Fields.....	21	Number of Fields with Inactive Oil Wells.....	0	Annual Gas Production of Inactive Wells (Mcf).....	691
Number of Fields with Oil and Gas Production.....	84	Annual Oil Production of Inactive Wells (bbbls).....	0	Total Annual Gas Production During 1986 (Mcf).....	691
Number of Fields with Oil Production Only.....	7	Total Annual Oil Production During 1986 (bbbls).....	8,580,546	Total Annual Water Production During 1986 (bbbls).....	150,868
Number of Fields with Gas Production Only.....	0	Number of Gas Wells (Active).....	0	(3 Fields Reporting)	
Number of Oil Wells (Active).....	5,098	Number of Fields with Active Gas Wells.....	0	County Name: Santa Barbara	
Number of Fields with Active Oil Wells.....	91	Annual Gas Production of Active Wells (Mcf).....	0	County Code: 083	
Annual Oil Production of Active Wells (bbbls).....	31,127,446	Number of Fields with Inactive Gas Wells.....	9	Total Number of Fields (Active and Inactive).....	40
Number of Fields with Inactive Oil Wells.....	0	Annual Gas Production of Inactive Wells (Mcf).....	2,339,742	Number of Inactive Fields.....	7
Annual Oil Production of Inactive Wells (bbbls).....	0	Total Annual Gas Production During 1986 (Mcf).....	2,339,742	Number of Fields with Oil and Gas Production.....	24
Total Annual Oil Production During 1986 (bbbls).....	31,127,446	Total Annual Water Production During 1986 (bbbls).....	95,935,376	Number of Fields with Oil Production Only.....	8
Number of Gas Wells (Active).....	9	(13 Fields Reporting)		Number of Fields with Gas Production Only.....	1
				Number of Oil Wells (Active).....	1753



Number of Fields with Active Oil Wells.....	31	Annual Gas Production of Active Wells (Mcf).....	86,069	County Name: Lee	
Annual Oil Production of Active Wells (bbbls).....	8,410,626	Number of Fields with Inactive Gas Wells.....	0	County Code: 071	
Number of Fields with Inactive Oil Wells.....	1	Annual Gas Production of Inactive Wells (Mcf).....	0	Total Number of Fields (Active and Inactive).....	1
Annual Oil Production of Inactive Wells (bbbls).....	74	Total Annual Gas Production During 1986 (Mcf).....	86,069	Number of Inactive Fields.....	0
Total Annual Oil Production During 1986 (bbbls).....	8,410,700	Total Annual Water Production During 1986 (bbbls).....	0	Number of Fields with Oil and Gas Production.....	1
Number of Gas Wells (Active).....	13	(0 Fields Reporting)		Number of Fields with Oil Production Only.....	0
Number of Fields with Active Gas Wells.....	2	County Name: Ventura		Number of Fields with Gas Production Only.....	0
Annual Gas Production of Active Wells (Mcf).....	101,615	County Code: 111		Number of Oil Wells (Active).....	4
Number of Fields with Inactive Gas Wells.....	23	Total Number of Fields (Active and Inactive).....	54	Number of Fields with Active Oil Wells.....	1
Annual Gas Production of Inactive Wells (Mcf).....	7,139,233	Number of Inactive Fields.....	4	Annual Oil Production of Active Wells (bbbls).....	184,978
Total Annual Gas Production During 1986 (Mcf).....	8,410,700	Number of Fields with Oil and Gas Production.....	45	Number of Fields with Inactive Oil Wells.....	0
Total Annual Water Production During 1986 (bbbls).....	111,427,120	Number of Fields with Oil Production Only.....	5	Annual Oil Production of Inactive Wells (bbbls).....	0
(32 Fields Reporting)		Number of Fields with Gas Production Only.....	0	Total Annual Oil Production During 1986 (bbbls).....	184,978
County Name: Solano		Number of Oil Wells (Active).....	2530	Number of Gas Wells (Active).....	0
County Code: 095		Number of Fields with Active Oil Wells.....	50	Number of Fields with Active Gas Wells.....	0
Total Number of Fields (Active and Inactive).....	21	Annual Oil Production of Active Wells (bbbls).....	15,495,995	Annual Gas Production of Active Wells (Mcf).....	0
Number of Inactive Fields.....	8	Number of Fields with Inactive Oil Wells.....	0	Number of Fields with Inactive Gas Wells.....	1
Number of Fields with Oil and Gas Production.....	6	Annual Oil Production of Inactive Wells (bbbls).....	0	Annual Gas Production of Inactive Wells (Mcf).....	19,132
Number of Fields with Oil Production Only.....	0	Total Annual Oil Production During 1986 (bbbls).....	15,495,995	Total Annual Gas Production During 1986 (Mcf).....	19,132
Number of Fields with Gas Production Only.....	7	Number of Gas Wells (Active).....	1	Total Annual Water Production During 1986 (bbbls).....	7,906,819
Number of Oil Wells (Active).....	0	Number of Fields with Active Gas Wells.....	1	(1 Fields Reporting)	
Number of Fields with Active Oil Wells.....	0	Annual Gas Production of Active Wells (Mcf).....	241,656	County Name: Santa Rosa	
Annual Oil Production of Active Wells (bbbls).....	0	Number of Fields with Inactive Gas Wells.....	44	County Code: 113	
Number of Fields with Inactive Oil Wells.....	6	Annual Gas Production of Inactive Wells (Mcf).....	17,171,789	Total Number of Fields (Active and Inactive).....	5
Annual Oil Production of Inactive Wells (bbbls).....	76,720	Total Annual Gas Production During 1986 (Mcf).....	17,413,445	Number of Inactive Fields.....	1
Total Annual Oil Production During 1986 (bbbls).....	76,720	Total Annual Water Production During 1986 (bbbls).....	57,867,354	Number of Fields with Oil and Gas Production.....	4
Number of Gas Wells (Active).....	315	(50 Fields Reporting)		Number of Fields with Oil Production Only.....	0
Number of Fields with Active Gas Wells.....	13	Florida:		Number of Fields with Gas Production Only.....	0
Annual Gas Production of Active Wells (Mcf).....	51,950,081	County Name: Collier		Number of Oil Wells (Active).....	73
Number of Fields with Inactive Gas Wells.....	0	County Code: 021		Number of Fields with Active Oil Wells.....	4
Annual Gas Production of Inactive Wells (Mcf).....	0	Total Number of Fields (Active and Inactive).....	7	Annual Oil Production of Active Wells (bbbls).....	6,491,740
Total Annual Gas Production During 1986 (Mcf).....	51,950,081	Number of Inactive Fields.....	1	Number of Fields with Inactive Oil Wells.....	0
Total Annual Water Production During 1986 (bbbls).....	693,731	Number of Fields with Oil and Gas Production.....	4	Annual Oil Production of Inactive Wells (bbbls).....	0
(13 Fields Reporting)		Number of Fields with Oil Production Only.....	2	Total Annual Oil Production During 1986 (bbbls).....	6,491,740
County Name: Sonoma		Number of Fields with Gas Production Only.....	0	Number of Gas Wells (Active).....	0
County Code: 097		Number of Oil Wells (Active).....	51	Number of Fields with Active Gas Wells.....	0
Total Number of Fields (Active and Inactive).....	2	Number of Fields with Active Oil Wells.....	6	Annual Gas Production of Active Wells (Mcf).....	0
Number of Inactive Fields.....	1	Annual Oil Production of Active Wells (bbbls).....	1,531,623	Number of Fields with Inactive Gas Wells.....	4
Number of Fields with Oil and Gas Production.....	0	Number of Fields with Inactive Oil Wells.....	0	Annual Gas Production of Inactive Wells (Mcf).....	9,408,490
Number of Fields with Oil Production Only.....	0	Annual Oil Production of Inactive Wells (bbbls).....	0	Total Annual Gas Production During 1986 (Mcf).....	9,408,490
Number of Fields with Gas Production Only.....	1	Total Annual Oil Production During 1986 (bbbls).....	1,531,623	Total Annual Water Production During 1986 (bbbls).....	52,370,472
Number of Oil Wells (Active).....	0	Number of Gas Wells (Active).....	0	(4 Fields Reporting)	
Number of Fields with Active Oil Wells.....	0	Number of Fields with Active Gas Wells.....	0	Louisiana:	
Annual Oil Production of Active Wells (bbbls).....	0	Annual Gas Production of Active Wells (Mcf).....	0	County Name: Cameron	
Number of Fields with Inactive Oil Wells.....	0	Number of Fields with Inactive Gas Wells.....	4	County Code: 023	
Annual Oil Production of Inactive Wells (bbbls).....	0	Annual Gas Production of Inactive Wells (Mcf).....	148,445	Total Number of Fields (Active and Inactive).....	76
Total Annual Oil Production During 1986 (bbbls).....	0	Total Annual Gas Production During 1986 (Mcf).....	148,445	Number of Inactive Fields.....	19
Number of Gas Wells (Active).....	1	Total Annual Water Production During 1986 (bbbls).....	6,578,346	Number of Fields with Oil and Gas Production.....	55
Number of Fields with Active Gas Wells.....	1	(4 Fields Reporting)		Number of Fields with Oil Production Only.....	2
				Number of Fields with Gas Production Only.....	0
				Number of Oil Wells (Active).....	537



Number of Fields with Active Oil Wells.....	27	Annual Gas Production of Active Wells (Mcf).....	13,085,154	Number of Inactive Fields.....	20
Annual Oil Production of Active Wells (bbbls).....	7,982,483	Number of Fields with Inactive Gas Wells.....	5	Number of Fields with Oil and Gas Production.....	47
Number of Fields with Inactive Oil Wells.....	30	Annual Gas Production of Inactive Wells (Mcf).....	3,994,207	Number of Fields with Oil Production Only.....	1
Annual Oil Production of Inactive Wells (bbbls).....	2,055,845	Total Annual Gas Production During 1986 (Mcf).....	17,079,361	Number of Fields with Gas Production Only.....	3
Total Annual Oil Production During 1986 (bbbls).....	10,038,328	(18 Fields Reporting)		Number of Oil Wells (Active).....	1184
Number of Gas Wells (Active).....	292	County Name: Lafourche		Number of Fields with Active Oil Wells.....	44
Number of Fields with Active Gas Wells.....	51	County Code: 057		Annual Oil Production of Active Wells (bbbls).....	20,132,446
Annual Gas Production of Active Wells (Mcf).....	109,874,333	Total Number of Fields (Active and Inactive).....	65	Number of Fields with Inactive Oil Wells.....	4
Number of Fields with Inactive Gas Wells.....	4	Number of Inactive Fields.....	18	Annual Oil Production of Inactive Wells (bbbls).....	5953
Annual Gas Production of Inactive Wells (Mcf).....	786,945	Number of Fields with Oil and Gas Production.....	45	Total Annual Oil Production During 1986 (bbbls).....	20,138,399
Total Annual Gas Production During 1986 (Mcf).....	110,661,278	Number of Fields with Oil Production Only.....	1	Number of Gas Wells (Active).....	233
Total Annual Water Production During 1986 (bbbls).....	57,544,496	Number of Fields with Gas Production Only.....	1	Number of Fields with Active Gas Wells.....	40
(52 Fields Reporting)		Number of Oil Wells (Active).....	707	Annual Gas Production of Active Wells (Mcf).....	55,549,092
County Name: Iberia		Number of Fields with Active Oil Wells.....	34	Number of Fields with Inactive Gas Wells.....	10
County Code: 045		Annual Oil Production of Active Wells (bbbls).....	8,428,205	Annual Gas Production of Inactive Wells (Mcf).....	1,924,848
Total Number of Fields (Active and Inactive).....	28	Number of Fields with Inactive Oil Wells.....	12	Total Annual Gas Production During 1986 (Mcf).....	57,473,940
Number of Inactive Fields.....	10	Annual Oil Production of Inactive Wells (bbbls).....	187,318	Total Annual Water Production During 1986 (bbbls).....	159,021,451
Number of Fields with Oil and Gas Production.....	18	Total Annual Oil Production During 1986 (bbbls).....	8,615,523	(46 Fields Reporting)	
Number of Fields with Oil Production Only.....	0	Number of Gas Wells (Active).....	305	County Name: St. Bernard	
Number of Fields with Gas Production Only.....	0	Number of Fields with Active Gas Wells.....	42	County Code: 087	
Number of Oil Wells (Active).....	185	Annual Gas Production of Active Wells (Mcf).....	87,736,949	Total Number of Fields (Active and Inactive).....	25
Number of Fields with Active Oil Wells.....	13	Number of Fields with Inactive Gas Wells.....	4	Number of Inactive Fields.....	9
Annual Oil Production of Active Wells (bbbls).....	4,201,910	Annual Gas Production of Inactive Wells (Mcf).....	90,091	Number of Fields with Oil and Gas Production.....	10
Number of Fields with Inactive Oil Wells.....	5	Total Annual Gas Production During 1986 (Mcf).....	87,827,040	Number of Fields with Oil Production Only.....	1
Annual Oil Production of Inactive Wells (bbbls).....	73,662	Total Annual Water Production During 1986 (bbbls).....	79,239,181	Number of Fields with Gas Production Only.....	5
Total Annual Oil Production During 1986 (bbbls).....	4,275,572	(44 Fields Reporting)		Number of Oil Wells (Active).....	66
Number of Gas Wells (Active).....	88	County Name: Orleans		Number of Fields with Active Oil Wells.....	5
Number of Fields with Active Gas Wells.....	16	County Code: 071		Annual Oil Production of Active Wells (bbbls).....	2,222,841
Annual Gas Production of Active Wells (Mcf).....	40,751,689	Total Number of Fields (Active and Inactive).....	3	Number of Fields with Inactive Oil Wells.....	6
Number of Fields with Inactive Gas Wells.....	2	Number of Inactive Fields.....	1	Annual Oil Production of Inactive Wells (bbbls).....	24,459
Annual Gas Production of Inactive Wells (Mcf).....	112,227	Number of Fields with Oil and Gas Production.....	0	Total Annual Oil Production During 1986 (bbbls).....	2,247,300
Total Annual Gas Production During 1986 (Mcf).....	40,863,916	Number of Fields with Oil Production Only.....	0	Number of Gas Wells (Active).....	33
Total Annual Water Production During 1986 (bbbls).....	26,863,916	Number of Fields with Gas Production Only.....	0	Number of Fields with Active Gas Wells.....	13
(17 Fields Reporting)		Number of Oil Wells (Active).....	0	Annual Gas Production of Active Wells (Mcf).....	11,657,020
County Name: Jefferson		Number of Fields with Active Oil Wells.....	0	Number of Fields with Inactive Gas Wells.....	2
County Code: 051		Annual Oil Production of Active Wells (bbbls).....	0	Annual Gas Production of Inactive Wells (Mcf).....	539,767
Total Number of Fields (Active and Inactive).....	29	Number of Fields with Inactive Oil Wells.....	0	Total Annual Gas Production During 1986 (Mcf).....	12,196,787
Number of Inactive Fields.....	9	Annual Oil Production of Inactive Wells (bbbls).....	0	Total Annual Water Production During 1986 (bbbls).....	15,265,664
Number of Fields with Oil and Gas Production.....	19	Total Annual Oil Production During 1986 (bbbls).....	0	(11 Fields Reporting)	
Number of Fields with Oil Production Only.....	0	Number of Gas Wells (Active).....	4	County Name: St. Martin	
Number of Fields with Gas Production Only.....	1	Number of Fields with Active Gas Wells.....	2	County Code: 099	
Number of Oil Wells (Active).....	261	Annual Gas Production of Active Wells (Mcf).....	846,939	Total Number of Fields (Active and Inactive).....	39
Number of Fields with Active Oil Wells.....	16	Number of Fields with Inactive Gas Wells.....	0	Number of Inactive Fields.....	16
Annual Oil Production of Active Wells (bbbls).....	4,284,852	Annual Gas Production of Inactive Wells (Mcf).....	0	Number of Fields with Oil and Gas Production.....	23
Number of Fields with Inactive Oil Wells.....	3	Total Annual Gas Production During 1986 (Mcf).....	846,939	Number of Fields with Oil Production Only.....	0
Annual Oil Production of Inactive Wells (bbbls).....	50,708	Total Annual Water Production During 1986 (bbbls).....	19,800	Number of Fields with Gas Production Only.....	0
Total Annual Oil Production During 1986 (bbbls).....	4,335,560	(1 Field Reporting)		Number of Oil Wells (Active).....	584
Number of Gas Wells (Active).....	50	County Name: Plaquemines		Number of Fields with Active Oil Wells.....	19
Number of Fields with Active Gas Wells.....	15	County Code: 075		Annual Oil Production of Active Wells (bbbls).....	6,194,700
		Total Number of Fields (Active and Inactive).....	71		



Number of Fields with Inactive Oil Wells.....	4	Annual Gas Production of Inactive Wells (Mcf).....	0	Number of Fields with Oil and Gas Production.....	5
Annual Oil Production of Inactive Wells (bbbls).....	312,218	Total Annual Gas Production During 1986 (Mcf).....	252,737	Number of Fields with Oil Production Only.....	0
Total Annual Oil Production During 1986 (bbbls).....	6,506,918	Total Annual Water Production During 1986 (bbbls).....	0	Number of Fields with Gas Production Only.....	1
Number of Gas Wells (Active).....	91	(0 Fields Reporting)		Number of Oil Wells (Active).....	0
Number of Fields with Active Gas Wells.....	20	County Name: Terrebonne		Number of Fields with Active Oil Wells.....	0
Annual Gas Production of Active Wells (Mcf).....	29,756,933	County Code: 109		Annual Oil Production of Active Wells (bbbls).....	0
Number of Fields with Inactive Gas Wells.....	3	Total Number of Fields (Active and Inactive).....	85	Number of Fields with Inactive Oil Wells.....	5
Annual Gas Production of Inactive Wells (Mcf).....	270,910	Number of Inactive Fields.....	23	Annual Oil Production of Inactive Wells (bbbls).....	95,576
Total Annual Gas Production During 1986 (Mcf).....	30,027,843	Number of Fields with Oil and Gas Production.....	60	Total Annual Oil Production During 1986 (bbbls).....	95,576
Total Annual Water Production During 1986 (bbbls).....	57,078,674	Number of Fields with Oil Production Only.....	0	Number of Gas Wells (Active).....	29
(23 Fields Reporting)		Number of Fields with Gas Production Only.....	2	Number of Fields with Active Gas Wells.....	6
County Name: St. Mary		Number of Oil Wells (Active).....	511	Annual Gas Production of Active Wells (Mcf).....	6,324,795
County Code: 101		Number of Fields with Active Oil Wells.....	26	Number of Fields with Inactive Gas Wells.....	0
Total Number of Fields (Active and Inactive).....	34	Annual Oil Production of Active Wells (bbbls).....	9,115,419	Annual Gas Production of Inactive Wells (Mcf).....	0
Number of Inactive Fields.....	9	Number of Fields with Inactive Oil Wells.....	34	Total Annual Gas Production During 1986 (Mcf).....	6,324,795
Number of Fields with Oil and Gas Production.....	25	Annual Oil Production of Inactive Wells (bbbls).....	940,977	Total Annual Water Production During 1986 (bbbls).....	231,707
Number of Fields with Oil Production Only.....	0	Total Annual Oil Production During 1986 (bbbls).....	10,056,306	(6 Fields Reporting)	
Number of Fields with Gas Production Only.....	0	Number of Gas Wells (Active).....	457		
Number of Oil Wells (Active).....	442	Number of Fields with Active Gas Wells.....	59		
Number of Fields with Active Oil Wells.....	14	Annual Gas Production of Active Wells (Mcf).....	163,301,590		
Annual Oil Production of Active Wells (bbbls).....	4,176,765	Number of Fields with Inactive Gas Wells.....	3		
Number of Fields with Inactive Oil Wells.....	11	Annual Gas Production of Inactive Wells (Mcf).....	520,662		
Annual Oil Production of Inactive Wells (bbbls).....	767,432	Total Annual Gas Production During 1986 (Mcf).....	163,822,252		
Total Annual Oil Production During 1986 (bbbls).....	4,964,257	Total Annual Water Production During 1986 (bbbls).....	54,211,041		
Number of Gas Wells (Active).....	243	(57 Fields Reporting)			
Number of Fields with Active Gas Wells.....	25	County Name: Vermillion			
Annual Gas Production of Active Wells (Mcf).....	125,719,296	County Code: 113			
Number of Fields with Inactive Gas Wells.....	0	Total Number of Fields (Active and Inactive).....	66		
Annual Gas Production of Inactive Wells (Mcf).....	0	Number of Inactive Fields.....	14		
Total Annual Gas Production During 1986 (Mcf).....	125,719,296	Number of Fields with Oil and Gas Production.....	51		
Total Annual Water Production During 1986 (bbbls).....	38,289,806	Number of Fields with Oil Production Only.....	1		
(25 Fields Reporting)		Number of Fields with Gas Production Only.....	0		
County Name: St. Tammany		Number of Oil Wells (Active).....	250		
County Code: 103		Number of Fields with Active Oil Wells.....	27		
Total Number of Fields (Active and Inactive).....	1	Annual Oil Production of Active Wells (bbbls).....	5,971,139		
Number of Inactive Fields.....	0	Number of Fields with Inactive Oil Wells.....	25		
Number of Fields with Oil and Gas Production.....	1	Annual Oil Production of Inactive Wells (bbbls).....	1,730,825		
Number of Fields with Oil Production Only.....	0	Total Annual Oil Production During 1986 (bbbls).....	7,701,964		
Number of Fields with Gas Production Only.....	0	Number of Gas Wells (Active).....	301		
Number of Oil Wells (Active).....	0	Number of Fields with Active Gas Wells.....	51		
Number of Fields with Active Oil Wells.....	0	Annual Gas Production of Active Wells (Mcf).....	185,312,800		
Annual Oil Production of Active Wells (bbbls).....	0	Number of Fields with Inactive Gas Wells.....	0		
Number of Fields with Inactive Oil Wells.....	1	Annual Gas Production of Inactive Wells (Mcf).....	0		
Annual Oil Production of Inactive Wells (bbbls).....	3,879	Total Annual Gas Production During 1986 (Mcf).....	185,312,800		
Total Annual Oil Production During 1986 (bbbls).....	3,879	Total Annual Water Production During 1986 (bbbls).....	55,873,865		
Number of Gas Wells (Active).....	1	(49 Fields Reporting)			
Number of Fields with Active Gas Wells.....	1	Mississippi:			
Annual Gas Production of Active Wells (Mcf).....	252,737	County Name: Hancock			
Number of Fields with Inactive Gas Wells.....	0	County Code: 045			
		Total Number of Fields (Active and Inactive).....	9		
		Number of Inactive Fields.....	3		



Number of Fields with Inactive Oil Wells.....	33	Annual Gas Production of Inactive Wells (Mcf).....	5,853	Number of Fields with Oil and Gas Production.....	73
Annual Oil Production of Inactive Wells (bbbls).....	155,274	Total Annual Gas Production During 1986 (Mcf).....	2,663,345	Number of Fields with Oil Production Only.....	0
Total Annual Oil Production During 1986 (bbbls).....	6,776,528	Total Annual Water Production During 1986 (bbbls).....	255	Number of Fields with Gas Production Only.....	1
Number of Gas Wells (Active).....	320	(1 Field Reporting)		Number of Oil Wells (Active).....	419
Number of Fields with Active Gas Wells.....	69	County Name: Chambers		Number of Fields with Active Oil Wells.....	47
Annual Gas Production of Active Wells (Mcf).....	80,175,397	County Code: 071		Annual Oil Production of Active Wells (bbbls).....	3,473,076
Number of Fields with Inactive Gas Wells.....	26	Total Number of Fields (Active and Inactive).....	122	Number of Fields with Inactive Oil Wells.....	26
Annual Gas Production of Inactive Wells (Mcf).....	3,480,466	Number of Inactive Fields.....	37	Annual Oil Production of Inactive Wells (bbbls).....	203,490
Total Annual Gas Production During 1986 (Mcf).....	83,655,863	Number of Fields with Oil and Gas Production.....	83	Total Annual Oil Production During 1986 (bbbls).....	3,676,566
Total Annual Water Production During 1986 (bbbls).....	131,705,662	Number of Fields with Oil Production Only.....	0	Number of Gas Wells (Active).....	136
(49 Fields Reporting)		Number of Fields with Gas Production Only.....	2	Number of Fields with Active Gas Wells.....	49
County Name: Calhoun		Number of Oil Wells (Active).....	626	Annual Gas Production of Active Wells (Mcf).....	34,486,550
County Code: 057		Number of Fields with Active Oil Wells.....	63	Number of Fields with Inactive Gas Wells.....	25
Total Number of Fields (Active and Inactive).....	141	Annual Oil Production of Active Wells (bbbls).....	5,681,566	Annual Gas Production of Inactive Wells (Mcf).....	1,331,581
Number of Inactive Fields.....	63	Number of Fields with Inactive Oil Wells.....	20	Total Annual Gas Production During 1986 (Mcf).....	35,818,131
Number of Fields with Oil and Gas Production.....	59	Annual Oil Production of Inactive Wells (bbbls).....	326,833	Total Annual Water Production During 1986 (bbbls).....	23,653,455
Number of Fields with Oil Production Only.....	0	Total Annual Oil Production During 1986 (bbbls).....	6,008,299	(40 Fields Reporting)	
Number of Fields with Gas Production Only.....	19	Number of Gas Wells (Active).....	183	County Name: Kenedy	
Number of Oil Wells (Active).....	147	Number of Fields with Active Gas Wells.....	44	County Code: 261	
Number of Fields with Active Oil Wells.....	40	Annual Gas Production of Active Wells (Mcf).....	55,572,218	Total Number of Fields (Active and Inactive).....	63
Annual Oil Production of Active Wells (bbbls).....	1,463,106	Number of Fields with Inactive Gas Wells.....	41	Number of Inactive Fields.....	26
Number of Fields with Inactive Oil Wells.....	19	Annual Gas Production of Inactive Wells (Mcf).....	2,451,847	Number of Fields with Oil and Gas Production.....	18
Annual Oil Production of Inactive Wells (bbbls).....	53,516	Total Annual Gas Production During 1986 (Mcf).....	58,024,065	Number of Fields with Oil Production Only.....	0
Total Annual Oil Production During 1986 (bbbls).....	1,516,622	Total Annual Water Production During 1986 (bbbls).....	67,976,391	Number of Fields with Gas Production Only.....	19
Number of Gas Wells (Active).....	284	(55 Fields Reporting)		Number of Oil Wells (Active).....	73
Number of Fields with Active Gas Wells.....	62	County Name: Galveston		Number of Fields with Active Oil Wells.....	8
Annual Gas Production of Active Wells (Mcf).....	40,118,764	County Code: 167		Annual Oil Production of Active Wells (bbbls).....	802,487
Number of Fields with Inactive Gas Wells.....	16	Total Number of Fields (Active and Inactive).....	102	Number of Fields with Inactive Oil Wells.....	10
Annual Gas Production of Inactive Wells (Mcf).....	284,885	Number of Inactive Fields.....	45	Annual Oil Production of Inactive Wells (bbbls).....	76,276
Total Annual Gas Production During 1986 (Mcf).....	40,403,649	Number of Fields with Oil and Gas Production.....	58	Total Annual Oil Production During 1986 (bbbls).....	878,763
Total Annual Water Production During 1986 (bbbls).....	7,007,882	Number of Fields with Oil Production Only.....	0	Number of Gas Wells (Active).....	248
(32 Fields Reporting)		Number of Fields with Gas Production Only.....	1	Number of Fields with Active Gas Wells.....	36
County Name: Cameron		Number of Oil Wells (Active).....	350	Annual Gas Production of Active Wells (Mcf).....	46,552,583
County Code: 061		Number of Fields with Active Oil Wells.....	34	Number of Fields with Inactive Gas Wells.....	1
Total Number of Fields (Active and Inactive).....	16	Annual Oil Production of Active Wells (bbbls).....	3,318,157	Annual Gas Production of Inactive Wells (Mcf).....	174,523
Number of Inactive Fields.....	3	Number of Fields with Inactive Oil Wells.....	22	Total Annual Gas Production During 1986 (Mcf).....	46,727,106
Number of Fields with Oil and Gas Production.....	4	Annual Oil Production of Inactive Wells (bbbls).....	227,784	Total Annual Water Production During 1986 (bbbls).....	1,184,519
Number of Fields with Oil Production Only.....	0	Total Annual Oil Production During 1986 (bbbls).....	3,545,941	(7 Fields Reporting)	
Number of Fields with Gas Production Only.....	9	Number of Gas Wells (Active).....	138	County Name: Kleberg	
Number of Oil Wells (Active).....	1	Number of Fields with Active Gas Wells.....	45	County Code: 273	
Number of Fields with Active Oil Wells.....	1	Annual Gas Production of Active Wells (Mcf).....	38,986,864	Total Number of Fields (Active and Inactive).....	101
Annual Oil Production of Active Wells (bbbls).....	3,969	Number of Fields with Inactive Gas Wells.....	12	Number of Inactive Fields.....	47
Number of Fields with Inactive Oil Wells.....	3	Annual Gas Production of Inactive Wells (Mcf).....	2,661,696	Number of Fields with Oil and Gas Production.....	41
Annual Oil Production of Inactive Wells (bbbls).....	35	Total Annual Gas Production During 1986 (Mcf).....	41,648,560	Number of Fields with Oil Production Only.....	0
Total Annual Oil Production During 1986 (bbbls).....	4,004	Total Annual Water Production During 1986 (bbbls).....	19,510,916	Number of Fields with Gas Production Only.....	13
Number of Gas Wells (Active).....	24	(31 Fields Reporting)		Number of Oil Wells (Active).....	284
Number of Fields with Active Gas Wells.....	12	County Name: Jefferson		Number of Fields with Active Oil Wells.....	35
Annual Gas Production of Active Wells (Mcf).....	2,657,492	County Code: 245		Annual Oil Production of Active Wells (bbbls).....	2,584,349
Number of Fields with Inactive Gas Wells.....	1	Total Number of Fields (Active and Inactive).....	138	Number of Fields with Inactive Oil Wells.....	6
		Number of Inactive Fields.....	64		



Annual Oil Production of Inactive Wells (bbls).....	6,673
Total Annual Oil Production During 1986 (bbls).....	2,591,022
Number of Gas Wells (Active).....	645
Number of Fields with Active Gas Wells.....	44
Annual Gas Production of Active Wells (Mcf).....	103,348,324
Number of Fields with Inactive Gas Wells.....	10
Annual Gas Production of Inactive Wells (Mcf).....	146,157
Total Annual Gas Production During 1986 (Mcf).....	103,492,481
Total Annual Water Production During 1986 (bbls).....	10,217,028
(33 Fields Reporting)	
County Name: Matagorda	
County Code: 321	
Total Number of Fields (Active and Inactive).....	189
Number of Inactive Fields.....	62
Number of Fields with Oil and Gas Production.....	81
Number of Fields with Oil Production Only.....	0
Number of Fields with Gas Production Only.....	26
Number of Oil Wells (Active).....	308
Number of Fields with Active Oil Wells.....	37
Annual Oil Production of Active Wells (bbls).....	1,677,757
Number of Fields with Inactive Oil Wells.....	44
Annual Oil Production of Inactive Wells (bbls).....	413,986
Total Annual Oil Production During 1986 (bbls).....	2,091,743
Number of Gas Wells (Active).....	319
Number of Fields with Active Gas Wells.....	89
Annual Gas Production of Active Wells (Mcf).....	79,334,235
Number of Fields with Inactive Gas Wells.....	18
Annual Gas Production of Inactive Wells (Mcf).....	422,688
Total Annual Gas Production During 1986 (Mcf).....	79,756,923
Total Annual Water Production During 1986 (bbls).....	33,658,522
(32 Fields Reporting)	
County Name: Nueces	
County Code: 355	
Total Number of Fields (Active and Inactive).....	257
Number of Inactive Fields.....	113
Number of Fields with Oil and Gas Production.....	129
Number of Fields with Oil Production Only.....	0
Number of Fields with Gas Production Only.....	15
Number of Oil Wells (Active).....	596
Number of Fields with Active Oil Wells.....	89
Annual Oil Production of Active Wells (bbls).....	2,583,144
Number of Fields with Inactive Oil Wells.....	30
Annual Oil Production of Inactive Wells (bbls).....	163,969
Total Annual Oil Production During 1986 (bbls).....	2,747,013
Number of Gas Wells (Active).....	623
Number of Fields with Active Gas Wells.....	100
Annual Gas Production of Active Wells (Mcf).....	66,323,425
Number of Fields with Inactive Gas Wells.....	44
Annual Gas Production of Inactive Wells (Mcf).....	393,994

Total Annual Gas Production During 1986 (Mcf).....	66,717,419
Total Annual Water Production During 1986 (bbls).....	24,799,503
(81 Fields Reporting)	
County Name: Refugio	
County Code: 391	
Total Number of Fields (Active and Inactive).....	118
Number of Inactive Fields.....	54
Number of Fields with Oil and Gas Production.....	54
Number of Fields with Oil Production Only.....	0
Number of Fields with Gas Production Only.....	10
Number of Oil Wells (Active).....	1,566
Number of Fields with Active Oil Wells.....	49
Annual Oil Production of Active Wells (bbls).....	18,330,638
Number of Fields with Inactive Oil Wells.....	5
Annual Oil Production of Inactive Wells (bbls).....	6,063
Total Annual Oil Production During 1986 (bbls).....	18,336,721
Number of Gas Wells (Active).....	442
Number of Fields with Active Gas Wells.....	47
Annual Gas Production of Active Wells (Mcf).....	49,170,966
Number of Fields with Inactive Gas Wells.....	17
Annual Gas Production of Inactive Wells (Mcf).....	570,313
Total Annual Gas Production During 1986 (Mcf).....	49,741,279
Total Annual Water Production During 1986 (bbls).....	152,262,891
(42 Fields Reporting)	
County Name: San Patricio	
County Code: 409	
Total Number of Fields (Active and Inactive).....	208
Number of Inactive Fields.....	112
Number of Fields with Oil and Gas Production.....	67
Number of Fields with Oil Production Only.....	0
Number of Fields with Gas Production Only.....	9
Number of Oil Wells (Active).....	487
Number of Fields with Active Oil Wells.....	61
Annual Oil Production of Active Wells (bbls).....	2,600,000
Number of Fields with Inactive Oil Wells.....	26
Annual Oil Production of Inactive Wells (bbls).....	228,759
Total Annual Oil Production During 1986 (bbls).....	2,828,759
Number of Gas Wells (Active).....	351
Number of Fields with Active Gas Wells.....	70
Annual Gas Production of Active Wells (Mcf).....	36,115,227
Number of Fields with Inactive Gas Wells.....	26
Annual Gas Production of Inactive Wells (Mcf).....	538,400
Total Annual Gas Production During 1986 (Mcf).....	36,653,627
Total Annual Water Production During 1986 (bbls).....	56,713,325
(48 Fields Reporting)	
County Name: Willacy	
County Code: 489	
Total Number of Fields (Active and Inactive).....	35
Number of Inactive Fields.....	9
Number of Fields with Oil and Gas Production.....	18

Number of Fields with Oil Production Only.....	0
Number of Fields with Gas Production Only.....	8
Number of Oil Wells (Active).....	230
Number of Fields with Active Oil Wells.....	12
Annual Oil Production of Active Wells (bbls).....	1,660,449
Number of Fields with Inactive Oil Wells.....	6
Annual Oil Production of Inactive Wells (bbls).....	3,573
Total Annual Oil Production During 1986 (bbls).....	1,664,022
Number of Gas Wells (Active).....	88
Number of Fields with Active Gas Wells.....	22
Annual Gas Production of Active Wells (Mcf).....	30,836,266
Number of Fields with Inactive Gas Wells.....	4
Annual Gas Production of Inactive Wells (Mcf).....	36,660
Total Annual Gas Production During 1986 (Mcf).....	30,974,926
Total Annual Water Production During 1986 (bbls).....	6,687,525
(10 Fields Reporting)	

[FR Doc. 89-26202 Filed 11-7-89; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Care Financing Administration****42 CFR Parts 400, 410, 414, 417, 424, 466, 473, 485, and 489****[BPD-653-N]****Medicare Program; Catastrophic Outpatient Drug Benefit—Extension of Public Comment Period****AGENCY:** Health Care Financing Administration (HCFA), HHS.**ACTION:** Extension of comment period.

**SUMMARY:** This notice extends the public comment period for several regulation documents that proposed to implement certain provisions of the Medicare Catastrophic Coverage Act of 1988 by establishing a new catastrophic drug benefit under Medicare Part B.

**DATE:** Comment period extended to January 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michelle Brugg, 301-966-4683.

**SUPPLEMENTARY INFORMATION:** The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988) established a new catastrophic outpatient drug benefit under Medicare Part B. To implement the provisions of Public Law 100-360, we published several proposed regulation documents. The titles and publication dates of these documents, and the Federal Register page numbers on which they appear are listed below:



Document title	Publication date	FR page
Catastrophic outpatient drug benefit (BPD-613-P).....	09/07/89	37190
Payment for covered outpatient drugs (BPD-614-P).....	09/07/89	37208
Conditions of Participation for Home intravenous Drug Therapy Providers (BPD-617-P).....	09/07/89	37220
Outpatient Prescription Drugs: List of Covered Home IV Drugs (BPD-621-PN).....	09/07/89	37239
Coverage of Home Intravenous Drug Therapy Services (BPD-615-P).....	09/08/89	37422

These proposed documents solicited public comments and allowed 60-days from the date of publication for receipt of comments. The comment period closing dates for these documents is either November 6, 1989 or November 7, 1989.

To implement changes made to section 1834(d) of the Act by section 203(c)(1) of Public Law 100-360, we are publishing in this issue of the *Federal Register* a proposed rule, which sets forth the methodology for payment for home intravenous drug therapy services. That proposed rule includes a 60 day comment period for receipt of public comments. To ensure a coordinated comment period for all of the related catastrophic drug regulation documents, we are extending the due date for receipt of public comments on the proposed documents listed above to January 8, 1990. We recognize that Congress is considering amendments to the Medicare provisions in the law and that, if enacted, these amendments may affect the provisions in the proposed rules.

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: October 25, 1989.

**Louis B. Hays,**

*Acting Administrator, Health Care Financing Administration.*

Approved: November 3, 1989.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 89-26381 Filed 11-8-89; 10:35 am]

BILLING CODE 4120-01-M

## 42 CFR Part 414

[BPD-618-P]

RIN 0938-AE00

### Medicare Program; Payment for Home Intravenous Drug Therapy Services

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule sets forth the methodology for payment for home intravenous (IV) drug therapy services. This proposal would implement the provisions of section 1834(d) of the Social Security Act as added by section 203(c)(1) of the Medicare Catastrophic Coverage Act of 1988. Coverage of and payment for home IV drug therapy services under Part B of Medicare would be implemented on January 1, 1990.

**DATE:** To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on January 8, 1990. A discussion of the extension of the public comment periods for several related documents published on September 7 and September 8, 1989 is provided in section VII.B. below.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-618-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-618-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** Charles Spalding (301) 966-4496.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Many individuals require intravenous (IV) drug therapy on an ongoing basis

either because the medication is not available in oral dosage form, the patient is unable to take the medication orally, or the medication is more effective if administered intravenously. Most of these individuals require hospitalization for the initiation of IV drug therapy and many must remain hospitalized for the duration of the therapy. There is, however, an increasing number of individuals whose IV drug therapy care, in whole or in part, can be managed at home. Allowing these patients to receive drug therapy at home rather than in the hospital can improve the quality of their lives and potentially allow their return to normal activities. In addition, home IV drug therapy may be less expensive than IV drug therapy furnished in an institutional setting.

Currently, outside of the hospital setting, the Medicare program generally covers only those drugs (including IV drugs) and biologicals that cannot be self-administered and that are furnished incident to a physician's professional services. These items are included in the definition of "medical and other health services" (section 1861(s) of the Act) and are covered under the Supplementary Medical Insurance program (Part B of Medicare). Provision of IV drug therapy could be a covered service incident to a physician's services if furnished in a physician's office or hospital outpatient department.

While drugs are not covered under Medicare's home health benefit, skilled nursing care in connection with administration of drugs currently may be covered under the home health benefit. However, in these cases, the home health benefit. However, in these cases, the beneficiary must otherwise qualify for home health services, which, among other things, requires that the beneficiary be in need of only part-time or intermittent skilled nursing care (42 CFR 410.80 and 409.40). In general, then, services associated with administration of IV drugs in the home and the drugs themselves have not been covered by the Medicare program unless a physician is present and furnishing or directly supervising the therapy, or unless a registered nurse inserts the IV needle as part of home health benefits (though no coverage of the IV drugs is currently available).

#### II. New Legislation

Section 203 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), enacted on July 1, 1988, establishes, as a new Part B benefit for Medicare beneficiaries, coverage of home IV drug therapy services



beginning January 1, 1990. In addition, section 202 of Public Law 100-360 sets forth the provisions governing coverage and payment of outpatient drugs including drugs used in home IV drug therapy. Section 203(a) of Public Law 100-360 amended section 1832(a)(2)(A) of the Social Security Act (the Act) to provide for coverage under Part B of home IV drug therapy services furnished on or after January 1, 1990. Section 203(b) of Public Law 100-360 added section 1861(jj) to the Act to define home IV drug therapy services. Thus, under section 1861(jj)(2) of the Act, home IV drug therapy services means " \* \* \* nursing, pharmacy, and related services (including medical supplies, intravenous fluids, delivery, and equipment) as are necessary to conduct safely and effectively an intravenously administered drug regimen. \* \* \* As provided in section 1861(jj)(1) of the Act, home IV drug therapy services are to be " \* \* \* furnished to an individual who is under the care of a physician—(A) in a place of residence used as such individual's home; (B) by a qualified home intravenous drug therapy provider \* \* \* or by others under arrangements with them made by such provider; and (C) under a plan established and periodically reviewed by a physician."

Section 203(c)(1)(F) of Public Law 100-360 added sections 1834(d)(1) and (2) of the Act, which govern payment for home IV drug therapy services. Section 1834(d)(1) of the Act requires that payment for these services be equal to the lower of actual charges or a fee schedule developed by the Secretary under the provisions of section 1834(d)(2) of the Act. Because section 203(c)(1) of Public Law 100-360 amended sections 1833(a)(2) and (b) of the Act to exempt payment for home IV drug therapy services from the customary Part B coinsurance and deductible requirements and section 1834(d) of the Act makes no provision for either coinsurance or a deductible amount, payment for home IV drug therapy services is to be made at 100 percent of the lower of actual charges or the fee schedule amount. Section 1834(d)(2) of the Act requires the Secretary to establish by regulations, before the beginning of 1990 and before the beginning of each subsequent year, a fee schedule determined on a per diem basis.

Although section 1834(d)(2) of the Act requires the Secretary to establish a per diem fee schedule for home IV drug therapy services, no specific formula is provided. However, the Conference Report that accompanied Public Law 100-360 indicates congressional intent

that the Secretary " \* \* \* could consider cost information, charge information, and payment rates for similar items and services covered under Medicare. The Secretary could not, however, require routine cost reporting \* \* \* " (H.R. Rep. No. 661, 100th Cong., 2nd Sess. 202 (1988).) In addition, the Conference Report provides the Secretary with " \* \* \* broad flexibility in establishing the fee schedule. The conferees expect that the Secretary will use this flexibility to establish a fee schedule which assures adequate access to services while preventing excessive payments. The conferees note that exclusive reliance on customary charges has previously resulted in excessive reimbursement levels for similar services \* \* \* " (H.R. Rep. No. 661, 100th Cong., 2nd Sess. 202 (1988).) Therefore, to establish a fee schedule that assures adequate access to services while preventing excessive payments, the Secretary may consider cost information, charge information, and payment rates for similar items and services covered under Medicare in order to arrive at reasonable allowances.

### III. Provisions of This Proposed Rule

Under this proposed rule, for services furnished in 1990, we would establish two per diem fee schedules for home IV drug therapy services and allowances that would be added to the fee schedules to cover special costs associated with home IV drug therapy services. One fee schedule would apply to pain management therapy and the second fee schedule would apply to antibiotics and all other IV drug therapies. We intend to periodically review the rates and allowances and we will be considering methods to update the rates and allowances once they are established (for example, through use of the consumer price index for urban consumers (CPI-U), or other data showing changes in salaries and other costs).

To develop an appropriate payment level for home IV drug therapy services, we first looked at existing models of payment for similar Medicare benefits. We gathered additional information by searching the available literature on home IV drug therapy and carefully reviewing relevant articles. We also visited (both onsite and offsite) with numerous entities that furnish home IV drug therapy. In addition, we consulted trade associations representing entities that furnish home IV drug therapy, supplier representatives, and third-party payors.

As a result of our research, we made two major decisions: first, we decided

that payment should be based, to the greatest extent possible, on cost data rather than charge data, and second, we decided that we should construct a fee schedule for each of the two major drug therapies, antibiotic therapy and pain management therapy. These decisions were made after careful consideration of the many factors affecting the cost of providing IV drug therapy services and supplies in the home.

First, we found very wide variances in charges among home IV drug therapy providers for comparable services. In our review of the literature, we also found a number of cost analyses for IV drug therapy provided in the hospital setting as well as references to cost comparisons between hospital inpatient and home-based IV drug therapy. The combination of data contained in these studies and the broad range of provider charges led us to believe that there is a tenuous relationship between costs and charges and that basing a fee schedule on charging patterns would result in excessive payment levels.

Second, based on a review of home IV drug therapy trade-related literature, we expect that the bulk of home IV drug therapy services provided to Medicare patients would be associated with antibiotics and pain management.

Because of a substantial difference between the cost of furnishing the two major IV drug therapies, we are proposing two separate fee schedules. If we were to employ only one fee schedule, we would inevitably either underpay or overpay any drug therapy provider whose patient mix is different from the estimated national patient mix described in the Regulatory Impact Statement, section VI, below. We believe that using a separate fee schedule for each of the major IV drug therapies would be more equitable and accurate for both the providers and the Medicare program.

Therefore, for purposes of payment under this proposed rule, we have grouped home IV drug therapies into two major groups, antibiotics and pain management therapies. We believe that this approach would be reasonable since we expect that the overwhelming majority of Medicare beneficiaries who will undergo home IV drug therapy will receive antibiotics or analgesics for pain management. Our expectation is based on statistics that indicate that hydration and all other drug therapies except for antibiotics and pain management represent a nominal share of the current market for home IV drug therapies.<sup>1</sup>

<sup>1</sup> "Home Infusions Therapy Industry: Robust Growth Prospects", *Prudential-Bache Health Care Industry Report*, September 20, 1988, Table 1.



Consequently, in addition to those drugs clearly classified as antibiotics in the proposed list of covered home IV drugs published in the Federal Register on September 8, 1989 (54 FR 37239), payment would also be made under the antibiotic fee schedule for all other types of drug therapy except for pain management. That is, the antibiotic therapy fee schedule would be used for determining payment for the following drug therapies: antibiotics, anti-infectives, fluid replacement drugs used for hydration therapy, and non-antibiotic drugs classified (at 54 FR 37246) as "other" than anti-infectives, drugs used for hydration therapy, or pain management drugs.

In addition, payment would be made under the antibiotic fee schedule for IV biologicals classified (at 54 FR 37248) as "other" than anti-infectives, fluid replacement drugs, pain management drugs, or anti-cancer chemotherapeutic drugs. Therefore, in summary, reference in this document to the antibiotic fee schedule applies to drugs used for all drug therapies other than pain management therapy.

Based on our research, we reached the following conclusions about the provision of home IV drug therapy services (that is, all the services and items necessary for the provision of the home IV drug therapy except the actual drugs that are infused):

- Pharmacy services comprise two major functions: Clinical and distributive. Clinical services include drug therapy monitoring, development of medication histories and patient profiles, consultation with physicians and nurses, drug-use evaluation, and quality assurance. Distributive services are those activities directly associated with the dispensing of drugs, for example, drug procurement and inventory, drug reconstitution, dosage preparation, labeling, and related administrative duties. The intensity of pharmacy and related services is based mainly on the dosage required by each patient for each drug and the shelf life of the drug (including reconstituted drugs). For example, the drug's shelf life is the primary factor in the frequency of drug preparation and delivery to the patient's home.

- Nursing services include both direct patient care and indirect patient care. Direct patient care services include assessing the patient's condition, changing IV sites and dressings, and drawing blood for laboratory analysis. Indirect patient care includes travel to and from the patient's home and arranging for the provision of emergency services on a 24-hour-per-day basis. The intensity of nursing and related services

is based mainly upon the patient's condition and type of venous access.

- Supplies are pharmaceutical materials needed to provide a home IV therapy drug program; that is, materials used to compound a drug, to reconstitute powdered drugs, and to administer drug infusions. Supplies used in the administration of drug infusions include all IV fluids, for example, dextrose and saline solutions used as diluents, heparin, heparin locks, and saline flushes, in addition to minibags, tubing, syringes, needles, and miscellaneous supplies such as sterile gloves, gauze, and swabs. We note that, although IV fluids are legend drugs, we would pay for them under the methodology set forth in this document; that is, as part of the payment for home IV drug therapy services rather than as covered home IV drugs. The only exceptions to this policy would be in the case of a fluid that is used either as the drug of choice to treat medical problems caused by dehydration or to hydrate patients before and after the administration of another drug to avoid medical problems that could arise from administration of that drug. That is, if IV fluids are administered by themselves for hydration purposes, they are covered and paid for as drugs under the drug payment methodology set forth in a separate notice of proposed rulemaking.

- Equipment used in home IV drug therapy is generally limited to IV poles and infusion pumps.

Based on the knowledge gained from our review of available literature and consultations with entities that furnish home IV drug therapy services, related trade associations, medical suppliers, and third-party payors, we developed for each of the two major therapies a basic fee schedule covering the per diem costs of a package of ongoing home IV therapy services, including supplies and equipment. We would supplement the basic per diem fee schedule with additional adjustments that reflect one-time expenses and other variables. In this document, we use the term "allowance" to refer to each component of the fee schedule and the additional adjustments.

One-time expenses reflect those services that are nonrecurring in nature and, therefore, are unlike many other home IV drug therapy services that continue for the entire duration of the home IV drug therapy. One example of a nonrecurring service is patient education and counseling, which would occur as the beneficiary begins the course of home IV drug therapy.

We would also provide allowances for other variables because we

recognize that there are additional costs associated with patients who, for example, are on multiple drug regimens (that is, receiving two or more drugs intravenously). Due to the unavailability of relevant data, except for nursing labor costs, these proposed fee schedule allowances do not include an adjustment for costs based on geographic area (that is urban or rural or State-to-State variations). We are particularly interested in receiving public comments concerning the differences in cost and other factors in urban and rural areas.

The basic fee schedule would reflect the per diem cost of the total package of services, supplies, and equipment provided to a home IV drug therapy patient.

For antibiotic therapy, we are proposing a basic per diem fee schedule amount of \$45.44 to cover the total cost of pharmacy services, pharmacy supplies (including IV fluids), and pharmacy delivery service; nursing services and nursing supplies; and other patient equipment needs. We are proposing a per diem fee schedule amount of \$31.63 to cover comparable costs associated with the furnishing of pain management therapy.

We note that payment for all home IV drug therapy services, including pharmacy services, is provided under the provisions of section 203 of Public Law 100-360, as would be implemented by this proposed rule. Section 202 of Public Law 100-360, which establishes the payment methodology for covered outpatient drugs, includes as part of the payment calculation for each drug an administrative allowance, which represents a pharmacy's dispensing fee. As set forth in the proposed rule that would implement the payment provisions of section 202 of Public Law 100-360, no administrative allowance would be paid for dispensing a covered home IV drug, since compensation for that activity is included in the payment methodology set forth in this proposed rule for home IV drug therapy services.

The basic fee schedule allowance would represent an aggregate per diem payment for the package of home IV therapy services. It is comprised of discrete components that would be subject to the application of a geographic wage index or other adjustments, or both, as described below in this preamble.

For the convenience of the reader, set forth below is an itemization of the individual allowances contained in the proposed basic fee schedules and the additional adjustments for one-time or



patient-specific expenses. The assumptions we used in determining

these allowances are briefly identified in the first column. These assumptions

are described in detail in the discussion set forth below in this preamble.

#### HOME IV ANTIBIOTIC THERAPY SERVICES PER DIEM FEE SCHEDULE

[Amounts may not equal the sum of the values due to rounding]

Assumptions	Pharmacy services	Nursing services	Supplies/mileage	Equipment	Total per diem
Pharmacy services & supplies:					
Pharmacy services (\$31.49 @ 7 min) × 2.5	\$9.18	\$0.00	\$0.00	\$0.00	\$9.18
Pharmacy supplies (\$7.00 × 2.5)	0.00	0.00	17.50	0.00	17.50
Drug delivery (every 5 days) (\$10.56 per trip) × 1/2	2.11	0.00	0.00	0.00	2.11
Subtotal pharmacy	11.29		17.50		28.79
Nursing visit (every 3 days):					
Patient care (.75 hr @ \$15.66) × 1/2		3.92			3.92
Travel time (.67 hr @ \$15.66) × 1/2		3.48			3.48
Overhead at 50 percent		3.70			3.70
Mileage (20 mi @ \$.25) × 1/2			1.50		1.50
IV start kit w/catheter (\$5) × 1/2			1.67		1.67
Air elim filter at (\$5.04) × 1/2			1.68		1.68
Subtotal, nursing	0.00	11.09	4.85	0.00	15.94
Equipment (90 percent IV Pole/10 percent Pump)	0.00	0.00	0.00	0.71	0.71
Total basic fee schedule	11.29	11.09	22.35	0.71	45.44

<sup>1</sup> Labor components to be adjusted by HHA urban or rural wage index, as appropriate.

#### HOME IV PAIN MANAGEMENT THERAPY SERVICES PER DIEM FEE SCHEDULE

[Amounts may not equal the sum of the values due to rounding]

Assumptions	Pharmacy services	Nursing services	supplies/mileage	Equipment	Total per diem
Pharmacy services & supplies:					
Pharmacy services (\$31.49 @ 7 min) × 1/2	\$1.22	\$0.00	\$0.00	\$0.00	\$1.22
Pharmacy supplies (\$17.40) × 1/2	0.00	0.00	5.80	0.00	5.80
Drug delivery (every 5 days) (\$10.50 per trip) × 1/2	2.11	0.00	0.00	0.00	2.11
Subtotal, pharmacy	3.33		5.80		9.13
Nursing visit (every 3 days):					
Patient care (.75 hr @ \$15.66) × 1/2		3.92			3.92
Travel time (.67 hr @ \$15.66) × 1/2		3.48			3.48
Overhead at 50 percent		3.70			3.70
Mileage (20 Mi @ \$.225) × 1/2			1.50		1.50
IV start kit w/catheter (\$5) × 1/2			1.67		1.67
Air elim filter (\$5.04) × 1/2			1.68		1.68
Subtotal, nursing	0.00	11.09	4.85	0.00	15.94
Equipment (100 percent pump)	0.00	0.00	0.00	6.56	6.56
Total basic fee schedule	3.33	11.09	10.65	6.56	31.63

<sup>1</sup> Labor components to be adjusted by HHA urban or rural wage index, as appropriate.

#### ONE-TIME OR PATIENT-SPECIFIC ALLOWANCES

[Adjustments to basic fee schedule]

[Amounts may not equal the sum of the values due to rounding]

Assumptions	Pharmacy services	Nursing services	Supplies/mileage	Equipment	Total add on
Initial patient education and treatment:					
Hospital discharges (2 visits)	\$0.00	<sup>1</sup> \$66.54	\$9.00	\$0.00	<sup>2</sup> \$75.54
Outpatient starts (3 visits)	0.00	<sup>1</sup> 99.81	13.50	0.00	113.31
Multiple Drug Regimens					
Antibiotic therapy:					
Pharmacy services (50 percent)	4.59				4.59



## ONE-TIME OR PATIENT-SPECIFIC ALLOWANCES—Continued

[Adjustments to basic fee schedule]

[Amounts may not equal the sum of the values due to rounding]

Assumptions	Pharmacy services	Nursing services	Supplies/mileage	Equipment	Total add on
Pharmacy supplies (100 percent).....			17.50		17.50
Nursing services (100 percent).....		0.00			0.00
Equipment (100 percent).....				0.71	0.71
Total .....	4.59		17.50	0.71	22.80
Pain management therapy:					
Pharmacy services (50 percent).....	0.61				0.61
Pharmacy supplies (100 percent).....			5.80		5.80
Nursing services (100 percent).....		0.00			0.00
Equipment (100 percent).....				6.56	6.56
Total .....	0.61		5.80	6.56	12.97
Nursing visit for 1st dose due to prescription change .....	0.00	16.64	2.25	0.00	18.89

<sup>1</sup> Labor components to be adjusted by HHA urban or rural wage index, as appropriate.<sup>2</sup> Lump sum.<sup>3</sup> Per diem for multiple regimen days.<sup>4</sup> Lump sum (1 visit)

Each intermediary that processes the bills will maintain a system of data exchange with the appropriate Peer Review Organization (PRO). Under section 203(d)(1) of Public Law 100-360, which amended section 1835(a)(2) of the Act, home IV drug therapy services initiated before January 1, 1993, must be authorized by the PRO prior to their provision. We are preparing a separate notice of proposed rulemaking implementing the provisions of section 203(d) of Public Law 100-360.

A single bill (HCFA Form 1450) will be submitted by the home IV drug therapy provider. This bill will include both the separate charges for the IV drug (which will be paid under the covered outpatient drug methodology set forth in section 202 of Public Law 100-360) and the charges for the home IV drug therapy supplies and services, which are payable under the methodology set forth in this proposed rule. For home IV drug therapy services, the intermediary will calculate payment at the lower of the total billed charges or the appropriate per diem fee schedule amount multiplied by the number of days covered by the bill.

We believe that this proposed basic fee schedule with allowances for special circumstances and costs would be equitable because it is based largely on information collected from the industry, data reported in medical journals, and consideration of current payment levels for similar Medicare benefits (for example, home health care, hospice services, and durable medical equipment). We believe that the amounts we are proposing are fair and equitable for efficient and economically-operated providers. Consequently, we expect that the proposed fee schedules

would allow for adequate access to home IV drug therapy for Medicare beneficiaries. However, we are specifically seeking verifiable information on costs and practices that will be considered in determining final rates.

We recognize that, depending on their organizational structure, location, and patient mix, many entities that furnish home IV drug therapy may experience costs for individual services and supplies that are higher or lower than the amounts reflected in the fee schedules and additional allowances. However, the fee schedules should be viewed in terms of a comprehensive amount for a complete package of goods and services that all providers must be able to furnish, either directly or under arrangement, rather than as separate allowances for discrete items. Therefore, public comments that address the individual allowances in the context of the fee schedule as a whole rather than as discrete components will be particularly useful.

An itemization of the separate services and supplies contained in the proposed fee schedules, add-on allowances and the methodology we propose to use to calculate payment follow.

#### A. Pharmacy Services, Supplies, and Delivery

The proposed per diem fee schedule allowances for pharmacy services are the sum of the separate proposed per diem allowances for professional pharmacist services, pharmacy supplies, and delivery of home IV drugs and related supplies.

From our consultations with entities that currently furnish home IV drug

therapy services, we learned that the intensity of pharmacy services is closely linked to the dosage requirements of the patient. In addition, much of the literature on personnel and supply costs associated with IV drugs and their administration focused on pharmacy time and motion studies to determine the cost of the preparation of a single dose of IV medication in a hospital. Therefore, we decided to construct the per diem fee schedules for pharmacy services on a cost per dose basis to the extent possible because we believe it best reflects the costs of recurring IV drug therapy services in the home setting. Further, to the extent possible, we wanted to avoid considering costs of any one-time or nonrecurring services that occur in preparation for patient discharge from the hospital.

We considered three principal data sources to obtain cost information concerning pharmacy services:

- A survey conducted by the American Society for Hospital Pharmacists of a sample of its members who are involved in the provision of home IV drug therapy services (the ASHP survey).

- A survey of hospital-based pharmacies published in 1988 by Eli Lilly and Company, a drug manufacturer, in which the surveyed pharmacies indicated the average total time spent on pharmacy services per dose (the Lilly survey).

- A collection of published time and motion studies of pharmacy services for inpatient hospital IV drug therapy (the time and motion studies).<sup>2</sup>

<sup>2</sup> The time and motion studies include the following four articles:

Continued



None of the data sources was perfectly reflective of the pharmacy services that would be furnished for patients living at home. However, after studying and comparing these data sources, we decided to use the Lilly survey as the data source for cost information on pharmacy services for the reasons that follow. A comparison of the findings of the three different data sources (the Lilly survey, the ASHP survey, and the time and motion studies) demonstrated that the Lilly survey struck a balance between the wide differences in time and cost values found in the other two data sources. Some of the reasons for the differences between the ASHPA and time and motion studies were readily apparent. For example, although the time and motion studies included information about the amount of time required for a pharmacist to prepare and dispense a single dose, these studies did not include information concerning clinical services. The ASHP survey measured the amount of a pharmacist's time required for clinical and distributive services on a per day basis, which reflects dosing requirements for patients on both single and multiple drug regimens. Since we had already decided to propose per diem fee schedules for pharmacy services based on per dose cost information, we were not able to use the ASHP survey information because we were unable to convert the ASHP per day cost information into cost information on a per dose basis.

In addition, because the ASHP survey focused on hospital patients who would be continuing IV drug therapy at home, this survey appears to include some services that are traditionally performed prior to hospital discharge and do not continue over the course of IV drug therapy provided in the home. Because the Lilly survey was not limited to patients who would continue to receive IV drug therapy after discharge from the

hospital, the Lilly survey included fewer nonrecurring pharmacy services that are furnished just prior to discharge than did the ASHP survey. Other differences between the ASHP survey and the time and motion studies were not easily discernible.

Thus, the Lilly survey was the only data source that converted both clinical and distributive services into a single dose unit of measure based on time and motion analyses. Consequently, we decided to use the Lilly survey for cost information concerning pharmacy service.

#### 1. Professional Pharmacist Services

The proposed per diem fee schedule allowance for pharmacy services is \$9.18 for antibiotic therapy and \$1.22 for pain management therapy. We calculated the payment based on the 1988 Lilly survey (described above) in which the surveyed pharmacies indicated that the average total time spent on pharmacist services per dose (including all clinical and distributive functions) was 7.0 minutes for small-volume parenterals (that is, IV drugs), excluding hyperalimentation and antineoplastic agents. The time value for clinical and distributive services associated with large-volume parenterals was 6.4 minutes. However, we were informed by entities that provide home IV drug therapy that large volume parenterals represent a nominal share of the pharmacy workload for home IV drug therapy. Therefore, we used the time value of 7 minutes as one of the factors to determine per dose costs for all covered home IV drugs.

We calculated a pharmacy service per dose cost of \$3.67 for all drugs based on the product of this time value (that is, 7 minutes) and a total pharmacy cost of \$31.49 per hour, which is based on an average adjusted hourly salary rate for a pharmacist of \$19.86 and for a pharmacy technician of \$8.09 plus employee benefits and overhead costs. Based on our discussion with hospital pharmacists and our review of literature, we concluded that the prevalent practice is to use pharmacy technicians to assist registered pharmacists in the preparation of IV drug products. For purposes of this proposed rule, we are estimating a blend of 75 percent pharmacist time and 25 percent technician time in preparing each dose. We are specifically seeking public comment on this issue.

To calculate the adjusted hourly salary rate for a pharmacist, we used a basic hourly salary for a pharmacist of \$18.42 found in the 1988 Lilly Hospital Pharmacy Survey of hospital pharmacist

salaries paid in 1987. We adjusted that 1987 base salary to 1989 levels by increasing it by the inflation factors used to update the 1987 and 1988 Medicare Part B reasonable charges for other nonphysician services subject to the inflation index charge limitation, that is, 3.7 percent and 4.0 percent, respectively. These computations resulted in an adjusted salary rate of \$19.86. For calculating the adjusted hourly salary rate for a pharmacy technician, we used a basic hourly salary rate of \$8.09. An hourly salary rate of \$7.50 for pharmacy technicians was found in the 1988 Lilly Hospital Pharmacy Survey. We adjusted that 1987 base salary to 1989 levels in the same manner as we did for pharmacist salaries, that is, by increasing the base salary by the inflation factors used to update Medicare Part B reasonable charges for other nonphysician services subject to inflation-indexed charge limitation (3.7 percent for 1988 and 4.0 percent for 1989). This yields an adjusted hourly salary rate of \$8.09 for a pharmacy technician. Applying the blend of 75 percent pharmacist time and 25 percent pharmacy technician time, our calculation yielded a blended hourly salary rate of \$16.92, to which we applied a factor of 13.5 percent to reflect employee benefits such as medical and life insurance, Social Security taxes, and retirement benefits. This is the factor currently used by the Federal government to describe the ratio of benefits to salaries for Federal employees. The product of these two factors (\$16.92 x 1.135) results in a total labor cost of \$19.20 per hour.

We were unable to obtain data on pharmacist overhead costs specific to entities that furnish home IV drug therapy services. Limited information on overhead costs was available from a survey conducted for the State of Maryland Medicaid program of 1985 operational data for pharmacies located in that State. (This survey (which is titled "Survey of Pharmacy Operational Data in the State of Maryland") was conducted by Myers and Stauffer, CPA, Topeka, Kansas and is dated November 15, 1985.) These data, based on information reported by over 200 independent and chain pharmacies, showed that overhead costs equal 54 percent of labor costs per prescription.

We believe that home IV drug therapy providers have additional costs not borne by community pharmacies. The volatile nature of IV drug formulation (as discussed in detail in the proposed rule on the conditions of participation for home IV drug therapy providers) may require the acquisition and

Tanner, David J., "Cost Containment of Reconstituted Parenteral Antibiotics: Personnel and Supply Costs Associated with Preparation, Dispensing, and Administration", *Reviews of Infectious Diseases*, Vol. 6, Supp. 4, November-December 1984.

Eisenberg, John M., Koffer, Harris, and Finkler, Steven A., "Economic Analysis of a New Drug: Potential Savings in Hospital Operating Costs from the Use of a Once-Daily Regimen of a Parenteral Cephalosporin", *Reviews of Infectious Diseases*, Vol. 6, Supp. 4, November-December 1984.

Tanner, David J. and Nazarian, Marita Q., "Cost Containment Associated with Decreased Parenteral Antibiotic Administration Frequencies", *American Journal of Medicine*, October 19, 1984.

Veterans Administration Pharmacy Service Study Group, "Variable Cost Per Dose of Preparing and Administering Small-Volume Cephalosporin Mixtures", *American Journal of Hospital Pharmacy*, Vol. 41, December 1984.



maintenance of specialized equipment or services, such as laminar airflow hoods and medical waste disposal; the application of more stringent quality control measures; and the provision of emergency services 24 hours a day, 7 days per week. Additionally, we believe there is more likelihood of added cost due to product waste and complications resulting from home IV drugs than from other more traditional forms of outpatient medication (for example, oral or topical drugs) normally provided by community pharmacies. For these reasons, we have added a factor of 10 percent to take into account additional pharmacist overhead costs for home IV drugs. Therefore, the total overhead factor used is 64 percent. (We specifically invite public comment on the appropriate factor to be used for pharmacy services.) The product of this overhead factor and the hourly labor cost of \$19.20 results in a total pharmacist cost of \$31.49 per hour or \$3.67 per dose ( $\$31.49 \times \frac{1}{8}$ ).

Due to the unavailability of relevant data, this proposed per diem fee schedule allowance would not include an adjustment for pharmacy labor costs based on geographic area (that is, urban or rural or State-to-State variations) wage differences. We are particularly interested in receiving public comment concerning the appropriate source and use of geographic wage indexes for making such an adjustment to pharmacist labor costs.

In terms of number of doses per day, we assume that patients on antibiotics would be receiving a drug intravenously an average of 2.5 times per day, for a total per diem cost of \$9.18 ( $\$3.67$  per dose cost  $\times$  2.5 doses). This is consistent with the average number of doses per day as calculated in a study conducted by a large company that furnishes home IV drug therapy. We assume that pain management patients would either receive a drug intravenously on a continuous basis over a 72-hour period throughout the entire course of their therapy or use special pumps that contain 3 full days' supply of the drug. As a result, pharmacist costs for analgesics would be based on the preparation of one-third of a dose daily, for a total per diem of \$1.22.

## 2. Pharmacy Supplies

We are proposing a per diem fee schedule allowance of \$17.50 for pharmacy supplies for antibiotic therapy and \$5.80 for pain management therapy. The cost information used in calculating this component of the fee schedule was obtained from various sources including published studies, entities that furnish

home IV drug therapy, medical suppliers, and hospital pharmacies.

The proposed per diem fee schedule allowance reflects an average basic cost of pharmacy supplies of \$7.00 per dose, adjusted for the cost of supplies necessary for pumps and similar infusion devices.

To determine the average basic cost of supplies per dose, we first considered the results of a 1982 hospital pharmacy study that was published in the "American Journal of Medicine".<sup>3</sup> That study, which included data from several hospitals of varying bed size, identified supplies associated with the preparation, dispensing, and administration of a single dose of IV antibiotic. The study determined that there was an average supply cost of \$4.80 per dose, which is based on 1982 manufacturers' list prices less a 40 percent discount rate that the article reported to be widely available to small hospitals (that is, those hospitals with fewer than 200 beds). We adjusted the 1982 base amount of \$4.80 to 1989 levels by increasing it by inflation factors used to update the Medicare Part B reasonable charges for other nonphysician services subject to the inflation index charge limitation. For those years prior to implementation of the index inflation charge (that is, 1983 through 1985) or for those years in which the inflation factor was not applied, the annual increase in the CPI-U, which is the basis of the inflation factor, was used. Those update factors are as follows:

ANNUAL UPDATE FACTOR

1983	1984	1985	1986	1987	1988	1989
7.1	2.6	4.2	3.8	1.8	3.7	4.0

This calculation results in a 1989 cost of \$6.69 for the supplies listed in the article. For comparative purposes, we also consulted the 1988 catalog prices of a major medical supplier. Our computation showed that a package of similar supplies added up to \$6.41 per single dose. Such a package includes: one syringe, one needle, sterile water, an IV administration set, a 100 ml minibag of 5 percent dextrose solution, alcohol swabs, and a heparin flush kit.

These estimates are supported by more recent cost information that has been obtained from additional sources, including manufacturers of medical supplies, entities that furnish home IV

drug therapy, and published data. For example, a study of home IV drug therapy delivery systems that was published in "Hospitals"<sup>4</sup> indicated that the nondrug material and labor costs of delivering a single dose of an IV drug in a low-volume bag (50 ml to 100 ml) in a hospital setting is \$5.18. (We did not use that figure because the article as published did not provide sufficient details, such as hospital size and an itemization of supplies used.)

Nonetheless, we recognize that there may be additional supply costs associated with home IV drug therapy that are not reflected in the Tanner and Nazarian study. Some of the factors that contribute to higher costs may be related to characteristics of the patient, the drug, or the home environment. For example, extra supplies such as IV extension tubing, saline flushes, and central line catheter clamps may be required due to safety considerations. In addition, since self-administering patients lack the proficient technique of skilled medical personnel, we expect there is heavier use of routine or miscellaneous IV supplies (such as needles and alcohol swabs) in the home setting. As a result, we rounded the \$6.69 amount generated by the Tanner study to \$7.00 per dose, which reflects an increase of approximately five percent. We note that this amount represents an increase of nearly 10 percent over the \$6.41 per dose cost of similar supplies for which we found prices listed in a major manufacturer's catalog.

The basic \$7.00 per dose estimate was adjusted for the costs associated with the supply kit required for ambulatory pumps necessary for delivery of home IV drug therapy, as discussed in detail in section II.C. of this preamble. We used a list price, which was published in "Pharmacy Practice News"<sup>5</sup>, of \$13.00 per administration set for pumps used for pain management patients to which we applied a 20 percent discount, which yielded a price of \$10.40. We factored in this discount because, as discussed in section III.3.C. below, we learned from pump manufacturers that many pumps are regularly sold to home care agencies at a volume purchase price reflecting a markdown of 20 percent. To arrive at a per diem allowance, we assume, as indicated above, that an average of 2.5 doses per day would be prepared for patients receiving antibiotics and one-

<sup>3</sup> Amen, Ronald and Smith, Christine Foltyn, "Choose IV Delivery Systems Wisely", *Hospitals*, September 20, 1988.

<sup>4</sup> Chart on pp. 29-33, *Pharmacy Practice News*, July 1988.

<sup>5</sup> Tanner, David J. and Nazarian, Marita Q., "Cost Containment Associated with Decreased Parenteral Antibiotic Administration Frequencies", *American Journal of Medicine*, October 19, 1984.



third dose per day for patients receiving pain management therapy. This results in a per diem pharmacy allowance (of \$17.50 for antibiotic therapy ( $\$7.00 \times 2.5$ ) and \$5.80 for pain management ( $(\$7.00 + \$10.40) \times .333$ ).

### 3. Pharmacy Delivery

The proposed per diem fee schedule allowance for pharmacy delivery of all home IV drugs is \$2.11 or, expressed in terms of trip costs, \$10.56 per trip. Based on interviews with entities that furnish home IV drug therapy and our review of the literature in this field, we learned that drug deliveries generally are made once every 3 to 7 days depending on the shelf life of the drugs, which is often determined by the packaging method (for example, some mixtures are refrigerated and some mixtures are frozen). We propose to use as a basis for the fee schedule the midpoint of that range; that is, a 5-day delivery cycle for both antibiotics and analgesics.

In order to compute a proposed fee schedule allowance, we first calculated a per trip cost. The per trip cost estimate assumes that patients would reside an average distance of 20 miles from the home IV drug therapy provider. There were little or no data available on which to estimate the distance between patients' residences and home IV drug therapy providers. Limited demographic information was shared by an entity based in a metropolitan area that furnishes home IV drug therapy. It was the experience of that particular entity that its patients lived in either the same county in which the entity was located or in adjacent counties. As a result, we estimated that the average distance between patient and provider would be approximately 20 miles; we specifically invite public comment on the validity of this assumption.

We would expect that deliveries would be scheduled so that each trip would cover the needs of at least two patients. Thus, the per patient mileage for delivery would be 20 miles per round trip. We calculated an average round trip of 20 miles per patient at \$.225 per mile (the current Federal mileage allowance for the use of personal vehicles), which would result in a total mileage cost of \$4.50. We assume labor costs based on .5 hour driving time (20 miles traveled per round trip per patient at 40 miles per hour) using the average salary rate of \$8.09 per hour for a pharmacy technician. The product of the average hourly rate of \$8.09 and .5 hour driving time yields a total of \$4.04 for direct labor costs.

As with pharmacy services, there were no data available on direct and overhead costs specific to drug delivery

services. Unlike pharmacy services, however, delivery services do not require facility space for storage of drugs and supplies, quality control testing, and specialized equipment or services. Consequently, we concluded that the 64 percent overhead factor applied to pharmacy services would be excessive for drug delivery services.

After further consideration of the results produced by the survey of Maryland pharmacies (which indicated an overhead cost of 54 percent), as well as the overhead factor used for nursing services (see discussion below), we determined that an overhead factor of 50 percent would be reasonable. Therefore, we are proposing the use of a 50 percent overhead factor for delivery services and specifically invite comment on the appropriate factor to be applied. Use of the 50 percent factor would yield a total delivery cost per patient (that is, labor and overhead costs) of \$10.56 per trip. Thus, the per diem cost of delivery for all covered drugs (delivery once every 5 days) would be \$2.11.

### B. Nursing Services and Supplies

The proposed fee schedule allowance for nursing services and supplies is \$15.94 per diem or, expressed in terms of a nursing visit, \$47.81 per visit. In determining the allowance for this component, we assumed that home visits would occur on an average of once every 3 days. The proposed Medicare conditions of participation for home IV drug therapy providers, which are the subject of a separate notice of proposed rulemaking, require that peripheral injection sites be rotated every 3 days to reduce the possibility of phlebitis. This policy reflects current standard practice among entities that furnish home IV drug therapy. While there is no absolute Medicare standard proposed for the frequency of nursing visits for monitoring central line injection sites, the results of our consultation with entities that furnish home IV drug therapy indicate that, although different costs might arise at different times, there are no material differences between the cost of nursing care for central line and peripheral line patients over the course of therapy. Therefore, we assumed a similar schedule of nursing visits for central line patients.

Our proposed allowance for nursing costs includes payment for time spent in direct patient care, travel time to and from the patient's home, mileage, an allowance for supplies, and an overhead rate for indirect labor and other costs. Labor costs associated with direct patient care and travel would be adjusted by the urban and rural wage indexes currently used in calculating the

Medicare schedule of limits on home health agency (HHA) costs. (See 54 FR 27742; June 30, 1989.)

We were unable to locate annual salary data specific to IV-certified nurses to use as the basis for labor cost estimates. Although two entities that provide home IV drug therapy services cited total compensation levels of approximately \$45,000, those levels largely represented salary and benefit costs for full-time nurses employed in supervisory or managerial positions rather than the cadre of nurses providing direct patient care in the home. These entities did not disclose information on compensation agreements with part-time nurses paid on a contractual or per visit basis. Other entities or health care organizations with whom we consulted cited nursing charges ranging from \$30 to \$90 per visit. In order to construct a nursing cost model, therefore, we referred to a national survey of nursing salaries itemized by specialty, which was published in "Modern Healthcare".<sup>6</sup> However, because there was no specialty clearly fitting the description of IV-certified nurse, we decided to use the home health specialty as the basis for the model.

For nursing services, we would use a 1988 annual wage of \$27,700 for the home health specialty nurse based on the results of the "Modern Healthcare" survey, which we adjusted to 1989 levels by the same inflation factor we used for pharmacists and pharmacy technicians (that is, 4.0 percent) for a 1989 annual salary of \$28,808. We then divided the inflation-adjusted salary of \$28,808 by total net work hours per year. (Although there appears to be widespread use of part-time or "contract" nurses in home IV drug therapy care, we were unable to determine, on average, the ratio of part-time or contract to full-time nurses and its resulting effect on personnel compensation costs. To develop net work hours for nursing services, therefore, we are using an assumption of 6 weeks of combined vacation, sick leave, and time spent in training and other professional development, although the practice of paid leave is more traditionally associated with full-time employment.) Our computation for productive work hours is as follows: 52 weeks  $\times$  40 hours per week = 2,080 total annual paid hours. A total of 2,080 paid hours minus 240 hours for time away from work (that is, 6 weeks  $\times$  40 hours per week) = 1,840 net work hours.

<sup>6</sup> Cole, Ben S., and Sizing, Walt, "Cole Nurse Compensation", *Modern Healthcare*, December 1988.



The resulting hourly salary rate for nursing care would be \$15.66 (that is, \$23,808 divided by 1,840 = \$15.66).

In order to determine estimates for indirect or overhead costs associated with nursing care, we referred to the HHA input price index (or HHA market basket), which is used to generate the Medicare cost limits. The relative weights used in the market basket show that costs not related to wages and benefits (including such components as contract services, transportation, office costs, medical equipment and supplies, rent, utilities, and miscellaneous items) account for approximately 25 percent of the current HHA cost limits. (See 54 FR 27742; June 30, 1989.)

However, that ratio may be understated because HHA labor costs include general and administrative wages and benefits, which we are treating as overhead costs for purposes of determining the fee schedule allowances. In addition, we have reason to believe that home IV drug therapy services may generate a higher proportion of indirect costs due to the provision of emergency services 24 hours a day, 7 days a week and more stringent quality control requirements. We also note that, unlike home health services, which are paid on a per visit and, consequently, more open-ended basis, home IV drug therapy services are to be paid on a per diem basis (which is based on a typical schedule of a nursing visit every 3 days). In other words, home IV drug therapy nursing services are essentially capped. Therefore, we used an indirect costs factor of 50 percent to ensure that the per diem fee schedule fully provides for crisis care and other complications arising from the provision of home IV drug therapy, which involves the use of potentially dangerous drugs. Accordingly, we increased the hourly salary by an overhead factor of 50 percent to reflect indirect nursing-related costs, for an adjusted nursing services cost of \$23.49 per hour.

We then gathered information on average nursing time spent in the home of an IV drug therapy patient from a number of sources including several entities that furnish home IV drug therapy, a national home care association, a review of nursing notes submitted by a home health care agency for purposes of requesting an exception to the home health cost limits, a health maintenance organization, and a professional nurses association. After comparing the information received from these different sources, we determined that a nursing visit averages approximately 30 minutes for assessing the patient and changing IV sites or

dressings and 15 minutes for consultation and documentation. This would result in a total of 45 minutes of direct patient care. We estimated time spent in travel status to be 40 minutes between patients. Thus, the total period of time per nursing visit would be 85 minutes, which at \$23.49 per hour, converts to a total nursing visit cost of \$33.28, or \$11.09 per day. We are assuming that the average mileage per patient is 20 miles with a travel time of 40 minutes. We assume that the average distance between the provider and the first patient to be visited and also the average distance between patients is 20 miles. (We do not expect the nurse to be making round trips to the provider's office between patient visits. We believe that 40 minutes travel time per patient is reasonable for both urban and rural areas.) We are specifically seeking comments and data about whether 40 travel time is appropriate for urban and rural areas. Thus, mileage payment for 20 miles at \$.225 per mile (Federal mileage allowance) is \$4.50 per visit, which, divided by 3 results in a per diem allowance of \$1.50. An additional allowance associated with the nursing visit would be included for the cost of supplies that are related to nursing services rather than to pharmacy services, for example, an IV start kit with catheter, sterile dressings, gloves, bandages, thermometers, and an air elimination filter. Thus, the per diem fee schedule allowance for nursing services and supplies would be calculated by the following formula:

[(Patient care time × adjusted nursing cost per hour) + (Travel time × adjusted nursing cost per hour) + Mileage allowance + Nursing supplies] divided by 3 days = Per diem allowance for nursing services and supplies; or

$$\frac{(.75 \times \$23.49) + (.667 \times \$23.49) + \$4.50}{3} = \$15.95$$

As discussed above, the labor portion of the \$15.95 per diem fee schedule allowance (that is, \$11.09 or  $(\$23.49 \times 1.417)$  divided by 3) would be adjusted by the HHA wage index.

#### C. Other Equipment

We are proposing a per diem fee schedule allowance of \$.71 for other IV equipment for antibiotic therapy and \$.66 for pain management therapy. This allowance is for equipment that is not related to pharmacy or nursing services and has not already been taken into account through the allowances for

those services. Therefore, this allowance would cover the costs of IV poles and two different types of electronic infusion devices (pumps or controllers). Our proposed allowance is based on assumptions concerning equipment use and patient mix as well as cost estimates of equipment based on manufacturers' list prices less an appropriate discount factor.

Equipment needs generally vary according to the particular drug therapy being furnished to a patient. There are two types of delivery systems used most frequently to administer IV drugs and other fluids to the patient: The gravity drip and the infusion pump. When the gravity drip is used, the equipment consists of an IV pole from which the administration set and IV bag are suspended.

Generally, a gravity drip is used for antibiotic therapy. However, since a gravity drip must be visually monitored to ensure it is working and occasionally restarted if it has stopped working, patient or caregiver physical limitations (for example, vision or dexterity problems) may necessitate the use of a pump. In addition, a patient with poor venous access may also need to use a pump instead of the gravity drip. Therefore, in developing the fee schedule for antibiotics, we estimate that 90 percent of all Medicare patients receiving antibiotics could use the basic gravity system, which uses only an IV pole, and the other 10 percent would need to use a pump. However, these patients' needs can be met with a relatively simple pump.

Patients receiving pain management therapy are treated with narcotic drugs whose use must be strictly controlled. A more specialized pump with a bolus feature is customarily used for these patients because it can be programmed to control daily dosage while permitting the patient to rapidly infuse preprogrammed incremental amounts of the drug to alleviate pain.

In discussions with pump manufacturers, we learned that many pumps are regularly sold to home care agencies at a volume price reflecting a markdown of 20 percent. The fee schedule allowance, therefore, reflects that same markdown factor for these devices.

In order to determine the cost of the various pumps, list price data and amortization guidelines were obtained from "Pharmacy Practice news,"<sup>7</sup> a

<sup>7</sup> Pharmacy Practice News, pp. 29-33.



trade publication, and from several pump manufacturers. For purposes of developing the fee schedule, we have assumed that a pump has a useful life of 1 year and, thus, we amortized the daily cost of a pump over 1 year, that is, 365 days.

The average rental cost of an IV pole is \$10.00 per month or \$.33 per day. The relatively simply pump or similar device that would be used by Medicare patients receiving antibiotics is available at a net cost of \$1,488 (list price of \$1,860 minus the 20 percent markdown) or \$4.08 per day. The pump with bolus feature is available at an average net cost of \$2,396 (list price of \$2,995) or \$6.56 per day.

We are proposing to use a weighted average for the use of IV poles and a simple infusion pump based on the assumed patient mix (discussed above). Therefore, the per diem fee schedule allowance for other equipment would be calculated as follows:

Antibiotic therapy: 90 percent of patients receiving antibiotics  $\times$  per diem cost for an IV drip pole + 10 percent of patients receiving antibiotics  $\times$  per diem cost for a simple infusion pump = Per diem allowance of other equipment; or

$(90\% \times \$3.33) + (10\% \times \$4.08) = \$7.11$ .

Pain Management therapy: 100 percent of patients receiving pain management therapy  $\times$  per diem cost of an ambulatory infusion pump = per diem allowance of other equipment; or

$(100\% \times \$6.56) = \$6.56$ .

#### D. Additional Allowances

Allowances for special costs to the home IV drug provider would be made in addition to the per diem fee schedule. The allowances would be paid in addition to the basic per diem fee schedule for the one-time costs for patient education and counseling, for the additional costs to the provider of a patient who receives a multiple IV drug regimen, and for the cost of a nursing visit associated with the first dose of any new drug added to the drug regime of an established patient.

##### 1. Patient Education and Counseling

In the case of a patient who begins IV drug therapy as a hospital inpatient, we assume that thorough patient training in self-administration has been provided before hospital discharge. As a result, once the patient is discharged to his or her home, we would provide a lump sum allowance equivalent to the payment for two home nursing visits. The purpose of these visits is to insure that the home environment is satisfactory for IV drug therapy (for example, there must be a working refrigerator to keep the drugs and other fluids cooled before using),

observe the first dose administered by the patient at home, reinforce prior IV therapy administration training, familiarize the patient with any new equipment (quite possibly the IV equipment is slightly different from that furnished in the hospital), and generally aid the patient in making the transition from IV drug therapy in the hospital to IV drug therapy in the home.

We expect that a patient who starts IV drug therapy in other than an inpatient hospital setting and who therefore has received no inpatient hospital training would need additional training in self-administration of IV drug therapy. As a result, we would provide a lump sum allowance reflecting payment for three nursing visits.

To calculate the appropriate allowance for these services, we would use the per diem allowance for nursing services, as discussed above in section III.B. of this preamble. However, since all these visits do not involve the use of nursing supplies, we have not included the cost of supplies (that is, \$10.04) in this allowance. Therefore, the special adjustment would consist of the following one-time allowance (based on the cost of a nursing visit of \$37.77) for self-administration training for a patient who began IV drug therapy:

- For a patient who began IV drug therapy as a hospital inpatient,  $(\$37.77 \times 2)$  or \$75.54.

- For a patient who began IV drug therapy other than as a hospital inpatient,  $(\$37.77 \times 3)$  or \$113.31.

As is our policy for nursing services, the labor portion of this allowance would be adjusted by the HHA wage index.

##### 2. Multiple IV Drug Regimen

We would provide a special allowance for pharmacist services, pharmacy supplies, and nursing services in those cases in which a patient is receiving more than one IV drug because we recognize that there are added personnel and supply costs associated with a multiple drug regimen. We note that a multiple drug regimen exists only when two or more specific drug therapies are prescribed. (For example, a patient is receiving two or more antibiotics or is receiving both antibiotics and analgesics.) Therefore, the following allowance does not apply when a patient is receiving hydration as an adjunct to another drug. For example, if a patient administers saline flushes before or after infusion of an IV antibiotic, that is not considered a multiple drug regimen because the flushes are administered incidental to the prescribed antibiotic. Similarly, the allowance does not apply when

additives (for example, electrolytes) are introduced into the prescribed drug or diluent.

We believe that, except for supplies and equipment that are dosage dependent, the additional costs associated with a multiple drug regimen are marginal. For example, although pharmacy dispensing services would increase markedly, that workload would not be necessarily doubled nor would there be a significant increase in other distributive services. Similarly, additional pharmacist time would be spent in some, but not all, clinical services. Finally, additional drug deliveries should not be required.

For these reasons, we are setting the add-on allowance at 50 percent of pharmacy services, 100 percent of pharmacy supplies, and 100 percent of other equipment. This calculation results in an additional per diem allowance of \$22.80 for antibiotic therapy and \$12.97 for pain management therapy.

In those cases where a patient is receiving both antibiotic and pain management therapy, the antibiotic fee schedule is the fee schedule used as the base for the calculation of the add-on allowance. In other words, the add-on allowance for a patient both on antibiotic and pain management therapy is \$22.80.

##### 3. Nursing Visit For Initial Dose Due to Change in Prescription

We would also include a flat allowance of \$18.89 (or 50 percent of the per visit allowance for nursing services less supplies) to cover the cost of a nursing visit associated with the first dose of any new covered home IV drug introduced into the drug regimen of an established patient. For safety reasons, many home IV drug therapy providers have established standard procedures requiring the first dose to be administered either by a physician or in a clinical setting.

The proposed conditions of participation for home IV drug therapy providers, which are set forth in a separate rulemaking document published in the Federal Register of September 7, 1989 (54 FR 37220), similarly require that either a physician or nurse be present at the administration of the initial dose. Physicians would directly bill Medicare Part B for their services. We believe that, on average, prescription changes would frequently coincide with the regularly scheduled nursing visit. We have, therefore, included an allowance equal to 50 percent of the cost, less supplies, of a nursing visit to the home when the home IV drug therapy provider sends a nurse



to the home for the initial dose. This allowance of \$18.89 would be paid only when a prescription change calls for a new drug to be added to the patient's drug regimen or for the substitution of a new drug for one already being used.

#### E. Updating the Fee Schedule

Section 1834(d)(2) of the Act requires the Secretary to establish the fee schedule, prior to its implementation, for each calendar year after 1990. To meet this requirement, we intend to periodically review the rates, and we will be considering ways the rates, once established, might be updated (that is, annually through the use of the percentage increase in the CPI-U or on the basis of other data gathered through cost surveys and studies or other sources).

The proposed per diem fee schedule allowances and add-on allowances set forth in this proposed rule have been adjusted for inflation only through 1989. The figure for 1990 will not be available until September of this year. Therefore, we intend to further adjust the allowances set forth in this document by the 1990 inflation factor as part of the final rule.

We recognize that, because this is a relatively new health care service, experience with home IV drug therapy is still growing. The introduction of new drugs and technology, improved safety practices, and greater awareness of the availability of such services are but some of the factors that could create changes and influence new trends in the delivery of home IV drug therapy. We expect that, as both Medicare and private sector experience grows, so will the availability of data. As a result, if in the future there is strong evidence of material change in the composition or costs of home IV drug therapy services, we would propose to modify the fee schedule to more accurately reflect those services or costs.

#### IV. Alternatives Considered

Instead of a separate per diem fee schedule for each of the two major drug therapies with additional allowances for special and one-time costs, we considered several alternatives that were subsequently rejected as discussed below.

##### A. Separate Fee Schedules Covering Different IV Lines

We considered establishing separate fee schedules with each one tailored to the type of venous access. We asked an association that represents entities that furnish home IV drug therapy for an assessment of the differences in the cost of services and supplies associated with

patients who have the two different types of venous access: peripheral or central line.

After polling a cross section of their membership (that is, proprietary and not for profit entities, both urban and rural), the association reported results indicating that there was no significant difference overall. Anecdotal evidence furnished to the association suggested that, although different costs might arise at different points in time, there was no real disparity in costs over the full course of therapy. As a result, we rejected this alternative.

##### B. Single Per Diem Fee Schedule

We considered establishing a single fee schedule that would take into account estimated unit costs for labor and nonlabor resources, adjust those costs for the unique characteristics of individual drug therapies, and weigh the resulting per diem costs by the estimated patient mix, that is, the percentage of patients on a particular therapy.

However, in constructing the unit costs for each of the therapies, it became apparent that total costs for antibiotic therapy and pain management therapy are significantly different. As a result, the single fee schedule would have been especially sensitive to our assumptions for patient mix and would have increased the potential for adverse impact on a home IV provider whose case mix was not reflective of those assumptions. Therefore, we rejected this alternative.

##### C. Per Diem Fee Schedules that Incorporates Nonrecurring Costs and Multiple Drug Regimen

We considered incorporating the costs associated with nonrecurring services and multiple drug regimens in a per diem fee schedule, which would have eliminated the need for added allowances for special costs. However, in the case of nonrecurring costs, such a plan would have required developing estimates of the average length of therapy in order to arrive at a per diem allowance. Moreover, by spreading the cost over the duration of an average therapy, a per diem allowance for nonrecurring services would adversely affect providers in those cases where patients are placed in home IV therapy for relatively short periods of time.

In order to build the costs of multiple drug regimens into a per diem fee schedule, we would have had to develop assumptions regarding the universe of patients, who are receiving a given number of IV drugs. However, we found that there were insufficient data available on which to develop such

assumptions. Therefore, we rejected this alternative.

##### D. Fee Schedule Based on Customary Home IV Drug Therapy Provider Charges

We considered establishing a fee schedule based on current charging practices of the entities that furnish home IV drug therapy. We rejected this alternative for two major reasons.

First, there were insufficient data to develop charge-based allowances for home IV drug therapy services. Our surveys of entities that furnish home IV drug therapy indicated that these entities customarily charge a global fee; that is, one amount for the total charges for drugs, supplies, and services. Although we asked several entities to separate the cost of the drugs from their total charges so that we could attempt to make the charges for services and supplies more analogous to the fee schedule methodology statutorily required for the Medicare program, only one of these entities that furnish home IV drug therapy was able or willing to provide this information.

Second, we believe that a charge-based fee schedule would result in excessive payment. For example, although there are substantial mark-downs in the prices for supplies and equipment widely available to home care agencies who purchase in large volumes, we received no indication from the entities that we contacted that they pass those decreased costs on to their patients. Instead we believe that the usual practice is for these entities to charge their patients the retail prices for supplies and equipment rather than the prices that the entities actually pay.

Moreover, it appears that customary charges for home IV drug therapy reflect a number of costs incurred while the patient is in the hospital, such as patient training and insurance verification. We believe these costs are incurred prior to hospital discharge and should not be shifted onto the charges for IV drug therapy services furnished in the home setting.

Finally, we have influenced in our decisions by the intent of Congress concerning excessive payment levels. In enacting Public Law 100-360, Congress specified in the Conference Report that " \* \* \* Medicare payment would be the lower of the provider's actual charge or the fee schedule amount \* \* \* [The Senate report had only required a fee schedule; the conferees later added the 'lower of requirement.']( (H.R. Rep. No. 661, 100th Cong., 2nd Sess. 202 (1988).)

We also heeded Congress's intent as expressed in the conference report that



we consider costs, charges, and payment rates for similar Medicare covered services. For example, the proposed fee schedule allowance for patient equipment are consistent with Medicare carrier allowances for IV poles and electronic infusion devices. The allowance for electronic devices reflects the 20 percent volume purchase discount traditionally offered to home care agencies by several pump manufacturers.

In determining the proposed per diem allowance for the nursing component, we first considered using the per visit cost limits for home health agencies as the model for home IV drug therapy providers. However, the home IV drug therapy providers with whom we met or consulted strongly expressed the view that the technically sophisticated services involved in home IV drug therapy are considerably different from traditional home health care services. To be as equitable as possible, therefore, we constructed an allowance for nursing services based on information garnered from entities that furnish home IV drug therapy, members of professional nursing associations, and a review of the literature on IV drug therapy. In our search for information from outside sources, we asked what a home IV nursing visit would typically require in terms of nursing tasks, time, and supplies. Other questions focused on nursing personnel, such as professional qualifications and salary or contractual payment levels.

For pharmacy services and supplies, there are no existing Medicare allowances. As a result, the discrete proposed allowances for pharmacy services, supplies, and delivery services were constructed from information collected from independent surveys conducted by pharmacy-related groups, published articles on pharmacy cost analyses and time and motion studies, inquiries to medical supply manufacturers, and interviews with entities that provide home IV drug therapy services.

Nonetheless, Congress expressed special caution on exclusive use of customary charges.

\*\*\* In establishing the fee schedule, the Secretary could consider cost information, charge information, and payment rates for similar items and services covered under Medicare. \*\*\* The conference agreement provides the Secretary with broad flexibility in establishing the fee schedule. The conferees expect that the Secretary will use this flexibility to establish a fee schedule which assures adequate access to services while preventing excessive payments. The conferees note that exclusive reliance on customary charges has previously resulted in excessive reimbursement levels for similar

services \* \* \* (H.R. Rep. No. 661, 100th Cong., 2nd Sess. 202 (1988)).

For these reasons, we decided against basing the fee schedule on current charging practices of home IV drug therapy providers.

#### V. Changes to the Regulations

The regulations implementing the provisions of sections 1834(d) (1) and (2) of the Act that provide for payment for home IV drug therapy services under the catastrophic drug benefit provisions would be located in subpart J (Payment for Home IV Drug Therapy Services) of a new part 414 (Payment for part B Medical and Other Health Services). We intend to issue a separate final rule to move the current sections on reasonable charges for part B services from part 405, subpart E to part 414. Other subparts will be added in separate documents as new provisions of the law are implemented through the usual rulemaking process.

#### VI. Regulatory Impact Statement

##### A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, any rule that would be likely to result in—

- An annual effect on the economy of \$100 million or more;

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

- 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all home IV providers are considered to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer

than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

The following discussion in combination with the discussion presented in the preamble constitutes a complete regulatory and flexibility analysis.

##### B. Objectives

Our explicit objective in establishing the fee schedules contained in this proposed rule is to provide adequate compensation to cover the average marginal costs (that is, the average cost of furnishing home IV drug therapy to one individual) of—

- Pharmacy services that include both clinical and distributive functions and supplies and equipment necessary for safe and effective IV therapy furnished in the patient's home;

- Nursing services required for setting up the IV lines and changing sites at prescribed intervals;

- Responding to emergencies;

- Monitoring the patient's progress and maintaining required patient records; and

- General administrative overhead.

A second objective we wish to promote through the proposed fee schedules is the efficient delivery of health services while, at the same time, ensuring that patients' safety and welfare are not compromised. On the one hand, by setting our payments for home IV drug therapy services at a level that approximates an efficient provider's costs, we hope to discourage wasteful spending on such items as office space or personnel when the need for these items or staffs cannot be justified economically. On the other hand, we are concerned that providers receive adequate compensation to cover their average marginal costs of providing high quality and effective care.

A third objective we hope to achieve is to maintain the structure and dynamics of the existing home IV drug therapy market. By designing the proposed fee schedules to meet the average marginal costs of established providers, we hope to maintain a position of neutrality with respect to the market. That is, we do not want to erect barriers to market entry, but neither do we want to create incentives for new providers to enter the market on the basis of the proposed fee schedules.



### C. Affected Entities

#### 1. Home IV Providers

According to the Prudential-Bache study of the home infusion industry cited earlier in this document, there are about 80 to 100 different companies providing home IV drug therapy care in some 300 to 350 local markets.<sup>7</sup> Based on inquiries to HCFA and anecdotal evidence, we anticipate that approximately 6,000 entities that currently furnish home IV drug therapy will request approval as Medicare home IV providers. While this appears to be a large number of providers, it may reflect the number of providers that have expressed some interest in becoming home IV drug therapy providers rather than the number of providers that will actually qualify or that will furnish services to Medicare patients. Nevertheless, inaugurating coverage of home IV drug therapy services for Medicare patients in 1990 should not materially affect the home IV drug therapy market because the fee schedules we are proposing are designed to cover only the marginal cost of patient care. This amount, we expect, would not be enough to cover start-up costs of a new provider. Thus, we do not foresee a rush of new entrants into the home IV drug therapy market for the exclusive purpose of serving Medicare patients.

We believe that decisions to enter the home IV drug therapy market or to treat Medicare patients will depend on the available capacity, patient referral patterns, contractual arrangements with hospitals, overall penetration into the home infusion market and a provider's marginal productivity. Of these factors, a provider's capacity to meet the demand for home IV drug therapy services from non-Medicare patients and its arrangements with a referring hospital may be the most important elements in the decision to treat a Medicare patient who meets the patient selection criteria. In markets where demand exceeds the supply of home IV providers, Medicare patients may have difficulty gaining access to home IV drug therapy services, while in markets where surplus capacity exists, home IV drug therapy providers may aggressively solicit Medicare patients.

The other factor that may weigh heavily in a home IV drug therapy provider's decision to accept Medicare patients is the overall referral pattern from hospitals in the provider's market. The Medicare hospital prospective payment system has generated

substantial incentives for hospitals to discharge Medicare patients as early as possible. With coverage of home IV drug therapy services beginning January 1990, hospitals will be eager to discharge patients that meet the patient selection criteria for home IV drug therapy. As discussed above, market conditions and the amount of excess capacity home IV drug therapy providers have will probably determine how likely they will be to accept Medicare patients. In markets where the excess home IV drug therapy service capacity is low, hospitals are likely to employ a variety of strategies to induce home IV drug therapy providers to accept Medicare patients.

#### 2. Hospitals

Coverage of home IV drug therapy services and the establishment of the proposed fee schedules may affect hospitals in two ways. The first way, as suggested above, is to permit hospitals to discharge patients requiring continuing IV drug therapy to their homes rather than keeping them in the hospital. This will relieve some of the financial pressures on hospitals. In most markets, we believe that home IV drug therapy providers have sufficient capacity now to make placement of Medicare patients with a home IV drug therapy provider easy. However, in some markets, and possibly in the future, high demand for placement of patients with home IV drug therapy providers may make placement of Medicare patients more difficult. In markets of high demand and low excess capacity, as mentioned above, hospitals may offer home IV drug therapy providers financial incentives to gain access for their discharged patients requiring IV drug therapy. If hospitals adopt such strategies in order to reduce lengths of stay, their savings would be reduced. Hospitals would have to carefully weigh the benefits of early discharges to a home IV drug therapy provider against the cost of offering the provider inducements to accepting their patients.

The second major consequence the proposed fee schedules may have for some hospitals is to stimulate their entry into the home IV drug therapy market. Of all the types of provider that may enter the home IV drug therapy market, hospitals have resources available to them that may give them advantages over other types of providers. Generally, hospitals have pharmacy facilities that would meet the pharmacy requirements for home IV drug therapy provider certification; and, because of the volume of IV drugs utilized in the inpatient and outpatient settings, hospitals may be

able to purchase IV drugs for home use at lower prices than many freestanding home IV drug therapy providers. Hospitals also employ nurses qualified to start IVs and to handle emergencies associated with IV drug therapy. Depending on the number of IV trained nurses on staff, arrangements could be made to rotate nurses to the home IV drug therapy provider without increasing labor costs.

Another advantage hospitals may have over other providers is the potential to control patient supply and demand. By vertically integrating the home IV drug therapy provider with the hospital, the hospital may be able to economize on its marketing costs and administrative costs. Furthermore, with some assurance of a minimum number of referrals from the parent hospital, the hospital-based home IV drug therapy provider could seek referrals from outside sources during periods of low demand and dedicate more resources to the parent hospitals during periods of high demand.

From the attending physician's standpoint, an integrated hospital-based home IV drug therapy provider may offer the physician certain material and psychological benefits not available in patient care were transferred to an entirely separate provider after discharge. Since physicians, as a matter of routine, may visit the hospital several times a week, they may have frequent opportunities to review patients' records and have personal contact with the nursing staff responsible for the patients' care. The opportunity to maintain on-going contact with the personnel caring for their patients following discharge may offer physicians a sense of control they may lack if they have only occasional contact with staff at a freestanding home IV drug therapy provider.

Although we believe that some hospitals may be in a better position to enter the home IV drug therapy market than other types of providers in similar markets, we would not expect a hospital to enter the home IV drug therapy market solely on the basis of the new Medicare benefit. We believe it would make sense for a hospital to enter the market only if it believes that it could capture a sufficient portion of the non-Medicare business to warrant entry into the market. The probability of market entry would increase if the hospital had experience in the postdischarge segment of the market, for example through operating a hospital-based HHA.

<sup>7</sup> Prudential-Bache, p. 24.



### 3. HHAs and Durable Medical Equipment (DME) Suppliers

As in the case of hospitals, it seems highly unlikely that Medicare coverage of home IV drug therapy services and the establishment of the proposed home IV drug therapy fee schedules by themselves would result in any significant changes in home IV drug therapy market structure for HHAs and DME suppliers. The decision to enter the home IV drug therapy market will largely depend on each organization's assessment of its ability to reach an adequate share of the non-Medicare market. At most, we see the introduction of the Medicare home IV drug therapy benefit and fee schedules as tipping the balance in one direction or another in an organization's decision to enter the home IV drug therapy market.

Generally, HHAs and DME suppliers may already furnish some but not all of the services Medicare would require a certified home IV drug therapy provider to furnish. For example, an HHA may employ or contract with registered nurses trained to administer IV medication but not with pharmacists. A DME supplier may regularly furnish infusion pumps and other equipment necessary for home IV drug therapy but not employ or contract with either registered nurses qualified to administer IV drugs or pharmacists. In either case, the decision to enter the home IV drug therapy market will depend largely, we believe, on the organization's ability to acquire, either directly or under arrangement, the services it does not now furnish. Also, we believe, the decision to acquire these services will be considered primarily in terms of the non-Medicare market and only secondarily in terms of the Medicare market.

### D. Program Costs

We estimate that in 1990, approximately 65,000 Medicare beneficiaries will meet the patient selection criteria for home IV drug therapy. Of these, we estimate that 87 percent will be continuing IV drug therapy begun in the hospital. Further, we anticipate that about 60 percent of the patients will be receiving medication for the management of pain and the remaining patients will be receiving antibiotics. Using data from Table 2 of the Prudential-Bache study<sup>6</sup> as a starting point and adjusting for differences between the Medicare population and the population sampled in the study, we expect that patients will undergo pain management therapy for

an average of 60 days. Patients receiving antibiotic therapy are expected to require an average of 30 days of home IV therapy. We anticipate that in calendar year 1990 about 2.3 million patient days would be for patients receiving pain management therapy and 780,000 patient days would be for patients receiving antibiotic therapy.

In addition to these assumptions about the Medicare home IV patient population, we estimate that about 25 percent of the patients receiving pain therapy in conjunction with chemotherapy (which, would not be covered as a home IV drug therapy benefit) will repeat their treatment within 1 year of receiving the initial home IV drug therapy. Also, we estimate that about 25 percent of Medicare home IV drug therapy patients will require multiple drug therapy and about 10 percent of Medicare home IV drug therapy patients will need an additional nursing visit as a result of a change in the patient's prescription.

Based on the foregoing assessment of the Medicare home IV drug therapy population, we project that Medicare program payments for home IV services, as we proposed them in the document, would result in the following costs over the next 5 fiscal years, beginning January 1, 1990:

### MEDICARE PROGRAM PAYMENTS FOR HOME IV DRUG THERAPY SERVICES BASED ON THE PROPOSED FEE SCHEDULES

(In millions)\*

FY 1990	FY 1991	FY 1992	FY 1993	FY 1994
\$80	\$140	\$160	\$190	\$220

\*Rounded to the nearest \$10 million.

### E. Conclusion

The proposed fee schedules, we believe, would offer home IV drug therapy providers sufficient compensation to cover the marginal costs of treating Medicare patients. However, the introduction of home IV drug therapy for Medicare patients and these proposed fee schedules should have little effect on the current structure of the market.

### VII. Other Required Information

#### A. Paperwork Burden

This proposed rule would not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

### B. Public Comment

Several other proposals concerning drugs and home IV drug therapy services under Public Law 100-360 were published on September 7 and September 8, 1989. Each provided for a 60-day public comment period. To coordinate the receipt of public comments on these documents with the receipt of public comments on this proposed rule, we are extending the due date for receipt of public comments on those proposals to January 8, 1990, in a document published in the Notices section of this issue of the Federal Register.

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of the final rule.

### List of Subjects in 42 CFR Part 414

Catastrophic outpatient drug benefit, Health supplies, Medicare.

A new 42 CFR part 414 would be added as set forth below:

### PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

#### Subpart A-I—[Reserved]

#### Subpart J—Payment for Home Intravenous (IV) Drug Therapy Services

##### Sec.

- 414.550 Basis and scope.
- 414.554 Determination of amount payable.
- 414.558 Calculation of per diem fee schedule allowances for calendar year 1990.
- 414.560 Calculation of additional allowances for calendar year 1990.
- 414.562 Calculation of per diem fee schedule and additional allowances for calendar years after 1990.

Authority: Secs. 1102, 1834(d), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395m(d), and 1395hh).

#### Subpart A-I—[Reserved]

#### Subpart J—Payment for Home Intravenous IV Drug Therapy Services

##### § 414.550 Basis and scope.

(a) *Statutory basis.* This subpart is based on sections 1834(d) (1) and (2) of the Act which, respectively—

(1) Provide that payment for home IV drug therapy services is the lesser of the actual charges or a fee schedule amount; and

<sup>6</sup> Prudential-Bache, p. 19.



(2) Require the Secretary to establish by regulation a per diem fee schedule for these services.

(b) *Scope.* This subpart sets forth the methodology used to determine the per diem fee schedule amount for home IV drug therapy services, which are covered under Medicare beginning on January 1, 1990.

**§ 414.554 Determination of amount payable.**

(a) *General rule.* Medicare payment for home IV drug therapy services as defined in § 410.203 of this chapter, is made at 100 percent of the lesser of—

- (1) The actual charge; or
- (2) The applicable per diem fee schedule amount and any applicable additional allowances determined under this subpart.

(b) *Separate fee schedules.* Two separate fee schedule amounts are calculated; one for pain management drug therapy and one for antibiotic and other drug therapies.

(c) *Basis for calculating fee schedule amounts.* The applicable fee schedule amount for each type of drug therapy is the per diem allowance for each of the home IV drug therapy service components plus, as appropriate, additional allowances applicable in special circumstances.

(d) *Service components.* HCFA calculates a per diem fee schedule allowance for each of the following:

- (1) Pharmacy services.
- (2) Pharmacy supplies.
- (3) Pharmacy delivery.
- (4) Nursing services and supplies.
- (5) Other equipment.

(e) *Special circumstances.* HCFA calculates additional allowances for each of the following:

- (1) Patient education and counseling at the time IV drug therapy begins in the home.
- (2) Multiple IV drug regimen.
- (3) New drug introduced into existing drug regimen.

**§ 414.558 Calculation of per diem fee schedule allowances for calendar year 1990**

(a) *Pharmacy services.* (1) An average hourly pharmacy rate is calculated by weighting an average hourly pharmacist rate based on direct and indirect costs and an average hourly pharmacy technician rate based on direct and indirect costs by the estimated time spent by each in drug preparation.

(2) A per dose cost of preparation is calculated for each type of drug by multiplying the average time spent in preparing the drug and evaluating patient outcome by the average hourly pharmacy rate.

(3) A per diem cost of preparation is calculated for each type of drug by multiplying the per dose cost for the drug by the average number of doses per day.

(4) The per diem allowance for pharmacy services for each type of drug therapy is equal to the per diem cost of preparing that type of drug.

(b) *Pharmacy supplies.* (1) A per dose cost of pharmacy supplies for each type of drug therapy is calculated by adding the cost of all supplies needed for that type of therapy.

(2) A per diem cost of pharmacy supplies for each type of drug therapy is calculated by multiplying the per dose cost by the average number of doses per day.

(3) The per diem allowance for pharmacy supplies for each type of drug therapy is equal to the per diem cost for supplies for that type of drug therapy.

(c) *Pharmacy delivery.* (1) A per trip nonlabor cost of delivery of drugs is calculated by multiplying the estimated average mileage per trip by the Federal mileage allowance divided by the estimated average number of deliveries per trip.

(2) A per trip labor cost of delivery of drugs is calculated by multiplying the estimated average travel time for each delivery by an average hourly salary rate for a delivery person based on direct and indirect costs.

(3) A per diem cost of delivery for each type of drug is calculated by adding the per trip nonlabor and labor costs and multiplying the result by the estimated number of trips per day for each type of drug.

(4) The per diem allowance for pharmacy delivery for each type of drug therapy is equal to the per diem cost of delivery for that type of drug therapy.

(d) *Nursing services and supplies.* (1) A per visit cost for patient care time is calculated by multiplying the average number of hours spent with a patient in each visit by the average hourly salary for a nurse based on direct and indirect costs.

(2) A per visit cost for travel time is calculated by multiplying the average travel time per patient by the average hourly salary for a nurse based on direct and indirect costs.

(3) The per visit costs calculated in paragraphs (d)(1) and (d)(2) of this section are adjusted for area differences in wage levels by a factor (established by HCFA) reflecting the relative home health agency wage level in the geographic area of the home IV drug therapy provider compared to the national average home health agency wage level.

(4) A per visit cost for travel is calculated by multiplying the estimated average mileage per visit by the Federal mileage allowance.

(5) A per visit cost of nursing supplies is calculated by adding the cost of supplies used in each visit.

(6) The per diem allowance for nursing services is calculated by adding the separate adjusted per visit costs for direct patient care time and travel time and the per visit costs for travel and nursing supplies and dividing by the average number of days between visits.

(e) *Other equipment.* The per diem allowance for other equipment is the separate per diem cost of the equipment not related to either pharmacy or nursing services calculated for each type of drug therapy by dividing the cost of the equipment necessary for the therapy by the average useful life of the equipment.

**§ 414.560 Calculation of additional allowances for calendar year 1990.**

(a) *Patient education and counseling at the time IV drug therapy begins in the home.* The amount of the allowance depends on whether the patient had begun IV drug therapy as a hospital inpatient.

(1) *Patient begins IV drug therapy while a hospital inpatient.* If the patient begins IV drug therapy as a hospital inpatient, the allowance is equal to two times the per visit cost for nursing services as a calculation by adding the per visit costs determined in § 414.558 (d)(1) through (d)(4).

(2) *Patient begins IV drug therapy outside the hospital inpatient setting.* If the patient begins IV drug therapy in any setting other than that of a hospital inpatient, the allowance is equal to three times the per visit cost for nursing services as calculated by adding the per visit costs determined in § 414.558 (d)(1) through (d)(4).

(b) *Multiple IV drug regimen.* A per diem allowance is made for the additional pharmacy services and supplies, nursing services, and other equipment needed for a patient who receives concurrently more than one IV drug. The per diem allowance is equal to the sum of the following: (1) 50 percent of the applicable per diem allowance for pharmacy services as calculated in § 414.558(a). (2) 100 percent of the applicable per diem allowance for pharmacy supplies as calculated in § 414.558(b). (3) 100 percent of the applicable per diem allowance for other equipment as calculated in § 414.558(e).

(c) *Nursing services for initial dose of new drug introduced into the drug regimen—(1) Applicability.* This



allowance is made for nursing services related to one nursing visit for the initial dose when a prescription change introduces an additional covered home IV drug to the patient's drug regimen or substitutes a new covered home IV drug for one already being used.

(2) *Amount.* This allowance is equal to 50 percent of the per visit costs for nursing services as calculated by adding the per visit costs determined in § 414.558 (d)(1) through (d)(4).

§ 414.562 *Calculation of per diem fee schedule and additional allowances for calendar years after 1990.*

The per diem fee schedule and additional allowances for calendar years after 1990 are periodically recalculated to take into account increases in costs of nursing and pharmacy services, supplies, and delivery, and other equipment.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: October 28, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: November 3, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-26380 Filed 11-8-89; 10:35 am]

BILLING CODE 4120-01-M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 217 and 252

#### Department of Defense Federal Acquisition Regulation Supplement; Master Agreements for Repair and Alteration of Vessels

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory Council is considering proposed revisions to DFARS parts 217 and 252 to update the list of clauses that are required for Master Agreements for Repair and Alteration of Vessels.

**DATE:** Comments on proposed changes should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before January 5, 1989, to be considered in the formulation of the final rule.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, Attn: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(M&RS), room 3D139, The Pentagon, Washington, DC

20301-3062. Please cite DAR Case 88-142 in all correspondence related to this subject.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council (202) 697-7268.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS part 217 is revised to require the contracting officer to determine those FAR/DFARS clauses applicable to each Agreement. The coverage has been revised to retain only those clauses unique to Master Agreements for Repair and Alteration of Vessels. In addition, coverage is provided to require annual review of the clauses under each Agreement.

##### B. Regulatory Flexibility Act

The proposed rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments for small entities concerning the affected Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 89-610 in correspondence.

##### C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

#### List of Subjects in 48 CFR Parts 217 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR parts 217 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 217 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

#### PART 217—SPECIAL CONTRACTING METHODS

2.-3. Section 217.7101 is revised to read as follows:

##### 217.7101 Descriptions.

(a) Master Agreement for Repair and Alteration of Vessels—A Master Agreement is a written instrument of understanding, negotiated between a contracting activity and a contractor, that (1) contains contract clauses, terms,

and conditions applying to future contracts for repairs, alternations, and/or additions to vessels and (2) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the Master Agreement. A Master Agreement is not a contract.

(b) Job Order—A job order is a fixed price contract incorporating by reference or attachment a Master Agreement for Repair and Alteration of Vessels. The job order applies to a specific acquisition and sets forth the scope of work, price, delivery date, and other appropriate terms that apply to the particular job order. The Master Agreement is incorporated into the job order by specific reference or by attachment. The job order may include clauses pertaining to subjects not covered by the Master Agreement, but applicable to the job order being awarded.

4. Section 217.7103-1 is revised to read as follows:

##### 217.7103-1 Content and format.

The Master Agreements shall contain all clauses required by 217.7104, Statute, Executive Order, and regulations. The format set forth below may be adapted to fit specific circumstances.

#### Master Agreement for Repair and Alteration of Vessels

This AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ by The UNITED STATES OF AMERICA, hereinafter called the "Government," represented by the Contracting Officer,

and \_\_\_\_\_, \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, hereinafter called the "Contractor." The clauses of the Federal Acquisition Regulation (FAR) and the Department of Defense (DoD) FAR Supplement, as set forth herein, have been agreed upon by the parties hereto for use in solicitations and/or Job Orders to effect repairs, alterations, and/or additions to vessels, issued by the Government from time to time under this Agreement. The clauses set forth in this Agreement shall be incorporated in each job order awarded pursuant to this Agreement.

This Agreement may be cancelled by either party upon thirty (30) days written notice without affecting rights and liabilities under any job order existing at the time of cancellation; *Provided, however,* that the Contractor shall perform and complete under the terms hereof all work covered by any job order entered into hereunder prior to the effective date of cancellation, as such job order may be modified by any change order issued under the clause entitled *Changes*, hereof.

This Agreement may be modified only by mutual agreement of the parties. However,



the Government has the right to cancel this Agreement upon thirty (30) days written notice at any time the parties fail to agree upon any modification to this Agreement which is required by statute, Executive Order, the Federal Acquisition Regulation, or the DoD FAR Supplement. A modification of this Agreement shall not affect any job order in existence at the time of modification, unless the parties so agree.

The rights and obligations of the parties to this Agreement shall be subject to and governed by the provisions of this Agreement and the provisions of job orders issued hereunder. To the extent of any inconsistency between this Agreement and any job order, the provisions of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By \_\_\_\_\_  
(Contracting Officer)

By \_\_\_\_\_  
(Contractor)

By \_\_\_\_\_  
(Title)

#### 217.7103-2 [Amended]

5. Section 217.7103-2 is amended by changing in the first sentence, the word "Provided" to read "provided"; and by removing in the last sentence the words "for Repair and Alteration of Vessels".

6. Section 217.7103-3 is revised to read as follows:

#### 217.7103-3 Solicitations for job orders.

(a) When a requirement arises for the type of work covered by the Master Agreement within the United States, its possessions or Puerto Rico, offers will be solicited from prospective contractors which have previously executed a Master Agreement and from prospective contractors which possess the necessary qualifications to perform the work and agree to execute a Master Agreement before award of a job order.

(b) The contracting officer shall ensure that solicitations are prepared in the Uniform Contract Format and in accordance with FAR subpart 14.2 or subpart 15.4, as applicable. When ever the Government solicits offers for the repair, completion, alteration of or addition to a vessel, the contracting officer shall notify the contractor (1) of the nature of the work to be performed, (2) the date the vessel will be available to the contractor, (3) the date of the work is to be completed, and (4) if bulk ammunition is aboard the vessel. Unless the notice otherwise states, offers shall be submitted based on performance at the contractor's site.

(c) Solicitations processed under negotiated acquisition procedures shall require proposals to include a breakdown of the price in such form and supported by such reasonable detail as

the contracting officer may request, but in any case indicating at a minimum the amount proposed for (1) direct labor, (2) material, (3) overhead, and (4) profit.

(d) Potential offerors shall be afforded an opportunity to inspect the item needing repair or alteration where practicable.

7. Section 217.7103-4 is revised to read as follows:

#### 217.7103-4 Preaward survey.

A preaward survey of the contractor's operations, including any analysis of the contractor's proposed subcontractors, may be conducted to insure the adequacy and suitability of facilities, including safety standards and adequacy of fire protection, adequacy of facilities for the health, comfort, and welfare of the crew of the vessel, and adequate plant protection to safeguard the vessel and Government property.

8. Section 217.7103-5 is revised to read as follows:

#### 217.7103-5 Award of a job order.

After the receipt and evaluation of offers and selection of the contractor, the price for the work and other pertinent data shall be set forth in a job order. Under sealed bid procedures, job orders signed by only the contracting officer constitute an award. Job orders awarded under negotiated acquisition procedures must be signed by both parties the contractor and returned to the contracting officer.

9. Section 217.7103-6 is revised to read as follows:

#### 217.7103-6 Emergency work

Under the following circumstances, the contracting officer, without soliciting offers, may issue a written order for work to a contractor who has previously executed a Master Agreement (a) when a vessel, its cargo, or stores would be endangered by delay in the performance of necessary repair work, or (b) when military necessity requires immediate work on a vessel. As soon as practicable after the issuance of such an order, the parties are required by the Master Agreement to negotiate a price. Upon completing negotiations, the contracting officer will issue a job order. This type of undefinitized contract action shall be processed in accordance with 217.75.

10. Section 217.7103-8 is revised to read as follows:

#### 217.7103-8 Modification of master agreements for repair and alteration of vessels.

Each Master Agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of the Federal Acquisition

and this regulation. Master Agreements may need to be reviewed and revised sooner for mandatory and statutory changes. A Master Agreement shall be changed only by modifying the Agreement itself and not by job orders. Modifying a Master Agreement shall not retroactively affect job orders previously issued.

11. Section 217.7104 is revised to read as follows:

#### 217.7104 Contract clauses.

(a) The contracting officer shall incorporate by reference the following clauses in solicitations for, and in, Master Agreements for Repair and Alteration of Vessels:

- (1) 252.217-7100, Changes.
- (2) 252.217-7101, Job Orders and Compensation.
- (3) 252.217-7102, Inspection and Manner of Doing Work.
- (4) 252.217-7103, Title.
- (5) 252.217-7104, Payments.
- (6) 252.217-7105, Bonds.
- (7) 252.217-7106, Default.
- (8) 252.217-7107, Performance.
- (9) 252.217-7108, Access to Vessel.
- (10) 252.217-7109, Liability and Insurance.
- (11) 252.217-7110, Guarantees.
- (12) 252.217-7111, Discharge of Liens.
- (13) 252.217-7112, Department of Labor Safety and Health for Ship Repairing.

(14) Any other clauses required by the FAR, this regulation, statute, or executive order.

(b) The contracting officer shall incorporate by reference the following clauses, as applicable, in solicitations for, and in, Master Agreements for Repair and Alteration of Vessels:

- (1) 252.217-7200, Plant Protection.
- (2) 252.217-7201, Identification of Sources of Supply.

(3) Any other clauses applicable per the FAR, this regulation, statute, or executive order.

(c) The contracting officer shall incorporate in solicitations for, and in, job orders the clauses in the Master Agreement (see (a) above and those clauses (b) above) applicable to the job order. The contracting officer may include clauses in job orders pertaining to subjects not covered by the Master Agreement, but applicable to the contract being negotiated, in the same manner as if there were no Master Agreement.



# **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

## **252.217-7100 [Removed]**

12. Section 252.217-7100 is removed.

## **252.217-7101 [Redesignated as 252.217.7100 and Amended]**

13. Section 252.217-7101 is redesignated as 252.217-7100 and the newly designated section is amended by subtracting in the penultimate sentence of the clause the words "the clause entitled Disputes" in lieu of the words "clause 252.217-7114 entitled "Disputes hereof".

## **252.217-7102 [Removed]**

14. Section 252.217-7102 is removed.

## **252.217-7103 [Redesignated as 252.217-7101 and Amended]**

15. Section 252.217-7103 is redesignated as 252.217-7101 and the newly designated section is amended by substituting in the penultimate sentence of paragraph (b) of the clause the words "the clause" in lieu of the words "clause 252.217-7111"; and by substituting in the penultimate sentence of paragraph (c) of the clause the words "the Disputes clause" in lieu of the words "Clause 252.217-7111".

## **252.217-7104 [Redesignated as 252.217-7102 and Amended]**

16. Section 252.217-7104 is redesignated as 252.217-7102 and the newly designated section is amended by substituting in paragraph (a) of the clause the words "the clause" in lieu of the words "Clause 252.217-7101"; by substituting in the second sentence of paragraph (c) of the clause the words "the clause" in lieu of the words "Clause 252.217-7130"; and by substituting in the penultimate sentence of paragraph (e) of the clause the words "the clause entitled "GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS)" in lieu of the words "Clause 252.217-7218 entitled "GOVERNMENT PROPERTY".

## **252.217-7105 [Redesignated as 252.217-7103]**

17. Section 252.217-7105 is redesignated as 252.217-7103.

## **252.217-7106 [Redesignated as 252.217-7104 and Amended]**

18. Section 252.217-7106 is redesignated as 252.217-7104 and the newly designated section is amended by substituting in the first sentence of paragraph (c) of the clause the words "the clause" in lieu of the words "Clause 252.217-7101" and enclosing the word "CHANGES" in quotation marks; by substituting in paragraph (c)(i) of the

clause the words "the CHANGES clause hereof" in lieu of the words "clause 252.217-7101 entitled CHANGES"; by substituting in paragraph (c)(ii) of the clause the words "the CHANGES clause" in lieu of the words "Clause 252.217-7101 entitled CHANGES"; and substituting in paragraph (e) of the clause the words "the clause entitled 'TITLE' " in lieu of the words "Clause 252.217-7105 entitled TITLE".

## **252.217-7107 [Removed]**

19. Section 252.217-7107 is removed.

## **252.217-7108 [Redesignated as 252.217-7105]**

20. Section 252.217-7108 is redesignated as 252.217-7105.

## **252.217-7109 [Removed]**

21. Section 252.217-7109 is removed.

## **252.217-7110 [Redesignated as 252.217-7106 and Amended]**

22. Section 252.217-7110 is redesignated as 252.217-7106 and the newly designated section is amended by substituting in the last sentence of paragraph (d) of the clause the words "the clause entitled "DISPUTES" in lieu of the words "clause 252.217-7111 entitled DISPUTES hereof"; by substituting in the last sentence of paragraph (e) of the clause the words "under this contract" in lieu of the words "252.217-7120 hereof" and enclosing the words "TERMINATION FOR CONVENIENCE OF THE GOVERNMENT" in quotation marks; and by substituting in the last sentence of paragraph (f) of the clause the words "the DISPUTES clause" in lieu of the words "Clause 252.217-7111 entitled DISPUTES".

## **252.217-7111 [Removed]**

23. Section 252.217-7111 is removed.

## **252.217-7112 [Redesignated as 252.217-7107 and Amended]**

24. Section 252.217-7112 is redesignated as 252.217-7107 and the newly designated section is amended by substituting in the last sentence of paragraph (a) of the clause the words "the clause" in lieu of the words "clause 252.217-7103" and enclosing the words "JOB ORDERS AND COMPENSATION" in quotation marks; by substituting in paragraph (c) (ii) of the clause the words "the clause" in lieu of the words "clause 252.217-7218" and enclosing the words "GOVERNMENT PROPERTY" in quotation marks; and by substituting in paragraph (d) of the clause the words "the GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) clause" in lieu of the words "clause 252.217-7218 entitled GOVERNMENT PROPERTY".

## **252.217-7113 [Redesignated as 252.217-7108]**

25. Section 252.217-7113 is redesignated as 252.217-7108.

## **252.217-7114 through 252.217-7123 [Removed]**

26. Sections 252.217-7114 through 252.217-7123 are removed.

## **252.217-7124 [Redesignated as 252.217-7109]**

27. Section 252.217-7124 is redesignated as 252.217-7109.

## **252.217-7125 through 252.217-7129 [Removed]**

28. Sections 252.217-7125 through 252.217-7129 are removed.

## **252.217-7130 [Redesignated from 252.217-7110 and Amended]**

29. Section 252.217-7130 is redesignated as 252.217-7110 and the newly designated section is amended by substituting in the fourth sentence of the clause the words "the clause" in lieu of the words "clause 252.217-7124"; and by substituting in the last sentence of the clause the words "the clause" in lieu of the words "Clause 252.217-7111" and removing the word "hereof" at the end of the same sentence.

## **252.217-7131 [Redesignated as 252.217-7111]**

30. Section 252.217-7131 is redesignated as 252.217-7111.

## **252.217-7132 [Redesignated as 252.217-7112]**

31. Section 252.217-7132 is redesignated as 252.217-7112.

## **252.217-7200 through 252.217-7268 [Removed]**

32. Sections 252.217-7200 through 252.217-7268 are removed.

## **252.217-7269 [Redesignated as 252.217-7200]**

33. Section 252.217-7269 is redesignated as 252.217-7200.

## **252.217-7270 [Redesignated as 252.217-7201 and Amended]**

34. Section 252.217-7270 is redesignated as 252.217-7201 and the newly designated section is amended by changing the reference in the introductory paragraph to read "217.7104(b)" in lieu of the "217.7204(c)".

[FR Doc. 89-26009 Filed 11-7-89; 8:45 am]

BILLING CODE 3810-01-M



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AB31

**Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period on Proposed Rule To Determine the Pallid Sturgeon To Be an Endangered Species****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; notice of reopening of comment period.

**SUMMARY:** Notice is hereby given that the Fish and Wildlife Service (Service) is reopening the public comment period on the Service's proposal to list the pallid sturgeon as an endangered species. The pallid sturgeon is a large fish known only to occur in the Missouri River, the Mississippi River downstream of the Missouri River, and the lower Yellowstone River. The comment period is being reopened for a month to grant commenters additional time to prepare and submit comments.

**DATES:** The comment period is reopened November 8, 1989. The comment period,

which originally closed on October 30, 1989, now closes on November 30, 1989.

**ADDRESSES:** Comments and materials concerning the Service's proposal to list the pallid sturgeon as an endangered species should be sent to the Missouri River Coordinator, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, P.O. Box 986, Pierre, South Dakota 57501. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kent D. Keenlyne, Missouri River Coordinator, at the above address, telephone (605) 224-8693.

**SUPPLEMENTARY INFORMATION:****Background**

The Service proposed to list the pallid sturgeon (*Scaphirhynchus albus*) as an endangered species on August 30, 1989 (54 FR 35901). The species is threatened through habitat modification and apparent lack of reproduction. Numbers of fish reported have declined dramatically in the last two decades. Past commercial utilization likely exceeded biological recruitment. Pollution may be a problem over much of its range, and significant hybridization has been documented.

Listing would provide protection for the preservation of the species.

Since publication of the proposed rulemaking, some parties have since requested an extension of the comment period to allow further public input. The Service finds that extending the public comment period will benefit the rulemaking process and, hence, issues this notice. Written comments may be submitted until November 30, 1989, to the Service office in the ADDRESSES section.

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

**Author**

The primary author of this notice is Nancy Chu, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, FTS 776-7398 or comm. (303) 236-7398.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: November 2, 1989.

Galen L. Boterbaugh,

Regional Director.

[FR Doc. 89-26256 Filed 11-7-89; 8:45 am]

BILLING CODE 4310-65-M



# Notices

Federal Register

Vol. 54, No. 215

Wednesday, November 8, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### Re-establishment of the Agribusiness Promotion Council

Notice is hereby given that the Agribusiness Promotion Council will be re-established for a two-year term.

The purpose of the Council will be to increase the involvement of the U.S. private sector in the agricultural and agribusiness development process in Caribbean Basin beneficiary countries by providing expertise and promoting business opportunities. This Council will serve an essential function. Re-establishment of this Council is in the public interest in connection with the performance of the duties and responsibilities of USDA.

Written comments may be submitted to Joan S. Wallace, Administrator, USDA/OICD, Washington, DC 20250-4300, until November 24, 1989. Additional information may be obtained by contacting Joan S. Wallace, Administrator, USDA/OICD, Washington, DC 20250-4300, telephone (202) 653-7873.

Dated: November 2, 1989.

John J. Franke, Jr.,  
Assistant Secretary for Administration.

[FR Doc. 89-26250 Filed 11-7-89; 8:45 am]  
BILLING CODE 3410-43-M

## Commodity Credit Corporation

### Proposed Determinations Regarding Support Prices for Pulled Wool and Mohair for the 1990 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

**SUMMARY:** This notice sets forth certain proposed determinations concerning the price support levels for pulled wool and mohair for the 1990 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

**EFFECTIVE DATE:** Comments must be received on or before December 28, 1989, in order to be assured of consideration.

**ADDRESS:** Mail comments to Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

**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 Preliminary Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these proposed 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 Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. The Secretary of Agriculture has determined that the prices of wool and mohair will be supported for the 1988 to 1990 marketing years by means of payments to producers (51 FR 28852, August 12, 1986).

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1987 and marketing year 1990 shall be 77.5 percent and, for marketing years 1988 and 1989, 76.4 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Based on current reported parity indices, the calculation for the 1990 shorn wool support price (grease basis) is as follows:

(1) Average parity index, calendar years 1986-1988:	
1986-1093	
1987-1110	
1988-1167	
3370 divided by 3	1123.3
(2) Average parity index, calendar years 1958-1960	297.3
(3) Ratio of 1123.3 to 297.3	3.7783
(4) 3.7783 x 62 cents per pound (1965 support price)	\$2.3425
(5) 77.5% x \$2.3425	\$1.8154
(6) \$1.8154 rounded to nearest full cent	\$1.82

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of



Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 percent above or below the comparable percentage of parity at which shorn wool is supported.

The Wool Act provides that the Secretary shall establish and announce, to the extent practicable, support price levels for wool and mohair sufficiently in advance of each marketing year, as will permit producers to plan their production for such marketing year. Accordingly, the following methods for calculating the support prices for pulled wool and mohair for the 1990 marketing year are being proposed. Comments with respect to the following proposed determinations must be received by December 26, 1989 in order to allow the Secretary an adequate period to consider the comments before making the price support decisions.

#### Proposed Determinations

##### A. Support Price—Pulled Wool

The support price for pulled wool for the 1990 marketing year cannot be determined until the 1990 national average market price for shorn wool is calculated, which will occur by April 1991. It is proposed that the method for calculating the support price for pulled wool shall be as follows: Once the national average market price for shorn wool is determined, the support price for pulled wool will be determined by taking 80 percent of the difference between the 1990 support price for shorn wool and the 1990 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). Historically, this formula has provided equitable support for pulled wool relative to shorn wool and has helped to maintain normal marketing practices for pulled wool.

##### B. Support Price—Mohair

It is proposed that the support price for mohair for the 1990 marketing year shall be determined based on the October 1989 parity prices for mohair and shorn wool. The following percentages are being considered in the final computation of the mohair support price:

- (1) 85 percent of the percent of parity at which shorn wool is supported.
- (2) A percentage equal to the percent of parity at which shorn wool is supported.

(3) 115 percent of the percent of parity at which shorn wool is supported.

Interested persons are encouraged to comment on the proposed method of calculation for payments on pulled wool and the proposed levels of price support for mohair. Consideration will be given to any data, views and recommendations which are submitted with respect to the above items.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the program support levels announced in this notice may be recalculated to comply with this Act.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702-706, 68 Stat. 910-912, as amended (7 U.S.C. 1781-1787).

Signed at Washington, DC on November 2, 1989.

John A. Stevenson,  
Acting Executive Vice President, Commodity  
Credit Corporation.

[FR Doc. 89-26324 Filed 11-7-89; 8:45 am]  
BILLING CODE 3410-05-M

#### Federal Grain Inspection Service

##### Diatomaceous Earth

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Request for public comment.

SUMMARY: The Federal Grain Inspection Service (FGIS) requests public comment on the need to test grain for the presence of diatomaceous earth (DE) and, when positively identified, not grade the grain "U.S. Sample grade," the lowest designated grade level, but rather state that the grain contains DE.

DATE: Comments must be submitted on or before January 8, 1990.

ADDRESSES: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454. Alternatively, telex users may respond to (IRSTAFF/FGIS/USDA) telexmail; telex users may respond to Lewis Lebakken, Jr., TLX: 7607351, ANS:FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447-4628.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address same as above, telephone 92020 475-3428.

SUPPLEMENTARY INFORMATION: According to the Official United States

Standards for Grain, grain containing an unknown foreign substance is graded "U.S. Sample grade." Further, grain that is obviously of inferior quality because it is in an unusual state or condition and that cannot be graded properly by use of other grading factors provided in the standards is considered "distinctly low quality" and also graded "U.S. Sample grade." Inspectors may grade grain containing DE as "U.S. Sample grade" either due to the presence of an unknown foreign substance or due to an unusual condition.

DE consists of siliceous skeletons of unicellular plants of the algae family which are recognized by the complex structure of their cell walls. Individual diatoms are generally less than 1/200 inch in size; thus requiring microscopic examination for positive identification. DE is a natural insecticide and is used to control insects in grain. When used on grain, DE usually appears as a light gray or white dust. When applied at very low levels, DE may not be readily visible on grain but the texture of the grain may feel coarse compared to grain for which DE was not applied. For these reasons, it is not possible to readily differentiate DE from potentially toxic substances.

When added to wheat as an insecticide, DE influences the physical properties of wheat. The degree of influence is governed, in part, based on the level of application. Test weight per bushel, a measurement used by many millers as a general indicator of quality or end-product yield, is often reduced with the addition of DE. Further, grain flowability is reduced which influences the efficiency of handling grain.

The Environmental Protection Agency has registered as an insecticide several brand names of DE. The Food and Drug Administration (FDA) has also addressed DE in its regulations (CFR title 21, chapter 1, parts 182, 193, 561, and 573). FDA recognizes DE as safe when used as described, as an indirect food additive and in feed and drinking water of animals.

A health concern regarding DE relates to the small amount of crystalline silica (less than 3 percent) occurring in DE. The Encyclopedia of Occupational Health and Safety issued by the International Labor Office in Geneva, Switzerland notes that DE contains some crystalline silica which: (1) is a health hazard by inhalation, (2) is a possible carcinogen for humans, and (3) causes silicosis, a noncancerous lung disease. The International Agency for Research on Cancer of the World Health Organization has classified crystalline silica as probably carcinogenic for humans.



FGIS has received requests from grain processors and distributors of DE requesting that FGIS not grade grain "U.S. Sample grade" when it contains DE. In response to these requests, FGIS, is requesting comments on the need for an inspection procedure that would permit an applicant for inspection to request that grain be tested for DE and graded without regard to the presence of DE. If such a request was not made, the grain would continue to be graded according to current procedures.

In general, if such an inspection policy is considered desirable, inspection procedures would be revised to allow an applicant for inspection to request the microscopic examination for DE through the official agency or FGIS field office responsible for providing inspection services in the subject geographic area. The request would be required prior to, or at the same time, as, a request for official inspection. Upon receipt of the request for examination, the official agency or FGIS field office would send a sample of the involved grain to an FGIS laboratory capable of testing for the presence of DE.

The testing laboratory would examine the same for DE using a standard laboratory procedure. Copies of the procedure would be available upon request from FGIS. Upon completion of the examination, the testing laboratory would notify the official agency or FGIS field office of the results by the most expedient method. An appropriate fee to cover testing costs would be developed for this service if this procedure is adopted.

If the examination determines that DE is present in the sample, the grain would be graded without regard to the presence of DE, and a statement would appear on the official inspection certificate indicating that the grain contains DE. If it is determined that the grain does not contain DE but some other unknown foreign substance, the grain would be considered "U.S. Sample grade" in accordance with the official U.S. Standards for Grain.

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

Dated: November 2, 1989.

W. Kirk Miller,  
Administrator.

[FR Doc. 89-26353 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-EN-M

#### Forest Service

#### North Fork of Mokelumne Wild and Scenic River Study; Correction

AGENCY: Forest Service, USDA.

**ACTION:** Correction to the North Fork of the Mokelumne Wild and Scenic River Study, FR, Vol. 54, No. 112, June 13, 1989, page 25145.

**SUMMARY:** The paragraph identifying Paul F. Barker, Regional Forester, Pacific Southwest Region, San Francisco, California as the responsible official is replaced by "The Secretary of Agriculture is the responsible official." The last sentence, "That decision will be subject to appeal under 36 CFR 217" is removed. Footnote 1 is removed.

Dated: October 30, 1989.

Jerald N. Hutchins,

Forest Supervisor, Eldorado National Forest.

[FR Doc. 89-26345 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-11-M

#### Eldorado National Forest, CA; Environmental Impact Statement

AGENCY: Forest Service, USDA.

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

**SUMMARY:** After completion of a study on impacts to the Pacific Deer Herd, currently being completed by the Forest Service in conjunction with the California Department of Fish and Game, the Forest Service will prepare an environmental impact statement (EIS) for management of OHV use in the Rock Creek area, Eldorado National Forest, Georgetown Ranger District, El Dorado County, California. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATE:** Comments about the analysis may be submitted now. Further information on the timing of the EIS will be released once the study is completed.

**ADDRESS:** Submit written comments and suggestions about the analysis to Raymond LaBoa, District Ranger, Georgetown Ranger Station, Eldorado National Forest, 7600 Wentworth Springs Road, Georgetown, California 95634.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and EIS should be directed to Raymond LaBoa, District Ranger, Georgetown Ranger Station, Eldorado National Forest, 7600 Wentworth Springs Road, Georgetown, California 95634, phone 916-333-4312.

**SUPPLEMENTARY INFORMATION:** In preparing the EIS, the Forest Service will identify and consider a range of alternatives for OHV management in the Rock Creek area. One of these alternatives is no action. Other alternatives will consider varying degrees of OHV use in the area.

Public participation will be especially important at several points throughout the environmental analysis process. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.

2. Identifying the issues and determining the significant issues for consideration and analysis within the EIS.

3. Determining the proper interdisciplinary team.

4. Determining the effective use of time and money in conducting the analysis.

5. Identifying the potential environmental, technical, and social impacts of the alternatives.

6. Determining potential cooperating agencies.

7. Identifying groups of individuals interested or affected by the decision.

Raymond LaBoa, District Ranger, Georgetown Ranger Station, is the responsible official.

The draft EIS will be filed with the Environmental Protection Agency (EPA) and become available for public review sometime after the study on impacts to the Pacific Deer Herd is completed. At that time, the EPA will publish a notice of availability of the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is very important that those interested in OHV management in the Rock Creek area participate at that time. Comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental



review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stages may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period on the draft EIS ends, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. In the final EIS, the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments; responses; environmental consequences discussed in the draft EIS; and applicable laws, regulations, and policies in making a decision. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision is subject to appeal pursuant to 36 CFR 217.

Dated: October 30, 1989.

Jerald N. Hutchins,  
Forest Supervisor, Eldorado National Forest.  
[FR Doc. 89-26346 Filed 11-7-89; 8:45 am]  
BILLING CODE 3410-11-M

## Soil Conservation Service

### Orange Cove Watershed, CA

**AGENCY:** Soil Conservation Service, USDA.

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

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guideline (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture; gives notice that an environmental impact statement is being prepared for Orange Cove Watershed, Fresno, Tulare and Kings Counties, California.

**FOR FURTHER INFORMATION CONTACT:** Pearlle S. Reed, State Conservationist, Soil Conservation Service, 2121-C Second Street, Suite 102, Davis, California, 95616, Telephone (916) 449-2861.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Pearlle S. Reed, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns flood prevention. Alternatives under consideration include channel enlargement and diversion of flood waters. Other alternatives that may be considered are: floodways, dams, floodproofing and flood easements.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction or interest in the preparation of the draft environmental impact statement. Further information on the proposed action, or future meetings may be obtained from Pearlle S. Reed, State Conservationist, at the above address or telephone (916) 449-2861.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10-904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: October 27, 1989.

Pearlle S. Reed,  
State Conservationist.  
[FR Doc. 89-26302 Filed 11-7-89; 8:45 am]  
BILLING CODE 3410-16-M

### Sicily Island Watershed, Louisiana; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service, U.S. Department of Agriculture gives notice that an Environmental Impact Statement is not being prepared for the Sicily Island Watershed, Catahoula Parish, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria,

Louisiana, 71302, telephone (318) 473-7751.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include financial assistance and accelerated technical assistance for installation of land treatment on 3,240 acres of critically eroding cropland and 31 acres of critically eroding abandoned gravel pits in forestland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy request at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Horace J. Austin.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: October 27, 1989.

Horace J. Austin,  
Acting State Conservationist.  
[FR Doc. 89-26277 Filed 11-7-89; 8:45 am]  
BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Meeting; Minority Enterprise Development Advisory Council

The Department of Commerce announces the following meeting:  
*Name:* Minority Enterprise Development Advisory Council.

*Date and Time:* November 27, 1989—9:00 a.m. to 4:00 p.m., November 28, 1989—9:00 a.m. to 3:00 p.m.

*Place:* Department of Commerce, Room 4830, 14th & Constitution Avenue NW., Washington, DC 20230.



**Contact Person:** Guale D. Owens, Confidential Assistant, Minority Business Development Agency, Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 377-5061.

**Minutes:** May be obtained from contact person listed above.

**Purpose of Meeting:** Preliminary administrative meeting.

**Agenda:** Administrative requirements of serving on Council, e.g. expense reimbursement, role of Council members, etc. Open Meeting—limited seating—anyone wishing to attend please call prior to meeting.

Kenneth E. Bolton,

Director.

[FR Doc. 89-26278 Filed 11-7-89; 8:45 am]

BILLING CODE 3510-21-M

## International Trade Administration

[A-566-811]

### Final Determination of Sales at Less Than Fair Value: Drafting Machines and Parts Thereof From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that drafting machines and parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of drafting machines and parts thereof from Japan as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

**EFFECTIVE DATE:** November 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mark Wells or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3793 or (202) 377-5288, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Final Determination

We determine that drafting machines and parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value, as

provided for in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

#### Case History

On August 18, 1989, we made an affirmative preliminary determination (54 FR 35363, August 25, 1989).

Interested parties submitted comments for the record in their case briefs dated October 2, 1989 and petitioner submitted a rebuttal brief dated October 10, 1989. No public hearing was held.

#### Period of Investigation

The period of investigation (POI) is November 1, 1988 through April 30, 1989.

#### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of this investigation.

The products covered by this investigation include drafting machines and parts thereof from Japan, currently classifiable under the Harmonized Tariff Schedule sub-headings 9017.10.00, and 9017.90.00. Prior to January 1, 1989, such merchandise was classified under item 710.8025 of the Tariff Schedules of the United States Annotated (TSUSA).

The scope of this investigation includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. For purposes of this investigation, "drafting machine" refers to "track" or "elbow-type" drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Both "track" and "elbow-type" drafting machines are classified under HTS 9017.10.00.

Also included within the scope of this investigation are parts of drafting machines classified under HTS 9017.90.00. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, parts of band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps and scales are not subject to this investigation.

#### Such or Similar Comparisons

Pursuant to section 771(16), we established two categories of "such or similar" merchandise: (1) Track drafting machines and (2) elbow-type drafting machines.

Product comparisons for track and elbow-type drafting machines were based on information submitted in the petition.

#### Fair Value Comparisons

To determine whether sales of drafting machines and parts thereof from Japan to the United States we made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination, we used the best information available, as required by section 776(c) of the Act, because respondent declined to participate in this investigation. For the final determination we are again using best information available as required by section 776(c) of the Act.

Since the prices contained in the petition were not expressly identified as in effect throughout 1988, the Department of Commerce used 1987 prices and an inflation factor based on price data from the petition over a thirty-four month period (January 1985–October 1987) to arrive at an adjusted 1988 list price for each model. We made deductions from the adjusted 1988 list price for a sales discount to unrelated dealers, U.S. warehousing fees, and U.S. Customs duties to arrive at an adjusted United States price for each model.

The Department's calculation of foreign market value was based on November 1988 list prices in Japan converted to U.S. dollars using an average daily yen per dollar exchange rate for the month of November 1988 (see Currency Conversion section of this notice). Deductions from the 1988 list prices were made for a sales discount to unrelated dealers and a difference in merchandise adjustment for Japanese models that include a scale balancer.

For this final determination, we took the highest margin for each such or



similar category of merchandise and calculated a simple average of the values to determine the margin for Mutoh Industries and the All Other rate.

#### United States Price

United States price was based on the U.S. price information provided in the petition as described above.

#### Foreign Market Value

Foreign market value was based on home market prices provided in the petition as described above.

#### Currency Conversion

In our preliminary determination, the Department used the 131 yen to the dollar exchange rate specified in the petition.

In our final determination, the Department has converted Mutoh's home market list prices using an average daily yen per dollar exchange rate of 123.139 for the month of November 1988. This exchange rate is more contemporaneous with the U.S. price data used in our margin calculations.

#### Interested Party Comments

##### Comment 1

Petitioner (Vemco Corporation) contends that the Department, in its preliminary determination, should have calculated United States price based on the price data contained in the petition. Petitioner argues that the list prices provided in the petition were in effect from October 1987 through the date of filing of the petition and that the Department should not have adjusted the data to account for inflation. In addition, in its October 2, 1989 case brief, petitioner also provided testimony from the ITC hearing which indicated that respondent did not raise its U.S. prices until April 10, 1989.

##### DOC Position

As best information for this final determination, we have used the prices contained in the petition, as adjusted and used in our initiation and preliminary determination. The prices contained in the petition were not expressly identified as in effect throughout 1988. The ITC testimony also does not conclusively state that respondent's prices remained constant during this period. Therefore, we have not altered our methodology in this regard for the final determination.

##### Comment 2

Respondent argues that the Department should have used a two percent rather than a one percent difference in merchandise adjustment for home market models that have a

scale balancer. In addition, respondent indicates that a difference in merchandise adjustment should have been made for rail extensions and two scales, both of which are included on every drafting machine sold in the home market.

Petitioner contends that the Department properly adjusted the list prices for differences in merchandise because the petition calculated a merchandise difference of "2 percent of cost or 1 percent of list."

Regarding respondent's claims for difference in merchandise adjustments for rail extensions and scales, petitioner argues that respondent, in deciding not to respond to the Department's questionnaire, forfeited all opportunity to submit information in support of these claimed adjustments.

##### DOC Position

As best information available, the Department utilized the difference in merchandise adjustment provided in the petition, which is 1 percent of list price for scale balancers. There is no information on the record, including the petition, pertaining to rail extensions and scales.

##### Comment 3

Respondent argues that the U.S. Customs duty adjustment should have been based on respondent's U.S. wholesale prices rather than respondent's adjusted 1988 U.S. list prices.

Petitioner contends that the Department was reasonable in basing the adjustment for U.S. Customs duty on list prices, because the list prices were actual, known prices.

##### DOC Position

In the preliminary determination, we based the U.S. Customs duty adjustment on respondent's adjusted 1988 list prices. For our final determination, we have calculated the duty adjustment based on respondent's adjusted 1988 list prices less a sales discount to U.S. dealers. We believe that the discounted price more closely approximates the customs value on which the actual duty was based.

#### Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation under section 733(d) of the Act, of all entries of drafting machines and parts thereof from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after August 25, 1989,

the date of publication of the preliminary determination in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The estimated less than fair value margins are shown below:

Manufacturer/Producer/Exporter	Margin Percent-age
Mutoh Industries, Ltd. (Mutoh) .....	90.87
All others .....	90.87

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC has 45 days from this final determination to determine whether or not material injury exists, or if threat of material injury exists. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on drafting machines and parts thereof from Japan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).



Dated: November 1, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import  
Administration.

[FR Doc. 89-26275 Filed 11-7-89; 8:45 am]

BILLING CODE 3510-05-M

(A-580-501)

**Photo Albums and Filler Pages From  
the Republic of Korea; Final Results of  
Antidumping Duty Administrative  
Review**

**AGENCY:** International Trade  
Administration/Import Administration,  
Department of Commerce.

**ACTION:** Notice of final results of  
antidumping duty Administrative  
review.

**SUMMARY:** On June 22, 1989, the  
Department of Commerce published the  
preliminary results of its administrative  
review of the antidumping duty order on  
photo albums and filler pages from the  
Republic of Korea. The review covers  
twenty-four purported manufacturers  
and/or exporters and five third-country  
resellers of this merchandise to the  
United States and the period July 16,  
1985 through November 30, 1986.

We gave interested parties an  
opportunity to comment on the  
preliminary results. We received no  
comments. The final results of this  
review are unchanged from those  
presented in the preliminary results.

**EFFECTIVE DATE:** November 8, 1989.

**FOR FURTHER INFORMATION CONTACT:**  
Michael Rill or Maureen Flannery,  
Office of Antidumping Compliance,  
International Trade Administration, U.S.  
Department of Commerce, Washington,  
DC 20230; telephone: (202) 377-2923.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 22, 1989, the department of  
Commerce ("the Department")  
published in the *Federal Register* (54 FR  
26227) the preliminary results of its  
administrative review of the  
antidumping duty order on photo albums  
and filler pages from the Republic of  
Korea (50 FR 51273, December 16, 1985).  
The Department has now completed that  
administrative review in accordance  
with section 751 of the Tariff Act of 1930  
("the Tariff Act").

**Scope of the Review**

Imports covered by this review are  
shipments of photo albums and photo  
album filler pages from the Republic of  
Korea. During the review period, such  
merchandise was classifiable under item  
256.60, 256.87, 256.90 or 744.55 of the

Tariff Schedules of the United States.  
This merchandise is currently  
classifiable under HTS item 3920, 3921,  
3926.90, 4819.50, 4820.50, 4820.90 or  
4823.90. The HTS item numbers are  
provided for convenience and Customs  
purposes. The written description  
remains dispositive.

The review covers twenty-four  
purported manufacturers/exporters and  
five third-country resellers and the  
period July 16, 1985 through November  
30, 1986.

**Final Results of the Review**

We gave interested parties an  
opportunity to comment on the  
preliminary results. We received no  
comments or requests for a hearing. The  
final results of the review are the same  
as those presented in the preliminary  
results of the review and we determine  
that the following margins exist for  
companies covered by our September  
21, 1987 notice of initiation:

Manufacturer/Exporter/Third-Country reseller	Margin (per- cent)
Ace Trading .....	64.81
Ahjun .....	64.81
Bowon <sup>1</sup> .....	( <sup>1</sup> )
Chungwoo .....	64.81
Costco .....	* 64.81
Deechun Silup .....	64.81
Daesin/Dong In .....	64.81
Deho .....	64.81
Dong In/Zhinham .....	64.81
Eun Jeong Trading .....	64.81
G.I. Corp. ....	64.81
Gyeongjin .....	64.81
Hankook Trading .....	64.81
Hansang .....	64.81
Honey Stationery .....	64.81
J & C International .....	64.81
Korea Trading Int'l .....	64.81
Lee Tung .....	64.81
Metro Ind. ....	64.81
Nam Doo Trading .....	64.81
Scandecor .....	64.81
Seoul General Stationery .....	64.81
Sinhan Trading .....	64.81
Sooter Studios .....	64.81
Sung Ill .....	64.81
Sungshim .....	64.81
Tradepower .....	64.81
Universal .....	64.81

<sup>1</sup> No shipments during the period. Not a known  
manufacturers or exporter.

\* All shipments during the period were reimports  
not to be assessed additional antidumping duties.

The Department shall determine, and  
the Customs Service shall assess,  
antidumping duties on all appropriate  
entries. The Department will issue  
appraisal instructions directly to the  
Customs Service.

As provided by section 751(a)(1) of the  
Tariff Act, a cash deposit of estimated  
antidumping duties based on the above  
margins shall be required for shipments  
from these firms. For any shipments

from the remaining known  
manufacturers, exporters, and third-  
country resellers not covered by this  
review, the cash deposit will continue to  
be at the rate for each of those firms  
published in the final results of the  
latest administrative review covering  
the firm (54 FR 13399, April 3, 1989), or  
the antidumping duty order (50 FR 51273,  
December 16, 1985) if a review covering  
the firm has not been conducted. For  
any future entries of this merchandise  
from a new exporter, whose first  
shipments occurred after November 30,  
1986 and who is unrelated to any  
reviewed firm or any previously  
reviewed firm, a cash deposit of 8.37  
percent shall be required.

These cash deposit requirements are  
effective for all shipments of Korean  
photo albums and filler pages entered,  
or withdrawn from warehouse, for  
consumption on or after the date of  
publication of this notice and will  
remain in effect until the final results of  
the next administrative review.

As indicated in our notice of  
preliminary results, based on  
information that shipments of photo  
albums and filler pages from certain  
third countries may be merchandise of  
Korean origin for antidumping duty  
purposes, the Department requested the  
Customs Service to extend liquidation of  
entries of photo albums and filler pages  
exported from, or purported to be  
merchandise of, Taiwan, Singapore or  
Malaysia, and entries of photo albums  
and filler pages exported from Hong  
Kong but purported to be merchandise  
of another country. We requested  
information from certain firms in  
Taiwan, Singapore, Malaysia and Hong  
Kong to help us identify entries of  
Korean merchandise subject to the  
antidumping duty order. Certain firms  
listed in the notice of preliminary results  
as being nonresponsive or providing  
inadequate information have since  
provided adequate information. The  
firms listed below, however, have not  
responded or have failed to provide  
adequate information. Therefore, as best  
information available, we will regard all  
photo albums and filler pages exported,  
or purported to be manufactured, by  
these firms as products of Korea for  
antidumping duty purposes and will  
instruct the Customs Service to suspend  
liquidation of entries of such photo  
albums and filler pages and to collect  
cash deposits of estimated antidumping  
duties of 64.81 percent for all such  
entries. This deposit requirement is  
effective on the date of publication of  
this notice for the following firms:



**Taiwan**

B & P Ind.  
Burt & Co.  
Four Star Int'l Trading  
Golden Ship  
Linphant  
Sovereign Enterprise

**Hong Kong**

Blossom Co.  
Blossom Industrial Co.  
Cowley Distributors  
Great China Ind.  
Lauender  
Perfect Ind.  
Preneba  
The Sincere Ind.  
Wing Shing Vinyl  
Wiseman Plastic

**Singapore**

Accord Mfg.  
Cornerfree  
Peng Mfr.  
Sin Chong  
Tai On Loong  
Terry Trading

**Malaysia**

Bungaraya Ind.

Actual assessments of antidumping duties will be based on the final results of any administrative review requested in accordance with our regulations.

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 section 353.22 of the Commerce Regulations (54 FR 12742, March 28, 1989; to be codified at 19 CFR 353.22).

Dated: October 30, 1989.

Eric I. Garfinkel,  
Assistant Secretary for Import  
Administration.

[FR Doc. 89-26276 Filed 11-7-89; 8:45 a.m.]

BILLING CODE 3510-DS-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Panama

November 2, 1989.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(CITA).

**ACTION:** Issuing a directive to the  
Commissioner of Customs establishing a  
limit.

**EFFECTIVE DATE:** November 9, 1989.

**FOR FURTHER INFORMATION CONTACT:**  
Naomi Freeman, International Trade  
Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce,  
(202) 377-4212. For information on the  
quota status of this limit, refer to the  
Quota Status Reports posted on the  
bulletin boards of each Customs port.  
For information on embargoes and quota  
re-openings, call (202) 377-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority.** Executive Order 11651 of March  
3, 1972, as amended; section 204 of the  
Agricultural Act of 1956, as amended (7  
U.S.C. 1854).

On August 30, 1989, the Government  
of the United States requested  
consultations with the Government of  
Panama regarding cotton trousers,  
breeches and shorts in Categories 347/  
348, produced or manufactured in  
Panama.

Inasmuch as consultations have not  
been held on a mutually satisfactory  
limit for these categories, the United  
States Government has decided, under  
section 204 of the Agricultural Act of  
1956, as amended, to control imports of  
cotton textile products in Categories  
347/348, produced or manufactured in  
Panama and exported during the twelve-  
month period which began on August 30,  
1989 and extends through August 29,  
1990. Should a solution be reached in  
consultations with the Government of  
Panama, further notice will be published  
in the Federal Register.

A description of the textile and  
apparel categories in terms of HTS  
numbers is available in the  
CORRELATION: Textile and Apparel  
Categories with the Harmonized Tariff  
Schedule of the United States (see  
Federal Register notice 53 FR 44937,  
published on November 7, 1988).

Auggie D. Tantillo,  
Chairman, Committee for the Implementation  
of Textile Agreements.

#### Committee for the Implementation of Textile Agreements

November 2, 1989.

Commissioner of Customs,  
Department of the Treasury,  
Washington, DC 20229.

Dear Mr. Commissioner:  
Under the terms of section 204 of the  
Agricultural Act of 1956, as amended (7  
U.S.C. 1854); and in accordance with the  
provisions of Executive Order 11651 of March  
3, 1972, as amended, you are directed to  
prohibit, effective on November 9, 1989, entry  
into the United States for consumption and  
withdrawal from warehouse for consumption  
of cotton textile products in Categories 347/  
348, produced or manufactured in Panama  
and exported during the period which began  
on August 30, 1989 and extends through  
August 29, 1990, in excess of 289,472 dozen<sup>1</sup>.

<sup>1</sup> The limit has not been adjusted to account for  
any imports exported after August 29, 1989.

Textile products in Categories 347/348  
which have been exported to the United  
States prior to August 30, 1989 shall not be  
subject to the limit established in this  
directive.

Textile products in Categories 347/348  
which have been released from the custody  
of the U.S. Customs Service under the  
provisions of 19 U.S.C. 1448(b) or  
1484(a)(1)(A) prior to the effective date of this  
directive shall not be denied entry under this  
directive.

The Committee for the Implementation of  
Textile Agreements has determined that this  
action falls within the foreign affairs  
exception to the rulemaking provisions of  
U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,  
Chairman, Committee for the Implementation  
of Textile Agreements.

[FR Doc. 89-26274 Filed 11-7-89; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Civilians of American Field Service Who Served Overseas Operationally in World War I During Periods April 1917 to January 1918 and December 1941 to August 1945; Acceptance of Group Application

Under the provisions of section 401,  
Public Law 95-202 and DOD Directive  
1000.20, the Department of Defense  
Civilian/Military Service Review Board  
has accepted an application on behalf of  
two groups known as: "U.S. Civilians of  
The American Field Service (AFS) Who  
Served Overseas Operationally in  
World War I During the Period April  
1917 to January 1918" and "U.S.  
Civilians of the American Field Service  
(AFS) Who Served Overseas  
Operationally in World War II During  
the Period December 1941 to August  
1945." Persons with information or  
documentation pertinent to the  
determination of whether the service of  
these groups is to be considered active  
military service to the Armed Forces of  
the United States are encouraged to  
submit such information or  
documentation within 60 days to the  
DOD Civilian/Military Service Review  
Board, Secretary of the Air Force (SAF/  
MRC), Washington, DC 20330-1000.  
Copies of documents or other materials  
submitted cannot be returned. For  
further information, contact Lt Col  
Harris, (202) 692-4747.

Patsy J. Conner,  
Air Force Federal Register Liaison Officer.  
[FR Doc. 89-26279 Filed 11-7-89; 8:45 am]

BILLING CODE 3510-01-M



**Department of the Army****Army Science Board; Closed Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* 27-29 November 1989.

*Time:*

1000-1700, 27 November 1989

0900-1700, 28 November 1989

0900-1600, 29 November 1989

*Place:* U.S. Army Armament Research Development and Engineering Center, Picatinny Arsenal, NJ

*Agenda:* The Army Science Board Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will convene to conduct a review of the program. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-26280 Filed 11-7-89; 8:45 am]

BILLING CODE 3710-8-M

**Privacy Act of 1974, New System of Records Notice**

**AGENCY:** Department of the Army, DOD.

**ACTION:** Addition of one new system of records notice for public comment.

**SUMMARY:** The Department of the Army proposed to add one new system of records to its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The system notice for the new system is set forth below.

**DATES:** This new system will be effective December 8, 1989, unless comments are received which would result in a contrary determination.

**ADDRESS:** Send comments to Mr. Robert Priest, Chief, Systems Management Branch, HQ, Army Information Systems Command (AS-OPS-MR), Ft. Huachuca, AZ 85613-5000. Telephone (202) 274-8810.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy

Act of 1974, as amended, (5 U.S.C. 552a), have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (Compilation, changes follow)

51 FR 23576, Jun 30, 1986

51 FR 30900, Aug 29, 1986

51 FR 40479, Nov 7, 1986

51 FR 44381, Dec 9, 1986

52 FR 11847, Apr 13, 1987

52 FR 18798, May 19, 1987

52 FR 25905, Jul 9, 1987

52 FR 32329, Aug 27, 1987

52 FR 43932, Nov 17, 1987

53 FR 12971, Apr 20, 1988

53 FR 18575, May 10, 1988

53 FR 21509, Jun 8, 1988

53 FR 28247, Jul 27, 1988

53 FR 28249, Jul 27, 1988

53 FR 28430, Jul 28, 1988

53 FR 34576, Sep 7, 1988

53 FR 49588, Dec 8, 1988

53 FR 51580, Dec 22, 1988

54 FR 10034, Mar 9, 1989

54 FR 11790, Mar 22, 1989

54 FR 14835, Apr 13, 1989

The new system report, as required by 5 U.S.C. 522a(r), of the Privacy Act were submitted on October 30, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730), December 24, 1985).

Dated: November 3, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

**SYSTEM NAME:**

Professional Staff Information File

**SYSTEM LOCATION:**

Headquarters, U.S. Army Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333-5600.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Department of the Army civilian psychologists, engineers, economists, sociologists, and other professional staff members employed by the Army Research Institute who voluntarily supply information for release and military officers assigned to the Army Research Institute who voluntarily provide information for release.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Files contain names of individuals and their curricula vitae, including data and information on the qualifications, expertise, experience and interests of

the professional staff of the Army Research Institute. Data include name, grade or rank, Institute assignment, education, prior professional experience, professional activities and development, lists of awards and recognitions, extra-government professional activities and significant professional publications.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3012.

**PURPOSE(S):**

To establish and maintain a professional staff directory which is used to consider staff members with special expertise for special duty assignments and to produce evidence of professional staff qualifications during Institute peer reviews and similar independent evaluations. Records are also used as basis for summary statistical reports concerning professional qualifications.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Army "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record systems notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Information is stored on a personal computer.

**RETRIEVABILITY:**

Information is retrieved by the surname of professional person. Categorical data is retrieved by keyword.

**SAFEGUARDS:**

Records are accessible only to designated individuals having official need-to-know in the performance of assigned duties.

**RETENTION AND DISPOSAL:**

Information will be maintained during the tenure of the person and deleted upon permanent departure from the Institute.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333-5600.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should



address written inquiries to the Commander, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333-5600.

#### RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333-5600.

#### CONTESTING RECORD PROCEDURES:

The Department of the Army's rules for accessing records and for contesting contents and appealing initial agency determinations are published in Army Regulation 430-21-8, "The Army Privacy Program"; 32 CFR Part 505; or may be obtained from the system manager.

#### RECORD SOURCE CATEGORIES:

Individuals employed by or assigned to the Army Research Institute who voluntarily submit requested information.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89-26339 Filed 11-7-89; 8:45 am]

BILLING CODE 3810-01

### Corps of Engineers, Department of the Army

#### Intent To Prepare Draft Environmental Impact Statement (DEIS) for Flood Control Feasibility Investigation, Walnut Creek Basin, Contra Costa County, CA

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a DEIS.

**SUMMARY:** The purpose of the investigation is to identify whether a federal interest exists to provide flood control for five tributaries of Walnut Creek. The five tributaries are Grayson, Murderers, Tice, San Ramon, and Green Valley Creeks. Most of the creek flood plains have been urbanized. Rapid urbanization has increased the values of the property subjected to flooding and has also decreased the soil infiltration capacity of the watershed, thereby increasing the flooding problems. The feasibility study is the second of two phases of an overall planning process for the Walnut Creek basin. Feasibility studies are cost shared on a 50/50 basis

between the federal government and a local non-federal sponsor. The Contra Costa County Flood Control and Water Conservation District will serve as the local sponsor. Potential alternative flood control measures which will be considered include creek deepening and widening, underground bypass pipes, storm water detention basins, open bypass channels, rock and concrete channel lining. Non-structural flood damage reduction measures and taking no action will also be analyzed. Significant issues which will be discussed in the EIS include, but not be limited to impacts on fish and wildlife, vegetation, aesthetics, recreation, and water quality. The Draft EIS is anticipated to be completed for public review in early 1991.

**Scoping Process:** Public information and scoping meetings will be held in mid-November. The dates, times, and locations for these meetings will be announced in future mailings and through the Contra Costa news media. Additional coordination will be conducted with city, county, state, and federal agencies as well as concerned individuals and groups. Public meetings will also be held when the Draft EIS has been completed and released for public comment. Persons wishing to identify additional issues and concerns which should be addressed in the DEIS, should attend the meetings or submit written comments to: Sacramento District, U.S. Army Corps of Engineers, Attn: CESP-K-PD-R, 650 Capital Mall, Sacramento, CA 95814. Questions should be directed to Ms. Patricia Foulk (916) 551-1858. Notice of these meetings and status updates for this study will be mailed to all persons on the Corps of Engineers mailing list. Anyone who is not already on the mailing list should contact the Corps at the above address to be added to the list.

Dated: October 19, 1989.

Jack A. LeCuyer,  
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-26281 Filed 11-7-89; 8:45 am]

BILLING CODE 3710-GH-M

### DEPARTMENT OF ENERGY

#### Energy Information Administration

#### Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests 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. 95-511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements 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, or extension; (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 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 on or before December 8, 1989. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of 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.)

**ADDRESS:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 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-70), Energy Information Administration, M.S. 1H-923, 1000 Independence Avenue SW.,



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. Federal Energy Regulatory Commission
2. FERC-520
3. 1902-0083
4. Application for Authority to Hold Interlocking Directorate Positions
5. Reinstatement
6. On occasion
7. Mandatory
8. Individuals or households, Businesses or other for-profit
9. 25 respondents
10. 25 responses annually
11. The estimated average hours per response for each of the respondents is 51.8 burden hours.
12. The estimated total reporting hours are 1,296.
13. The Federal Power Act requires each person that desires to hold public utility interlocking directorate positions to submit an application to the FERC for authority to do so. The supporting information describes the interlocking positions the applicant seeks to hold, the applicant's financial interest, other officers and nature of the business relationships among the firms.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89-26349 Filed 11-7-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. PP-84]

#### Withdrawal of Presidential Permit Application; Central Maine Power Co.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of withdrawal by Central Maine Power Company (CMP) of an application for a Presidential permit.

**SUMMARY:** On October 17, 1989, CMP notified the Department of Energy (DOE) of its intention to withdraw its application for a Presidential permit to construct, connect, operate, and maintain electric transmission facilities at the international border between the U.S. and Canada. The original application was filed on June 8, 1987, and was docketed as PP-84.

For additional information contact: Anthony J. Como, Office of Fuels Programs (FE-52), Office of Fossil

Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5935; Lise Courtney M. Howe, Office of General Counsel (GC-41), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.

**SUPPLEMENTARY INFORMATION:** On June 8, 1987, CMP applied to the DOE, pursuant to Executive Order 10485, for a Presidential permit to construct electric transmission facilities across the U.S.-Canadian international border. The project was to consist of: (1) A  $\pm 450$ -kV direct current transmission line; (2) a converter terminal located near the towns of Farmington and Jay, Maine; (3) a 345-kV alternating current transmission line; (4) expansion of the existing 345-kV Surowiec Substation at Pownal, Maine; and (5) the possible construction of a ground electrode. The proposed project was coupled with a power purchase contract between CMP and Hydro-Quebec for the purchase of up to 1000 megawatts of firm power for a period of 29 years.

In January 1989, the Maine Public Utility Commission (MPUC) denied CMP a Certificate of Public Convenience and Necessity for the purchase of the firm power from Hydro-Quebec. Subsequently, in April 1989, the MPUC also denied CMP's Petition for Reconsideration of its January decision. On October 18, 1989, Hydro-Quebec exercised its right to terminate the firm power contract upon the " \* \* \* denial of any right or approval in the United States, for the purchase and sale of electric power and energy \* \* \*".

Accordingly, on October 18, 1989, CMP notified the DOE of the Hydro-Quebec decision and formally withdrew its application for a Presidential permit.

Issued in Washington, DC, on October 27, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-26348 Filed 11-7-89; 8:45 am]

BILLING CODE 6450-01-M

#### Federal Energy Regulatory Commission

[Docket Nos. ID-2426-000, et al.]

#### Owsley Brown, II, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 2, 1989.

Take notice that the following filings have been made with the Commission:

#### 1. Owsley Brown, II

[Docket No. ID-2426-000]

Take notice that on October 11, 1989, Owsley Brown, II (Applicant) filed an application under section 305(b) of the Federal Power Act to hold concurrently the following positions:

Position and name of corporation	Classification
Director, Louisville Gas & Electric Co.	Public Utility.
Director, Hilliard Lyons Trust Co.	Trust Company subsidiary of Underwriter.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 2. Western Massachusetts Electric Co.

[Docket No. ER90-34-000]

Take notice that on October 23, 1989, Northeast Utilities Service Company (NUSCO) as Agent for Western Massachusetts Electric Company (WMECO) tendered for filing a Notice of Termination of the following rate schedule:

Agreement with respect to gas turbine units between WMECO and Village of Johnson Water and Light Department, dated November 1, 1981 (WMECO Rate Schedule FERC 209 and Supplements thereto).

NUSCO requests that the Commission allow the termination of the Agreement to take effect on October 31, 1989.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 3. Kansas City Power & Light Co.

[Docket No. EC90-4-000]

Take notice that on October 31, 1989, Kansas City Power & Light Company (Applicant) filed an Application for Authority to Sell the Ray Junction—Excelsior Springs Tap, a 161 Kv transmission facility to the Union Electric Company. The Application is filed pursuant to section 203 of the Federal Power Act and involves property in excess of \$50,000.00.

Applicant is incorporated under the laws of the State of Missouri with its principal place of business in Kansas City, Missouri.

The sale will permit Union Electric Company to own and operate transmission facilities which are used solely to connect a Union Electric Company substation with a transmission line owned and operated by Applicant. The property involved in the proposed sale will be needed solely



by Union Electric Company and will not be used or necessary in serving other wholesale or retail customers of Kansas City Power & Light Company.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 4. Idaho Power Co.

[Docket No. ER90-45-000]

Take notice that on October 30, 1989, Idaho Power Company (IPC) tendered for filing, pursuant to Section 205 of the Federal Power Act, a Letter Agreement dated October 5, 1989, which provides for transmission service for the Bonneville Power Administration by IPC. These services are to be provided for a term from October 11, 1989, to December 31, 1989.

IPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the Agreement to become effective on October 11, 1989 in accordance with its terms.

Copies of the filing were served on all of Idaho's affected transmission customers, and the state regulatory commissions of Idaho, Oregon, and Nevada.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 5. Boston Edison Co.

[Docket No. EC90-3-000]

Take notice that on October 31, 1989, Boston Edison Company (Edison) tendered for filing an Application under Section 203 of the Federal Power Act for Sale of an Easement in Electric (CEL). The property in question is located in Edison's Station 509 in Cambridge, Massachusetts.

Edison requests that approval be issued on or before December 4, 1989.

Edison states that it has served the filing on CEL and the Massachusetts Department of Public Utilities.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 6. Iowa Southern Utilities Co.

[Docket No. ER90-41-000]

Take notice that Iowa Southern Utilities Company on October 30, 1989, tendered for filing as an initial rate schedule an Energy Agreement whereby Iowa Southern will offer approximately 118 megawatts of energy to Iowa Electric Light and Power company for a 16-year period. Iowa Southern requests an effective date of January 1, 1990.

A copy of the filing was served upon Iowa Electric.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 7. Pennsylvania Power & Light Co.

[Docket No. ER90-44-000]

Take notice that on October 30, 1989, Pennsylvania Power & Light Company (PP&L) tendered for filing, as an initial rate schedule, a Transmission Entitlement Sales Agreement (Agreement) between PP&L and Public Service Electric and Gas Company (PSE&G) reflecting PP&L's short-term sale to PSE&G of all or a portion, of PP&L's entitlement for the use of the Pennsylvania-New Jersey-Maryland Interconnection's (PJM) transmission system which is used to import energy from systems to the west of PJM at a maximum rate of \$924 per megawatt week, which is equal to the current rate of \$5.50 per megawatt hour rate set forth in Schedule 4.02 of the PJM Agreement times 168 hours.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of October 30, 1989, in accordance with the anticipated commencement of service.

PP&L states that a copy of its filing was served on PSE&G, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 8. Iowa Power Co.

[Docket No. ER89-642-000]

Take notice that on October 30, 1989, Iowa Power Company (Iowa Power) tendered for filing its amended Notice of Cancellation of Rate Schedule FPC No. 57 as supplemented.

Iowa Power requests waiver of the Commission's notice requirements and therefore request that the cancellation become effective as of October 10, 1989.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 9. Terra Comport Corp.

[Docket No. ER90-40-000]

Take notice that Terra Comport Corporation on October 30, 1989, tendered for filing as an initial rate schedule a Capacity and Energy Agreement whereby Terra Comport will sell approximately 118 megawatts of

capacity and associated energy to Iowa Electric Light and Power Company for a 21-year period. Terra Comport requests an effective date of January 1, 1990.

Copies of the filing were served upon Iowa Electric and upon the Iowa State Utilities Board.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 10. Iowa Power and Light Co.

[Docket No. ER90-42-000]

Take notice that on October 30, 1989, Iowa Power and Light Company (Iowa Power) tendered for filing a Seasonal Diversity Exchange Agreement between Iowa Power and Central Iowa Power Cooperative (CIPCO) dated June 6, 1989.

Iowa Power states that the Diversity Exchange Agreement is a negotiated Agreement for the exchange of 40 MW of power and energy on a seasonal basis, with Iowa Power providing to CIPCO 40 MW of capacity for the 1989 winter season and CIPCO providing to Iowa Power 20 MW for each of the 1989 and 1990 summer seasons; and Iowa Power states that the Iowa State Utilities Board and CIPCO have been mailed copies of the Agreement.

Iowa Power requests an effective date of May 1, 1989, and therefore requests a waiver of the Commission's notice requirements.

*Comment date:* November 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-26225 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M



[Docket Nos. CP90-145-000, et al.]

**ANR Pipeline Co., et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. ANR Pipeline Co.**

[Docket No. CP90-145-000]

November 1, 1989.

Take notice that on October 27, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-145-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of West Michigan Shared Hospital Laundry (West Michigan), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on a firm basis, up to a maximum of 84 dt of natural gas per day for West Michigan from receipt points located in Louisiana and offshore Louisiana to delivery points located in Michigan. ANR anticipates transporting, on an average day 84 dt and an annual volume of 30,860 dt.

ANR states that the transportation of natural gas for West Michigan commenced September 9, 1989, as reported in Docket No. ST90-137-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. ANR Pipeline Co.**

[Docket No. CP90-142-000]

November 1, 1989.

Take notice that on October 27, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-142-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport natural gas on an interruptible basis for Coastal Gas Marketing Co. (Coastal). ANR explains

that service commenced September 22, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-127-000. ANR further explains that the peak day quantity would be 2,000 dekatherms, the average daily quantity would be 2,000 dekatherms, and that the annual quantity would be 730,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the states of Kansas, Louisiana, Oklahoma, Texas and Michigan and the Offshore Texas and Louisiana gathering areas. ANR states that it would deliver the gas to Coastal at existing interconnections located in the state of Wisconsin.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Transcontinental Gas Pipe Line Corp.**

[Docket No. CP90-130-000]

November 1, 1989.

Take notice that on October 30, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-130-000 a request pursuant to §§ 157.205 and 157.212 (18 CFR 157.205 and 157.212) of the Commission's Regulations under the Natural Gas Act for authority to construct and operate an additional delivery point and related facilities to serve an existing gas sales customer, UGI Corporation (UGI) under Transco's blanket certificate which was issued on September 2, 1982, in Docket No. CP82-426-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Transco states that UGI has an interruptible transportation entitlement of 550,000 Dth of gas per day pursuant to a service agreement dated September 3, 1987. Transco indicates that it has agreed to install a new delivery point, with a design maximum daily delivery rate of 500 Mcf per day, to serve UGI to be located at milepost 1689.30 on Transco's mainline in Quarryville, Lancaster County, Pennsylvania. It is further stated that UGI's total sales and firm transportation allocation would not be altered from its current level as a result of the installation of the additional delivery point nor will it have any effect on Transco's peak day or annual deliveries to UGI or any other of Transco's existing customers.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

**4. Natural Gas Pipeline Co. of America**

[Docket No. CP90-161-000]

November 1, 1989.

Take notice that on October 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-161-000 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 under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport natural gas on an interruptible basis for Triumph Natural Gas Limited Partnership (Triumph), a producer of natural gas, pursuant to a transportation service agreement dated August 23, 1989 (#IGP-1995). Natural proposes to transport on a peak day up to 32,202 MMBtu per day; on an average day up to 26,250 MMBtu; and on an annual basis 9,561,250 MMBtu of natural gas. Natural states that it may accept additional quantities as overrun gas as permitted by Rate Schedule ITS. Natural states that the receipt and delivery points would be located in Offshore Louisiana.

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. Natural commenced such self-implementing service on September 1, 1989, as reported in Docket No. ST90-287-000.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. Northwest Pipeline Corp.**

[Docket No. CP90-167-000]

November 1, 1989.

Take notice that on October 30, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-167-000, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Union Pacific Resources Company (Union Pacific), a producer of natural gas, under the blanket certificate issued Northwest in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.



Northwest states that pursuant to a Transportation Agreement dated October 14, 1989, as amended October 14, 1989, under Rate Schedule TI-1, it proposes to transport up to 60,000 MMBtu of natural gas per day for Union Pacific from various existing receipt points on Northwest's system in Wyoming and redeliver the gas to various delivery points on Northwest's system in Wyoming.

Northwest states that no construction of facilities would be required to provide the transportation service. Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 60,000 MMBtu, 2,000 MMBtu and 750,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced September 24, 1989, as reported in Docket No. ST90-240-000.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 6. Northwest Pipeline Corp.

[Docket No. CP90-156-000]

Take notice that on October 27, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-156-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Pacific Western Energy Corp. (Pacific Western), a marketer of natural gas, pursuant to Northwest's blanket transportation certificate that was accepted by Northwest on June 10, 1988, in Docket No. CP86-578-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Pacific Western on an interruptible basis, pursuant to a transportation agreement dated July 21, 1989, under Northwest's TI-1 Rate Schedule. Northwest states that peak day deliveries would be 50,000 MMBtu of gas, average day deliveries of 100 MMBtu of gas with annual volumes estimated to be 36,500 MMBtu of gas. Northwest stated that transportation service commenced on October 5, 1989, under § 284.223(a) of the Regulations as reported to the Commission on October 23, 1989, in Docket No. ST90-197-000. Northwest explains further that it will receive, transport and deliver the gas from any point on its system.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 7. El Paso Natural Gas Co.

[Docket No. CP90-159-000]

November 1, 1989.

Take notice that on October 30, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-159-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texaco Gas Marketing Inc. (Texaco), a broker, under the blanket certificate issued in Docket No. CP88-433-000, 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.

El Paso states that pursuant to a transportation service agreement dated August 16, 1989, under its Rate Schedule T-1, it proposes to transport up to 4,220 MMBtu per day equivalent of natural gas for Texaco. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to a delivery point in Arizona, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90-154. El Paso further advises that it would transport 2,110 MMBtu on an average day and 770,150 MMBtu annually.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 8. Columbia Gulf Transmission Co.

[Docket No. CP90-153-000]

November 1, 1989.

Take notice that on October 27, 1989, Columbia Gulf Transmission Company (Columbia), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP90-153-000 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 Tenngasco Corporation (Tenngasco) under its blanket authorization issued in Docket No. CP86-239-000 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.

Pursuant to interruptible transportation service agreements dated June 9, 1987, Columbia Gulf would perform the proposed interruptible transportation service for Tenngasco Columbia Gulf's Rate Schedules ITS-1 and ITS-2. The transportation agreements are effective as of June 9,

1987, and shall continue in full force and effect until July 31, 1987, and from month-to-month thereafter unless terminated by either party upon thirty days written notice. Columbia Gulf proposes to transport up to a maximum of 55,000 MMBtu equivalent of natural gas per day; 25,000 MMBtu on an average day; and 9,125,000 MMBtu annually. Columbia Gulf proposes to receive the gas from points onshore and offshore Louisiana and redeliver the subject gas at for Tenngasco at various existing points located onshore Louisiana. Columbia Gulf avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Columbia Gulf commenced such self-implementing service on October 1, 1989, as reported in Docket No. ST90-103-000.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 9. Amoco Gas Co.

[Docket No. CP90-115-000]

November 1, 1989.

Take notice that on October 23, 1989, Amoco Gas Company (Amoco), 200 East Randolph, Chicago, Illinois 60601, filed in Docket No. CP90-115-000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Amoco agrees to comply with the conditions set forth in § 284.224(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D and E of part 284 of the Commission's Regulations.

*Comment date:* November 22, 1989 in accordance with Standard Paragraph F at the end of the notice.

#### 10. Sea Robin Pipeline Co.

[Docket No. CP90-165-000]

November 1, 1989.

Take notice that on October 30, 1989, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas, filed in Docket No. CP90-165-000 a



request pursuant to §§ 57.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Enron Gas Marketing (Enron), a marketer, under Sea Robin's blanket certificate issued in Docket No. CP88-824-000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request which is on file with the Commission and open to public inspection.

Sea Robin states that pursuant to a transportation service agreement dated April 21, 1989, it proposes to transport up to 200,000 Mcf per day of natural gas for Enron. Sea Robin states it would receive the gas at specified points located in the offshore Louisiana area and redeliver the gas at specified points located onshore Louisiana. ANR estimates that the maximum day and average day volumes would be 206,000 million Btu, and that the annual volumes would be 75,190,000 million Btu. It is stated that on September 8, 1989, Sea Robin initiated a 120-day transportation service for Enron under § 284.223(a), as reported in Docket No. ST90-31-000.

Sea Robin further states that no facilities need be constructed to implement the service. Sea Robin indicates that the service would continue on a month-to-month basis until either party gives written notice. Sea Robin proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 11. ANR Pipeline Co.

[Docket No. CP90-143-000]

November 1, 1989.

Take notice that on October 27, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-143-000 a request pursuant to §§ 57.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Apache Transmission Corporation (Apache) under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 26,119 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of Apache pursuant to a transportation agreement April 18, 1989,

between ANR and Apache. ANR would receive the gas at various existing points of receipt in Louisiana, Michigan and the offshore Louisiana gathering area and deliver equivalent volumes, less fuel used and unaccounted for line loss, at existing points of delivery in Michigan, Ohio, Indiana, Kentucky, Illinois, and Wisconsin.

ANR states that the estimated daily and annual quantities would be 28,119 dkt and 9,533,000 dkt, respectively. Service under § 284.223(a) commenced on September 15, 1989, as reported in Docket No. ST90-135-000, it is stated.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 12. Williams Natural Gas Co.

[Docket No. CP90-136-000]

November 1, 1989.

Take notice that on October 26, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP90-136-000, pursuant to §§ 157.205 and 157.212(a) of the Regulations under the Natural Gas Act (NGA) for authorization to utilize facilities originally installed for the delivery of 311 transportation gas for other purposes, under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to utilize the 311 facilities installed to deliver 311 transportation gas to Stahl Specialty Company (Stahl) in Johnson County, Missouri for deliveries other than 311. The cost to construct the facilities was \$13,840 which was paid from funds on hand.

WNG states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 13. Orange and Rockland Utilities, Inc.

[Docket No. CP90-65-000]

November 1, 1989.

Take notice that on October 16, 1989, Orange and Rockland Utilities, Inc. (Orange and Rockland), One Blue Hill Plaza, Pearl River, New York 10965, filed in Docket No. CP90-65-000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth

in the application on file with the Commission and open to public inspection.

It is stated that Orange and Rockland agrees to comply with the conditions set forth in § 284.224(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D and E of part 284 of this Commission's Regulations.

*Comment date:* November 22, 1989 in accordance with Standard Paragraph F at the end of the notice.

#### 14. ANR Pipeline Co.

[Docket No. CP90-170-000]

November 2, 1989.

Take notice that on October 30, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-170-000 a request pursuant to §§ 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act and the Natural Gas Policy Act for authorization to transport natural gas for Tejas Power Corporation (Tejas), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 100,000 dt per day, on an interruptible basis, for Tejas pursuant to a transportation service agreement dated September 8, 1989, between ANR and Tejas. ANR would receive the gas at ANR's existing points of receipt located in the State of Louisiana and the offshore Texas and Louisiana gathering areas and redeliver the gas for the account of Tejas at existing interconnections located in the States of Louisiana, Oklahoma, Indiana, Illinois, Ohio, Kentucky, Kansas, and Texas.

ANR further states that the estimated average daily and annual quantities would be 100,000 dt and 36,500,000, respectively. ANR states that service under § 284.223(a) commenced on October 1, 1989 as reported in Docket No. ST90-217-000.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 15. ANR Pipeline Co.

[Docket No. CP90-147-000]

November 2, 1989.

Take notice that on October 27, 1989, ANR Pipeline Company (ANR), 500



Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-147-000 a request pursuant to §§ 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act and the Natural Gas Policy Act for authorization to transport natural gas for Hadson Gas Systems, Inc. (Hadson), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 10,000 dt per day, on an interruptible basis, for Hadson pursuant to a transportation service agreement dated August 15, 1989, between ANR and Hadson. ANR would receive the gas at ANR's existing points of receipt located in the Offshore Louisiana gathering area and redeliver the gas for account of Hadson at existing interconnections located in the Offshore Louisiana gathering area.

ANR further states that the estimated average daily and annual quantities would be 10,000 dt and 3,650,000, respectively. ANR states that service under § 284.223(a) commenced on September 13, 1989, as reported in Docket No. ST90-132-000.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 16. Natural Gas Pipeline Co. of America

[Docket No. CP90-183-000]

November 2, 1989.

Take notice that on October 31, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-183-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing delivery point as a sales tap to provide jurisdictional services, under the certificate authorization issued in Docket No. CP82-402-000 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.

Natural proposes to operate a sales tap to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations, at an existing delivery point at an interconnection with Western Farmers Electric Cooperative, an end-user, in Woodward County, Oklahoma. Natural states that such delivery point was

originally constructed, and has been used solely, to provide transportation services pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 and subpart B of part 284 of the Commission's Regulations. Natural further states that it installed the subject six-inch tap on its 24-inch Mountain View—Minneola mainline at a total cost of \$21,641, and that the facilities were constructed on existing right-of-way and placed in service on July 13, 1988.

*Comment date:* December 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26226 Filed 11-7-89; 8:45 am]

BILLING CODE 8717-01-M

[Docket No. G-6342-021, et al.]

#### Conoco Inc., et al.; Applications for Termination or Amendment of Certificates<sup>1</sup>

November 1, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 20, 1989, 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 procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

<sup>1</sup> This notice does not provide for consolidation for hearing of the several matters covered herein.



Docket No. and date filed	Applicant	Purchaser and location	Description
G-6342-021 D 10-5-89	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 8-25-89 to Doyle Hartman.
G-6342-022 D 10-5-89	Conoco Inc.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 8-25-89 to Lanexco Inc.
G-6342-023 D 10-5-89	Conoco Inc.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 8-25-89 to David H. Arrington Oil & Gas Inc.
G-6342-024 D 10-5-89	Conoco Inc.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 8-25-89 to Lewis B. Burleson.
G-6342-025 D 10-10-89	Conoco Inc.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 8-25-89 to Tahoe Energy Inc.
G-6342-026 D 10-10-89	Conoco Inc.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 8-25-89 to Doyle Hartman.
G-6342-027 D 10-11-89	Conoco Inc.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 8-25-89 to Doyle Hartman.
G-6346-001 D 10-11-89	Conoco Inc.	El Paso Natural Gas Company, Jalmat (Yates) Field, Lea County, New Mexico.	Assigned 8-25-89 to Doyle Hartman.
G-10199-001 D 10-10-89	Marathon Oil Company, P.O. Box 3128, Houston, TX 77253.	Williams Natural Gas Company, Rhodes Field, Barber and Kiowa Counties, Kansas.	Assigned 6-1-89 to Raymac Petroleum, Inc.
C164-670-002 D 10-3-89	Marathon Oil Company	Arkla Energy Resources, a division of Arkla, Inc., Wilburton Field, Haskell, Latimer, LeFlore and Pittsburg Counties, Oklahoma.	Assigned 4-1-89 to B.J. Brown.
C164-973-000 D 10-10-89	Texaco Inc., P.O. Box 52332, Houston, TX 77052.	K N Energy, Inc., Boyd N.E. Field, Beaver County, Oklahoma.	Assigned 12-1-89 to K. C. Resources Inc.
C190-2-000 (C179-441) D 10-10-89	Marathon Oil Company	Northern Natural Gas Company, Division of Enron Corp., East Grand Valley Field, Beaver County, Oklahoma.	Assigned 4-1-89 to Harken Exploration Co.

## Filing Code

- A—Initial Service
- B—Abandonment
- C—Amendment to add acreage
- D—Assignment of acreage
- E—Succession
- F—Partial Succession

[FR Doc. 89-26242 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-22-000]

### Algonquin Gas Transmission Co.; Application Proposing Changes in FERC Gas Tariff

November 1, 1989.

Take notice that on October 30, 1989, Algonquin Gas Transmission Company ("Algonquin"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed revised tariff sheets reflecting proposed changes in its FERC Gas Tariff, pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's Regulations under the Natural Gas Act. Algonquin proposes that the filing take effect on December 1, 1989.

Algonquin states that the filing would increase annual revenues by approximately \$12.3 million. The Company asserts that the increased rates are required to provide revenues

equal to the test period cost of service, when applied to the related test period quantities.

Algonquin states that copies of its filing have been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211, 358.214). All such motions or protests should be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26241 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-41-005 and RP87-14-006]

### Algonquin Gas Transmission Co.; Compliance Filing

November 1, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 27, 1989, in compliance with the provisions of settlements in the above-captioned proceedings and orders of the Federal Energy Regulatory Commission ("Commission"), most particularly Orders issued on April 14, 1989 and October 6, 1989 in Docket No. RP86-41-000, tendered for filing to its FERC Gas Tariffs, Second Revised Volume No. 1 and Original Volume No. 2



certain tariff sheets to be effective November 1, 1989.

Algonquin states that this instant filing reflects, on a prospective basis commencing November 1, 1989, the changes in its rates and tariff in compliance with applicable provisions of the settlements and the Commission's April 14 and October 6 Orders, including changes in rates to reflect rolled in facility costs for Rate Schedules F-2, F-3, F-4, SS-III, STB; rolled in gas costs for Rate Schedules F-2, F-3, and F-4; a change in Rate Schedule T-1 rate design to reflect the rolled in allocation of facilities costs; the MFV cost allocation and rate design methodology including two part demand charges; adjusted fuel percentages and the replacement of the direct billing method of recovering the costs of transmission and compression provided by others, as more fully described in said filing.

Algonquin notes that copies of this filing were served upon all parties on the official service list, each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-26243 Filed 11-7-89; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP90-18-000]

#### **ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff**

November 1, 1989.

Take notice that ANR Pipeline Company ("ANR") on October 25, 1989 tendered for filing as a part of its Original Volume No. 1 of its FERC Gas Tariff, six copies each of the following tariff sheets:

First Revised Sheet No. 19  
Second Revised Sheet No. 87  
Third Revised Sheet No. 88

Third Revised Sheet No. 89  
Third Revised Sheet No. 90  
Second Revised Sheet No. 90A  
Original Sheet No. 124  
Original Sheet No. 125

ANR states that the above-referenced tariff sheets are being filed under § 2.104 of the Commission's Regulations to implement partial recovery of \$21.9 million of additional buyout buydown costs and to establish a volumetric buyout buydown surcharge applicable to such additional buyout buydown costs. Under the proposed filing, ANR is proposing to absorb twenty five percent of its buyout buydown costs, to recover twenty five percent of such costs through a fixed monthly charge applicable to its Rate Schedules CD-1, MC-1 and SGS-1 sales customers and to recover fifty percent of such costs through a volumetric buyout buydown surcharge of 0.46¢ per dth applicable to each sales and transportation Rate Schedule under Original Volume Nos. 1, 1-A and 2 of ANR's FERC Gas Tariff.

ANR has requested that the Commission accept this filing, to become effective November 25, 1989.

ANR states that copies of the filing were served upon all of its Volume Nos. 1, 1-A, and 2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by November 8, 1989, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-26232 Filed 11-7-89; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP85-169-045]

#### **CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff**

November 2, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on October 30, 1989, pursuant to section 4 of the Natural Gas Act, and the Commission's

May 2, 1989 and October 10, 1989, orders in this proceeding filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Thirteenth Revised Sheet No. 31  
Alternate Substitute Thirteenth Revised Sheet No. 31  
Substitute Alternate Seventh Revised Sheet No. 32  
Substitute Alternate Third Revised Sheet No. 33

The filing is proposed to become effective on November 1, 1989, and would implement the Commission's decision on GSS issues prospectively.

CNG states that the cost of service and throughput quantities that support this filing are the same as those contained in CNG's limited general rate increase application which was also filed on October 30, 1989.

Alternate Substitute Thirteenth Revised Sheet No. 31, Substitute Alternate Seventh Revised Sheet No. 32, and Substitute Alternate Third Revised Sheet No. 33 reflect a voluntary rate reduction from the rates that could have been placed into effect. CNG requests that these tariff sheets be accepted for filing and permitted to become effective on November 1, 1989, with the understanding that CNG reserves the right to place its full rate increase, as shown on Alternate Substitute Revised Sheet No. 31, into effect.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All protests should be filed on or before November 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-26237 Filed 11-7-89; 8:45 am]  
BILLING CODE 6717-01-M



**[Docket No. RP88-217-013]****CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff**

November 2, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on October 30, 1989, pursuant to section 4 of the Natural Gas Act, the Commission's August 3, 1989 order in Docket No. RP88-190-002, *et al.* and section 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Original Sheet Nos. 160H and 160I

Substitute First Revised Sheet Nos. 160G, 160H and 160I

Substitute Second Revised Sheet Nos. 45 and 160H

Substitute Third Revised Sheet No. 45

Substitute Fourth Revised Sheet No. 45

Second Substitute First Revised Sheet No. 45

The proposed effective dates of these sheets are August 1, 1988, December 1, 1988, March 1, 1989, May 1, 1989, August 1, 1989 and September 1, 1989. CNG states that the purpose of this filing is to comply with Ordering Paragraph (F) of the Commission's order issued August 3, 1989 in North Penn Gas Co., *et al.*, Docket No. RP88-190-002, *et al.*

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before 11/9/89. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-26238 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP90-27-000]****CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff**

November 1, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on October 30, 1989, pursuant to section 4 of the Natural Gas Act, and part 154 of the Commission's regulations (18 CFR part 154) filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Thirteenth Revised Sheet No. 31

Seventh Revised Sheet No. 32

Third Revised Sheet No. 33

Alternate Thirteenth Revised Sheet No. 31

Alternate Seventh Revised Sheet No. 32

Alternate Third Revised Sheet No. 33

CNG states that this filing is a general rate increase request for the limited purpose of changing the compliance filing cost of service in CNG's Docket No. RP88-211 and CNG's base tariff rates to reflect CNG's conversion of a part of its firm sales agreement with Texas Eastern Transmission Corporation (Texas Eastern) to firm transportation. CNG request an effective date of November 1, 1989, the same date that the conversion of the Texas Eastern agreement becomes effective.

CNG states that its primary filing would decrease the D-2 demand component of the RQ and CD rate by 0.12 cents per dekatherm, and increase the sales commodity rate by 1.27 cents per dekatherm compared to the base tariff rates now in effect, subject to possible refund, in Docket No. RP88-211. There would be no change to the D-1 component of the RQ and CD rate. The one-part sales rates would increase by 1.15 cents per dekatherm. The primary tariff sheets would not change the Rate Schedule GSS rates except for the capacity charge, which would be reduced by 0.11 cents per dekatherm. The filing would not affect firm transportation rates except for the D-2 rate component which would be reduced by 0.12 cents per dekatherm. The interruptible transportation rate would be reduced by the same unit amount.

CNG states the alternate tariff sheets would collect the compliance filing rates that were permitted to become effective in Docket No. RP88-211, adjusted as required by the Commission in its suspension order and subsequent orders in the Docket No. RP88-211 proceeding. Additionally, CNG removed take-or-pay costs from the cost of service supporting the alternate rates and included in that cost of service the Account No. 858 costs of attributable to the conversion of the Texas Eastern contract.

CNG requests that its primary tariff sheets be accepted for filing and permitted to become effective on November 1, 1989, with the understanding that CNG reserves the right to place its full rate increase into effect, as contained in the alternate sheets. In the event the primary tariff sheets are not permitted to become effective on November 1, 1989, CNG seeks to place its alternate tariff sheets into effect.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26227 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP90-21-000]****CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff**

November 1, 1989.

On October 30, 1989, CNG Transmission Corporation ("CNG") tendered for filing, as part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 120,

Superseding First Revised Sheet No. 120

First Revised Sheet No. 121

Superseding Second Substitute Original Sheet No. 121

CNG states that these tariff sheets are filed to correct an error and to more accurately reflect certain procedures followed by CNG regarding the requesting and scheduling of transportation service on its system.

CNG has requested that the Commission permit this filing to become effective as of December 1, 1989.

CNG states that copies of the filing were served upon all of its Volume No. 1



customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practices and Procedure (18 CFR 385.211 and 385.214). All such motions or protests shall be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-26228 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-26-000 and TM90-2-21-000]

#### **Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

November 1, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 30, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

##### *To Be Effective September 1, 1989*

Substitute Twenty-third Revised Sheet No. 16B

Substitute Thirteenth Revised Sheet No. 16B1

Substitute Thirteenth Revised Sheet No. 16B2

##### *To Be Effective November 1, 1989*

Twenty-fourth Revised Sheet No. 16B

Fourteenth Revised Sheet No. 16B1

Fourteenth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP88-187, *et al.*, in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to modify its earlier filings in Docket Nos. RP89-229 and TM89-7-21 to permit it to flow through revised take-or-pay and contract reformation costs from (i) Texas Eastern Transmission Corporation (Texas Eastern) pursuant to a filing made on August 31, 1989 which was accepted by

the Federal Energy Regulatory Commission's (Commission) order issued on September 29, 1989 in Docket No. TM89-10-17; (ii) Texas Eastern pursuant to a filing made on August 31, 1989 which was accepted by Commission's order issued on September 29, 1989 in Docket No. TM89-11-17, and (iii) Texas Gas Transmission Corporation pursuant to a filing made on August 25, 1989 which was accepted by Commission's Order issued September 22, 1989 in Docket No. TM89-4-18.

Additionally, Columbia states that certain tariff sheets effective September 1, 1989, relating to Columbia's filing of August 31, 1989 in Docket Nos. RP89-229 and TM89-7-21, contained costs which should have been included only in the first year from Transcontinental Gas Pipe Line Corporation's (Transco) filing made on June 27, 1989, which was accepted by Commission order issued on July 28, 1989, in Docket No. TM89-4-29. This resulted in incorrect allocated costs being reflected on Columbia's tariff sheets for the flow through of take-or-pay costs attributable to Transco's Docket No. TM89-4-29. The revised tariff sheets to be effective September 1, 1989, submitted with the instant filing, reflect a decrease in Transco's allocated costs of \$1,602 beginning May 1, 1989.

Copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, RP-89-181, RP89-214, RP89-229, TM89-3-21, TM89-4-21, TM89-5-21 and TM89-7-21.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-26229 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC90-4-000; Docket No. TC90-4-001]

#### **Florida Gas Transmission Co.; Tariff Sheet Filing**

November 1, 1989.

Take notice that on October 23, 1989, Florida Gas Transmission Company (FGT) tendered for filing in the above-referenced dockets the following tariff sheets:

2nd Revised Sheet No. 71  
2nd Revised Sheet No. 72  
2nd Revised Sheet No. 73  
2nd Revised Sheet No. 74  
2nd Revised Sheet No. 75  
2nd Revised Sheet No. 76  
2nd Revised Sheet No. 77  
2nd Revised Sheet No. 78

FGT states that it is filing the "Index of Requirements by Curtailment Priority for the Period Ended June 30, 1989" pursuant to the Commission's Orders in Opinion Nos. 98 and 98-A. FGT requests that the Tariff Sheets become effective on November 15, 1989, and that the Commission waive its regulations to the extent necessary to allow said sheets to become effective as proposed.

Any person desiring to be heard or to make any protest with reference to said tariff filing should on or before November 13, 1989, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-26239 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-20-000]

#### **Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff**

November 1, 1989.

Take notice that on October 30, 1989, Great Lakes Gas Transmission Company ("Great Lakes"), tendered for filing proposed changes to the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2.



**First Revised Volume No. 1**

Twenty-First Revised Sheet No. 4  
 Twenty-Sixth Revised Sheet No. 57(i)  
 Twenty-Sixth Revised Sheet No. 57(ii)  
 Twelfth Revised Sheet No. 57(v)

**Original Volume No. 2**

Twenty-Fourth Revised Sheet No. 53  
 Fifteenth Revised Sheet No. 77  
 Thirteenth Revised Sheet No. 151  
 Eighth Revised Sheet No. 152  
 Ninth Revised Sheet No. 223  
 Ninth Revised Sheet No. 245  
 Fourth Revised Sheet No. 269  
 Fourth Revised Sheet No. 270  
 Eighth Revised Sheet No. 294  
 Second Revised Sheet No. 320  
 First Revised Sheet No. 321  
 Second Revised Sheet No. 349  
 First Revised Sheet No. 350  
 Third Revised Sheet No. 437  
 Second Revised Sheet No. 465  
 Third Revised Sheet No. 466  
 First Revised Sheet No. 508  
 Second Revised Sheet No. 603  
 Second Revised Sheet No. 665  
 Second Revised Sheet No. 686  
 Second Revised Sheet No. 700  
 First Revised Sheet No. 760

The proposed tariff changes are based on sales and transportation volumes for the base period (twelve months ended June 30, 1989), as adjusted, and would produce increased revenues to Great Lakes of approximately \$33,300,000. The changes would also establish new base tariff rates for future purchased gas adjustments.

Great Lakes states that the proposed rates are necessary to reflect the new facilities and services authorized by the Commission in Docket Nos. CP88-542-000 and CP88-805-000 as well as for new facilities and services requested by Great Lakes in Docket No. CP88-541-000. In addition, the proposed rates include increases in certain other costs. The proposed rates include an overall return of 12.68% which reflects an imbedded debt cost of 9.34% and a return on common equity of 16.4%.

In its filing, Great Lakes states that it utilized its existing cost classification, allocation and rate design methodology changed only to reflect the requirements of the Commission's order Granting in Part and Denying in Part Rehearing issued on October 10, 1989 in Docket No. RP88-35-013. However, since requests for further rehearing may be filed concerning such changes Great Lakes also submitted alternative tariff sheets reflecting its existing cost classification, allocation and rate design methodology without the above changes. The filing of alternative tariff sheets is in conformity with the provisions of Articles X and XII of the stipulation and agreement in

settlement of rate proceedings approved by the Commission on April 6, 1988 in Docket Nos. RP88-35-000, *et al.*

Great Lakes states that, in compliance with the Commission's policy statement concerning rate design issued May 30, 1989, in Interstate Natural Gas Pipeline Rate Design, Docket Nos. PL89-2-001 *et al.*, 47 FERC 61,295, order on rehearing and clarifying policy statement issued July 27, 1989, 48 FERC 61,122, it will be filing as part of its case-in-chief on November 14, 1989, proposed changes in rate design that can be made effective prospectively upon final approval by the Commission.

Great Lakes requests that, if the Commission decides to suspend the effectiveness of the proposed increased rates, such suspension period not extend beyond April 1, 1990 when the new facilities involved in Docket Nos. CP88-541-000, CP88-542-000 and CP88-805-000 will be ready for service and the new services can commence.

Great Lakes further states that copies of the filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR §§ 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26230 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP-87-86-012, RP86-11-009, RP85-11-026]

**KN Energy, Inc.; Filing**

November 1, 1989.

Take notice that on October 25, 1989, KN Energy, Inc. (KN) filed an amendment to service agreement for each of its wholesale customers except City of Hastings, Peoples Natural Gas Company, and Public Service Company of Colorado (Denver).

KN states that this amendment is in compliance with the Commission's order issued February 17, 1989, approving with modifications KN's offer of settlement.

KN states that copies of this filing has been mailed to its jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26244 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-25-000, Docket No. TM90-1-25-000]

**Mississippi River Transmission Corp.; Rate Change Filing**

November 1, 1989.

Take notice that on October 30, 1989, Mississippi River Transmission Corporation (MRT) tendered for filing the tariff sheets listed below to its FERC Gas Tariff, Second Revised Volume No. 1. All tariff sheets carry a proposed effective date of December 1, 1989 other than Fifth Revised Sheet No. 63, which has a proposed effective date of September 1, 1989.

Thirty-Seventh Revised Sheet No. 4  
 Alternate Thirty-Seventh Revised Sheet No. 4

Fourteenth Revised Sheet No. 4A  
 Fifth Revised Sheet No. 4A.1  
 Fifth Revised Sheet No. 4A.2  
 Second Revised Sheet No. 4A.3  
 Second Revised Sheet No. 4A.4  
 First Revised Sheet No. 4A.5  
 Fifth Revised Sheet No. 63

MRT states that this filing is being submitted to reflect its quarterly purchased gas cost adjustment (PGA) pursuant to § 154.308 of the Commission's Regulations and the PGA provisions of MRT's tariff, and is designed to track various pipeline and producer cost changes. The quarterly impact of MRT's PGA filing on its



jurisdictional customers is stated to be an increase of approximately \$4.3 million.

MRT further states that the enclosed Sheet Nos. 4A reflect the most recent fixed take-or-pay charges applicable to MRT as a result of filings of United Gas Pipe Line Company, Natural Gas Pipeline Company of America and Trunkline Gas Company. MRT states that the jurisdictional impact of this take-or-pay flowthrough filing is an increase of approximately \$38,000 for the quarter. MRT is submitting Fifth Revised Sheet No. 63 to reflect the inclusion of Tariff Sheet No. 4A.5.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 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 November 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26233 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-17-000 and CP89-1121-002]

#### Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

November 1, 1989.

Take notice that on October 25, 1989, Mississippi River Transmission Corporation ("MRT") tendered for filing the following tariff sheets to its FERC Gas Tariff:

	Tariff volume	Effective date
Substitute Thirty-Sixth Revised Sheet No. 4.	1	Dec. 1, 1989.
Alternate Substitute Thirty-Sixth Revised Sheet No. 4.	1	Do.
Title Page and Original Sheet 1.	1-A	Nov. 24, 1989.
Alternate Original Sheet No. 2 through No. 5.	1-A	Dec. 1, 1989.
Original Sheet No. 6 through No. 99.	1-A	Nov. 24, 1989.

MRT states that the purpose of the filing is to comply with the Commission's September 18, 1989 Order in Docket No. CP89-1121 which granted MRT's request for blanket certificate authority to perform open access transportation pursuant to subpart G of part 284 of the Commission's Regulations, subject to modifications and conditions. Pursuant to § 157.20(a) of the Regulations, MRT states that it has notified the Commission by separate transmittal that MRT is accepting the certificate issued.

MRT states that it intends to begin open access transportation on December 1, 1989, and has therefore requested December 1, 1989 as the effective date for both the tariff pages reflecting the *pro forma* sales rate changes contained in its certificate application in Docket No. CP89-1121, as well as the initial transportation rates accepted by the Commission in the September 18, 1989 Order. In order that MRT receive the earliest possible authorization to implement the administrative portion of its tariff consistent with the Commission's notice requirements, MRT has requested an effective date of November 24, 1989 for the remaining tariff pages in Original Volume No. 1-A.

MRT states that Ordering paragraph (D) of the September 18, 1989 Order conditioned approval of the rates set forth in Rate Schedules FTS and ITS upon MRT filing a limited rate filing, consisting of Statements L, M, and N as set forth in § 154.63 of the Commission's Regulations, in order to justify sales rates equal to or greater than those proposed to be implemented initially by MRT in Docket No. CP89-1121. Accordingly, MRT has submitted a limited filing which fully supports the sales rates filed.

MRT states that copies of the filing have been served upon all of MRT's jurisdictional customers and state commissions, as well as on all parties reflected on the Commission's Official Service List in Docket No. CP89-1121-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 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 November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-26231 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-26-000]

#### Natural Gas Pipeline Co. of America; Changes in Rates

November 1, 1989.

Take notice that on October 30, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective December 1, 1989.

Eighty-fifth Revised Sheet No. 5  
Fiftieth Revised Sheet No. 5A

Natural states the purpose of the instant filing is to implement Natural's quarterly PGA unit rate adjustment calculated pursuant to section 18 of the General Terms and Conditions of Natural's Tariff.

The overall effect of the quarterly adjustment when compared to the gas cost component in Natural's quarterly PGA filing in Docket No. TQ89-3-26-000 effective September 1, 1989, is an increase in the DMQ-1 commodity charge of 57.07¢, an increase in the DMQ-1 demand charge of \$.06, and a \$.0013 decrease in the entitlement charge. Appropriate adjustments have been made with respect to Natural's other rate schedules.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before November 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26245 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. RP90-23-000]

**North Penn Gas Co.; Restatement of Rates**

November 1, 1989.

Take notice that on October 30, 1989, North Penn Gas Company (North Penn) submitted a restatement of its base tariff rates pursuant to the Commission's orders of June 16, 1989 and September 21, 1989 in Docket No. TQ89-2-21 as well as the October 13, 1989 Commission order in Docket No. RP89-237. North Penn submits the filing under protest and without prejudice to any judicial appeal or rehearing request of the above-referenced orders. According to North Penn, the revenue/cost of service study and resultant tariff rates are based on North Penn's experience for the twelve month period ending February 28, 1989 with annualizing adjustments as permitted by § 154.303(e)(1)(ii)(B) of the Commission's Regulations.

North Penn further states that copies of its filing have been served upon each of its customers and the Public Service Commissions of Pennsylvania and New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26246 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-55-000]

**Questar Pipeline Co.; Rate Change**

November 1, 1989.

Take notice that on October 31, 1989, Questar Pipeline Company tendered for filing and acceptance certain revised tariff sheets to its FERC Gas Tariff as follows:

Tariff sheet	Proposed effective date
First Revised Volume No. 1	
Twenty-Sixth Revised Sheet No. 12.	December 1, 1989
Twenty-Seventh Revised Sheet No. 12.	January 1, 1990
Sixth Revised Sheet No. 12-A.	January 1, 1990
Original Volume No. 1-A	
Eleventh Revised Sheet No. 5.	January 1, 1990
Original Volume No. 3	
Fourteenth Revised Sheet No. 8.	January 1, 1990

Questar Pipeline states that the purpose of this filing is to adjust the purchased gas costs under Questar Pipeline's sale-for-resale Rate Schedule CD-1 effective December 1, 1989, and implement the Gas Research Institute's (GRI) adjustment authorized in Docket No. RP89-187-000 to be effective January 1, 1990.

Questar Pipeline further states that Twenty-Sixth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of \$2.26187/Dth which is \$0.02930 higher than the currently effective rate of \$2.23257/Dth. The demand base cost of purchased gas as adjusted is decreased by \$.00109/Dth from \$0.00657/Dth to \$0.00548/Dth.

Questar Pipeline states that it has provided a copy of the filing to all parties on its official service list.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before November 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26234 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-8-001]

**Transcontinental Gas Pipe Line Corp.; Tariff Filing**

November 1, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 30, 1989, certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date is November 10, 1989.

Transco states that, as background to the filing, on October 10, 1989 Transco filed revised tariff sheets in Docket No. RP90-8 pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's Regulations thereunder. The tariff sheets tendered in the October 10 filing were paginated with Sheet Nos. but were not delineated as original or revised sheets. The Commission Staff has informed Transco that a more descriptive pagination is required and requested that Transco refile the tendered tariff sheets to reflect such.

Transco states that the tariff sheets submitted in this filing are identical to the tariff sheets contained in the October 10 filing except for the revised pagination.

In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26240 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. TQ90-1-56]

**Valero Interstate Transmission Co.;  
Proposed Changes in FERC Gas Tariff**

November 1, 1989.

Take notice that Valero Interstate Transmission Company ("Vitco"), on October 30, 1989 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1  
18th Revised Sheet No. 14  
16th Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2  
21st Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A. The change on 18th Revised Sheet No. 14 represents a decrease in the percentage applicable to Retained Gas. The change in rates to Rate Schedule S-3 includes a decrease in purchased gas cost of \$.1146 per MMBtu.

The proposed effective date of the above filing is December 1, 1989. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by December 1, 1989.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26235 Filed 11-7-89; 8:45 am]

BILLING CODE 6717-61-M

**ENVIRONMENTAL PROTECTION  
AGENCY****R & J Trucking; 42 U.S.C. Section  
122(h) Proposed Administrative  
Agreement**

[FRL-3678-9]

**AGENCY:** U.S. Environmental Protection Agency (U.S. EPA).**ACTION:** Proposed settlement.

**SUMMARY:** U.S. EPA is proposing to settle a claim under section 107 of CERCLA for response costs incurred during removal activities at R & J Trucking in Princeton, Indiana. Respondent has agreed to reimburse U.S. EPA in the amount of \$5,000. U.S. EPA today is proposing to approve this settlement offer because it reimburses U.S. EPA, in part, for costs incurred during U.S. EPA's removal action.

**DATE:** Comments on this proposed settlement must be received on or before December 8, 1989.

**ADDRESSES:** Copies of the proposed settlement are available at the following addresses for review: (It is recommended that you telephone Mary Ann Croce at (312) 886-1728, before visiting the Region V Office). U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible). Mary Ann Croce, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-4359.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Croce, Office of Public Affairs, at (312) 886-1728.

**SUPPLEMENTARY INFORMATION:** The R & J Trucking site is not on the National Priorities List. U.S. EPA personnel were working on a removal action on a neighboring piece of property when the leaking methane gas was discovered at R & J Trucking. The gas presented a serious danger of explosion.

The Respondent is the owner of the site. The actions which were taken by U.S. EPA, mitigated the possibility of an explosion occurring. Actions included capping an underground well where the methane gas originated. R & J Trucking is the only settling party to the proposal. A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement. Comments

should be sent to the Office of Public Affairs (5PA-14), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89-26329 Filed 11-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OFTS-44541; FRL 3663-9]

**TSCA Chemical Testing; Receipt of  
Test Data****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data on mercaptobenzothiazole (MBT) (CAS No. 149-30-4), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(s) within 15 days after it is received.

**I. Test Data Submissions**

Test data for MBT was submitted by the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.2475. They were received by EPA on October 23, 1989. The submissions describe chemical fate, environmental effects and health effects studies. The chemical fate studies were for aerobic aquatic degradation testing, indirect photolysis screening level testing, and chemical mobility testing. The environmental effects studies were for chronic fish toxicity to rainbow trout, and daphnid chronic toxicity. The health effects studies received were teratology studies in rats and rabbits and a dominant lethal assay study in rats. These studies are all required by this test rule.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.



## II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (OPTS-44541). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: October 31, 1989.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-26341 Filed 11-7-89; 8:45 a.m.]

BILLING CODE 6560-50-D

[OPTS-59277A; FRL-3662-5]

### 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-89-27. The test marketing conditions are described below.

**EFFECTIVE DATE:** October 27, 1989.

Written comments will be received until November 24, 1989.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-59277A]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202) 382-3532.

#### FOR FURTHER INFORMATION CONTACT:

Alan S. Cole, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202) 382-3861.

#### 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-89-27. EPA has 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.

Inadvertently, notice of receipt of the application was not published promptly upon receipt of the TME application. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

The following additional restrictions apply to TME-89-27:

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. 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 bill of lading that accompanies each shipment of the substance.

#### T-89-27

Date of Receipt: September 20, 1989.

Notice of Receipt: November 2, 1989 (54 FR 46297).

Applicant: Westvaco Corporation.

Chemical: (G) Rosin, polymer with dibastic, ester with polyols.

Use: Resin for packaging use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

**Risk Assessment:** EPA identified no significant health or environmental concerns. Therefore, the test marketing activities will not present an unreasonable risk of injury to health or 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: October 27, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-26343 Filed 11-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140120; FRL-3660-8]

### Contractors, Subcontractors, and the Consumer Product Safety Commission Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** EPA has authorized several contractors, subcontractors, and the Consumer Product Safety Commission (CPSC) for access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI). EPA is issuing this notice to inform submitters of changes in the TSCA CBI access status under these contracts and for CPSC.

#### FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, TSCA 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.

Access to CBI by the contractors, subcontractors, and CPSC shown in the chart below was announced in earlier Federal Register notices. EPA is issuing this notice to inform submitters of changes in the TSCA CBI access status under these contracts and for CPSC. To clarify a listing in the chart below, AScl Corporation, contract No. 68-D9-0006



was previously announced in the Federal Register of December 20, 1988 (53 FR 51135), as American Scientific International Inc., contract No. 68-D9-0005. The contract number listed was a

typographical error. The contractor's name has since been changed to ASci Corporation.

In accordance with 40 CFR 2.306(j), EPA has determined that the following

contractors, subcontractors, and CPSC will require access to CBI submitted to EPA under TSCA to perform successfully work specified under their contracts.

Contract number	Contractor name/Federal agency	Address	Authorized sections of TSCA	Site information	Federal register publication cite/date	Extended expiration date
68-D8-0089	AM-PRO Protective Agency...	6941 Trenholm Rd., Suite B, P.O. Box 6636, Columbia, SC 29260.	All .....	RTP Facilities .....	53 FR 43268 (10/26/88)	09/30/90
68-D9-0006	ASci Corp .....	6888 Elm St., McLean, VA 22101.	All .....	EPA Headquarters .....	53 FR 51135 (12/20/88)	09/30/90
68-01-7380	Chemical Abstracts Service...	2540 Olentangy, River Rd., P.O. Box 3012, Columbus, OH 43210.	5, 6 .....	Contractor Site .....	52 FR 42037 (11/2/87)	09/30/90
68-02-4296	Dynamac Corp .....	1140 Rockville Pike, Rockville, MD 20852.	4, 5, 6, 8, 21 .....	EPA Headquarters and Contractor Site .....	52 FR 43251 (11/10/87)	09/30/90
68-D8-0018	Research and Evaluation Assoc. ....	100 Europa Dr., Suite 590, Chapel Hill, NC 27514.	All .....	Contractor Site .....	53 FR 37643 (9/27/88)	09/30/90
68-02-4379	Midwest Research Institute...	401 Harrison Oaks Blvd., Suite 350, Cary, NC 27513.	5, 6, 8 .....	Contractor Site .....	52 FR 44221 (11/18/87)	09/30/91
68-01-7176	InterAmerica Research Corp. ....	7926 Jones Branch Dr., McLean, VA 22102.	4, 5, 6, 8, 12, 13 .....	EPA Headquarters .....	53 FR 15596 (5/2/88)	09/30/90
68-01-7176	CRC Systems, Inc. ....	11242 Waples Mill Rd., Fairfax, VA 22030.	All .....	EPA Headquarters .....	54 FR 9084 (3/3/89)	09/30/90
N/A	Consumer Product Safety Commission .....	5401 Westbard Ave., Bethesda, MD 20816.	All .....	CPSC Headquarters .....	51 FR 41416 (11/14/86)	09/30/92
68-W8-0126	EG&G Dynatrend .....	1911 N. Fort Myer Dr., Suite 907, Arlington, VA 22209.	All .....	EPA Headquarters .....	54 FR 7598 (2/22/89)	09/30/93

The contractors, subcontractors, and CPSC listed above that are authorized to transfer CBI materials from EPA Headquarters to their facilities will, upon completing review of the CBI materials, return them to EPA. Contractors and subcontractors requiring access to TSCA CBI at their facilities will be authorized for such access under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. CPSC has been authorized for access to TSCA CBI at its facilities under the EPA "TSCA Confidential Business Information Security Manual." EPA has received their security plans and has performed the required inspections of their facilities. Contractor, subcontractor, and CPSC personnel will be required to sign no-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated November 1, 1989.

John Neyland,

Acting Director, Information Management Division.

[FR Doc. 89-26342 Filed 11-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59876; FRL-3664-8]

#### 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 3 such PMN(s) and provides a summary of each.

**DATES:** Close of Review Periods:

Y 89-222, September 28, 1989.

Y 89-223, 89-224, October 3, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-222

Manufacturer. Pfizer Inc.  
Chemical. (S) Polydextrose.  
Use/Production. (G) Adhesive additive.

Prod. range: Confidential.  
Toxicity Data. Acute oral toxicity: LD50 < 18,820 mg/kg species(Rat). Eye irritation: moderate species(Rabbit). Skin irritation: negligible species(Rabbit).

Y 89-223

Manufacturer. Confidential.  
Chemical. (S) Alkyldicar.



Use/Production.(G) Fiber finish for textile uses.

Prod. range: Confidential.

Y 89-224

Manufacturer: Confidential.

Chemical. (G) Polyethyleneglycol, polymer with bis (aryl ether) and alkyl aryl dicarboxylic acid.

Use/Production. (G) Textile processing aid.

Prod. range: Confidential.

Dated: November 1, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-26344 Filed 11-7-89; 8:45am]

BILLING CODE 6560-EO-D

## FEDERAL COMMUNICATIONS COMMISSION

### Participants, Schedules Set for AM Improvement Hearing

October 31, 1989.

The special En Banc hearing on the matter of the AM Broadcast Service will be held on Thursday, November 16, 1989, at the Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, DC. The schedule and assignment of panelists are shown below, followed by a short biography of each panelist. This hearing will be open to the public.

Participants are expected to submit comments in writing by close of business, Friday, November 10, 1989 to: Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554, Ref: MM Docket No. 87-267.

At the hearing, after a panel is seated, each panelist will have five (5) minutes to present the key points of his or her testimony. After the presentations, there will be an opportunity for questions.

Following the hearing interested parties may submit written comments in reply to the written and oral testimony. A deadline for the reply comments will be announced at the hearing.

For further information, please contact William Hassinger at (202) 632-6460. The contact for media coverage is Maureen Peratino or Sally Lawrence at (202) 632-5050.

#### Schedule

Thursday, November 16, 1989

9:30-9:45 Opening remarks  
9:45-10:30 Panel I: Overview

L. Lowry Mays  
William R. Sanders  
David L. Hicks  
Dr. John Abel

10:30-11:15 Panel II: Receivers  
Art Suberbielle

Michael Rau  
Tom Friel  
Mark Horiki  
Frank Hilbert  
[GM/Delco]

11:15-12:00 Panel III: Expanded Band

Jim Johnson  
David Honig  
Tom Kigin  
John Quinn  
Bayard Walters

12:00-1:30 Break

1:30-2:15 Panel IV: Technical and

Assignment Issues

Wallace Johnson  
Jerry Smith  
Alan Okun  
Wayne Eddy  
Arlen Diamond

2:15-3:00 Panel V: AM Improvement and the Future

Ted Snider  
Richard Harris  
Wayne Vriesman  
Paul Synczak  
Dorothy Brunson  
Richard Blackburn

#### Participants

Dr. John Abel: Executive Vice-President, Operations, National Association of Broadcasters

Richard Blackburn: Blackburn & Co.

Dorothy Brunson: President, Brunson Communications, Inc., which has AM Broadcast Stations in Maryland, Georgia, and North Carolina. Recognized for contributions to broadcasting and the cause of minority businesswomen. Named "Working Woman of the Year" by Working Women magazine.

Arlen Diamond: General Manager, FM Broadcast Station, KSMU-FM, Springfield, Missouri. Researcher on AM radio.

Wayne Eddy: President/General Manager of AM Broadcast Station, KYMN, Northfield, Minnesota. Member of the Board of Directors, Minnesota Broadcasters Association. Member of the NAB Daytimers Committee.

Tom Friel: Group Vice-President, Consumer Electronics Group, Electronic Industries Association.

Richard Harris: Group W Radio Chairman.

David L. Hicks: President and Chief Executive Officer, Hicks Broadcasting Corp., Kalamazoo, Michigan.

Frank Hilbert: Manager, Modulation Systems Laboratory, Corporate Research, Motorola.

David Honig: Attorney. Has represented minority interests before the FCC. Member of U.S. delegation to WARC-79 which created the AM expanded band.

Mark Horiki: Matsushita Electric Corp. of America.

Jim Johnson: President/General Manager of AM Broadcast Station WDAO, Dayton, Ohio.

Wallace Johnson: President of Moffet, Larson and Johnson, Inc., Consulting Telecommunications Engineers. Executive Director of the Association of Broadcast Engineering Standards (ABES). Former Chief of the Broadcast Bureau (now the Mass Media Bureau). Member and Vice-Chairman of several U.S. delegations at

international conferences devoted to AM Broadcasting. Chairman of the Technical Sub-Committee of the FCC's Advisory Committee on Broadcasting. Member of U.S. delegations which negotiated bilateral AM broadcast agreements with Canada and Mexico.

Tom Kigin: Vice President, Minnesota Public Radio, St. Paul, Minnesota, owner of AM Broadcast Station KSJN.

L. Lowry Mays: Chairman, Joint Board of Directors, National Association of Broadcasters. President and Chief Executive Officer, Clear Channel Communications, San Antonio, Texas.

Alan Okun: President/General Manager of Okun Broadcasting Corporation, licensee of daytime-only AM Broadcast Station, WGFP, Webster, Massachusetts. Served on NAB Daytimer Committee for several years and addressed national conventions on matters of interest to daytime broadcasters.

John Quinn: Owner and operator of daytime-only AM Broadcast Station WJDM, Elizabeth, New Jersey.

Michael Rau: Vice-President, Office of Science and Technology, National Association of Broadcasters.

William R. Sanders: Chairman, Radio Board of Directors, National Association of Broadcasters. President and owner of Station KICD/KICD-FM, Spencer, Iowa.

Jerry Smith: Operations manager and chief engineer of AM Broadcast Station WPDQ, Jacksonville, Florida.

Ted Snider: Owner AM Broadcast Station, KARN, Little Rock, Arkansas. Formerly involved with the NAB as Board Member, Radio Board Vice-Chairman, Radio Board Chairman, Joint Board Chairman, and Immediate Past Joint Board Chairman. Also co-chaired the AM Retreat of AM Broadcasters (March 1989). Author of an article on AM Radio published in Broadcasting.

Art Suberbielle: President and General Manager of AM Broadcast Station KANE, New Iberia, Louisiana. Former board member of National Radio Broadcasters Association and National Association of Broadcasters and past president of the Louisiana Association of Broadcasters. Panelist at several national conventions where AM improvements were discussed.

Paul Synczak: Vice-President, General Counsel, and Secretary, Corporation for Public Broadcasting.

Wayne Vriesman: Vice-President, Radio Tribune Broadcasting and President, Clear Channel Broadcasting Service.

Bayard Walters: Licensee of four AM Broadcast Stations and former chairman of the NAB Daytimers Committee.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-26222 Filed 11-7-89; 8:45 am]

BILLING CODE 6712-01-M



**FEDERAL MARITIME COMMISSION****Agreements(s) Filed; American President Lines, Ltd. et al.**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

**Agreement No: 202-010776-50**

**Title: Asia North America Eastbound Rate Agreement.**

**Parties:**

American President Lines, Ltd.,  
Kawasaki Kisen Kaisha, Ltd.,  
A.P. Moller-Maersk Line,  
Mitsui O.S.K. Lines, Ltd.,  
Neptune Orient Lines, Ltd.,  
Nippon Yusen Kaisha Line,  
Nippon Liner System, Ltd.,  
Sea-Land Service, Inc.

**Synopsis:** The proposed amendment would permit the parties to expand the scope of the Agreement and to establish a separate discussion section covering the trade from India, Pakistan, Bangladesh and Sri Lanka to U.S. Pacific Coast ports and U.S. Interior points via such ports. Membership in this section will be open to all carriers operating in this "sub-continent trade" whether or not the carrier is a party to the remainder of the Agreement. The amendment would permit the parties to this section to discuss and agree upon specified matters, including rates, in the sub-continent trade. However, adherence to any agreement reached would be voluntary.

**Agreement No: 203-011256**

**Title: TNS Agreement.**

**Parties:**

P & O Containers (TFL) Limited,  
Nedlloyd Lijnen, B.V.,  
Sea-Land Service, Inc.

**Synopsis:** The proposed agreement would permit the parties to rationalize the use of containers, chassis and other equipment in the trade between

the United States, including Puerto Rico and the U.S. Virgin Islands, and Europe.

By order of the Federal Maritime Commission.

Dated: November 2, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-26251 Filed 11-7-89; 8:45 am]

BILLING CODE 6730-01-M

**FEDERAL RESERVE SYSTEM****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 the notice 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 or to the offices of the Board of Governors. Comments must be received not later than November 22, 1989.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **T. Brent Ballinger**, Pawhuska, Oklahoma; to acquire an additional 0.5 percent of the voting shares of N.B.C. Bancshares in Pawhuska, Inc., Pawhuska, Oklahoma, and thereby indirectly acquire National Bank of Commerce in Pawhuska, Pawhuska, Oklahoma.

Board of Governors of the Federal Reserve System, November 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26270 Filed 11-7-89; 8:45 am]

BILLING CODE 6210-01-M

**Chase Manhattan Corp.; Application to Engage de Novo in Provision of Financial Advice to Municipalities and the Administration of Pooled Financing Programs on Behalf of Municipalities and Municipal Authorities**

Chase Manhattan Corporation, New York, New York ("Applicant" or "Chase"), has applied, pursuant to

section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to expand the authority of its wholly owned subsidiary, Chase Securities, Inc., New York, New York ("Company") to provide financial advice to municipalities and to administer "pooled financing programs" on behalf of municipalities and municipal authorities. These activities would be conducted on a nationwide basis.

Applicant proposes that Company would engage *de novo* in the provision of financial advice to state and local governments, political subdivisions, school districts and authorities ("municipalities"). This activity has been previously approved by the Board in § 225.25(b)(4)(v) of the Board's Regulation Y. (12 CFR 225.25 (b)(4)(v)).

Applicant also proposes to engage *de novo* in an activity not previously approved by the Board: administration of pooled financing programs on behalf of state and local government authorities. This new activity would entail: (i) Disseminating information regarding pooled financing programs; (ii) assisting municipalities in various required filings for participation in such programs; and (iii) acting as a servicing agent for the participating municipal authorities and municipalities with respect to the administration of such programs.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Applicant believes that this proposed activity is "so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes that Company's provision of investment advice in connection with its administration of pooled financing programs for municipalities is encompassed within the Board's prior approval for Company's predecessor organization to engage in general investment advisory activity. See Chase Manhattan Corporation, 74 Federal Reserve Bulletin 704 (1988). Applicant also states that the proposed activity of acting as an administrator involves functions that are routinely performed by banks as part of their lending activities, their advisory activities and their underwriting activities relating to bank-eligible municipal securities. Activities routinely performed by banks



that would also be performed by Company in its proposed capacity as administrator of pooled financing programs include: preparation of survey documents at the outset of a pooled financing program; conducting loan closings; estimating debt service; and providing payment schedules. In addition, once a pooled financing program is established, Applicant believes that Company would be performing traditional loan servicing functions of a type permissible under § 225.25(b)(1) of Regulation Y. (12 CFR 225.25(b)(1)).

Company also intends to deal in both newly-issued and previously-issued municipal bonds of its administrative and advisory customers unless such activity is prohibited by contract with the issuer. When purchasing new issue securities as principal, Company indicates that it would abide by Rule G-23 of the Municipal Securities Rulemaking Board. That rule establishes ethical standards and disclosure requirements for securities dealers which act as financial advisor to issuers of municipal securities. G-23 also would require, under certain circumstances, the termination of the financial advisory role with respect to a new issue of municipal securities prior to dealing in that issue. Applicant believes that this rule adequately addresses any conflicts of interest that may arise in the conduct of such activities.

Applicant does not believe that dealing in securities previously issued by an entity for which Company acts as an administrator or advisor would create any conflict of interest or other adverse effect. Applicant indicates that any such activity would occur at a time when the financial advisory role with respect to an issue has terminated. Although Applicant anticipates that administrative services with respect to pooled financing programs and dealing may occur in the underlying bonds simultaneously, Applicant states that it is unable to identify any conflict arising from the ongoing performance of such administrative services.

Applicant also indicates that Company would resign as financial advisor in order to underwrite pooled or other financings where the underwriting provided a good business opportunity, and the municipal issuer expressly consented to the underwriting role.

Applicant takes the position that the proposed activities will benefit the public. Applicant believes that they will increase competition. Applicant further believes that the proposed activities would benefit municipalities by giving them the option of utilizing Company's knowledge and expertise independently of Company's underwriting services. In

addition, Applicant submits that the ability to offer advice on a stand-alone basis would also enable Company to more fully utilize its resources. Finally, Applicant submits that the proposed activities would not result in adverse effects such as unsound banking practices or conflicts of interest.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 27, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26271 Filed 11-7-89; 8:45 am]

BILLING CODE 6210-01-M

#### **Jefferson Bankshares, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased

competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1989.

**A. Federal Reserve Bank of Richmond**  
(Lloyd W. Bostian, Jr., Vice President)  
701 East Byrd Street, Richmond, Virginia 23261:

1. *Jefferson Bankshares, Inc.*, Charlottesville, Virginia; to engage de novo through its subsidiary, *Jefferson Financial, Inc.*, Charlottesville, Virginia, in providing financial advisory services to local and state governments; providing portfolio investment advice to any person; and engaging on a fee basis, in providing financial advisory services to non-affiliated financial and non-financial institutions, including the offering of financial advice to private corporate entities with regard to their own financial structure and need for capital, either equity or debt, not including debt or equity underwriting pursuant to § 225.25(b)(4) (iii) and (v) of the Board's Regulation Y and previous Board orders.

**B. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wells Fargo & Company*, San Francisco, California; to acquire 0.1 percent of Wells Fargo Institutional Trust Company, N.A., San Francisco, California, a limited purpose national bank, in connection with a joint venture with The Nikko Securities Co., Ltd., Tokyo, Japan. Company would engage in trust activities that may be performed by a trust company in the manner authorized by state and federal law pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26272 Filed 11-7-89; 8:45 am]

BILLING CODE 6210-01-M



**Piedmont Bankshares, Corp., et al.;  
Formations of Acquisitions by, and  
Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 30, 1989.

**A. Federal Reserve Bank of Richmond**  
(Lloyd W. Bostian, Jr., Vice President)  
701 East Byrd Street, Richmond, Virginia  
23261:

1. *Piedmont Bancshares Corporation*, Winston-Salem, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Enterprise National Bank of the Piedmont, in organization, Winston-Salem, North Carolina, a *de novo* bank.

**B. Federal Reserve Bank of Chicago**  
(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin*, Kohler, Wisconsin, and *FIB Acquisition, Inc.*, Kohler, Wisconsin; to acquire 100 percent of the voting shares of First Illinois Bancorp, Inc., Galesburg, Illinois, and thereby indirectly acquire Abingdon Bank and Trust Company, Abingdon, Illinois; Community Bank and Trust Company, Canton, Illinois; First Galesburg Bank and Trust Company, Galesburg, Illinois; and Madison Park Bank, Peoria, Illinois. In connection with this application, FIB Acquisition, Inc. has also applied to become a bank holding company.

Board of Governors of the Federal Reserve System, November 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26273 Filed 11-7-89; 8:45 am]

BILLING CODE 6210-01-M

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early  
Termination of the Waiting Period  
Under the Premerger Notification  
Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

**TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 10-16-89 AND 10-27-89**

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Moleculon, Inc., Solvay & Cie S.A., Kalipharma Inc.	89-2718	10/16/89
Westinghouse Electric Corporation, The Shaw-Walker Company, The Shaw-Walker Company	89-2724	10/16/89
Charter Medical Corporation, Healthcare International, Inc., The Brown Schools of Charleston, Inc.	89-2750	10/16/89
Windmill Corporation, Meshulam Riklis, Martha White Food, Inc. and Frozen Specialties, Inc.	89-2783	10/16/89
Polly Peck International plc, Whitehall Associates, L.P., Del Monte Corporation	89-2793	10/16/89
Nitto Denko Corporation, Graphic Technology, Inc., GTI Acquisition Corp.	89-2815	10/16/89
Quantum Fund N. V., Vermilion Bay Land Company, Vermilion Bay Land Company	89-2817	10/16/89
Bennett S. LeBow, Bennett S. LeBow, MAI Basic Four, Inc.	89-2832	10/16/89
Tichenor Media System, Inc., Louis J. Appell Residuary Trust, Susquehanna Broadcasting Co., Susquehanna Radio Corp.	89-2842	10/16/89
Radio Wado, Inc., Louis J. Appell Residuary Trust, Susquehanna Broadcasting Co., Susquehanna Radio Corp.	89-2843	10/16/89
Hironori Shimotsu, Andre S. Tatibouet, Maui Lu Resort	89-2863	10/16/89
The Daiwa Bank, Ltd., Lloyds Bank Plc, Lloyds Bank Plc	89-2864	10/16/89
Clair's Stores, Inc., Bob and Beatrice Binsky, Decor Corporation	90-0003	10/16/89
Paramount Communications Inc., LBC Holdings, Inc., Lomas Bank USA	90-0015	10/16/89
Primerica Corporation, Arthur and Angela Williams, Jr., A.L. Williams & Associates, Inc.	90-0025	10/16/89
Arthur and Angela Williams, Jr., Primerica Corporation, Primerica Corporation	90-0026	10/16/89
Air & Water Technologies Corporation, Jeffrey J. Cantwell, Falcon Associates, Inc.	90-0031	10/16/89
Jeffrey J. Cantwell, Air & Water Technologies Corporation, Air & Water Technologies Corporation	90-0033	10/16/89
Hellman & Friedman Capital Partners, Jack Kent Cooke, Cooke CableVision Inc.	90-0053	10/16/89
Standard Motor Products, Inc., Blackstone Capital Partners, L.P., Wickes Companies, Inc.	90-0056	10/16/89
Standard Motor Products, Inc., Wasserstein, Perella Partners, L.P., Wickes Companies, Inc.	90-0057	10/16/89
Businessland, Inc., John J. Fitzsimmons, Data Systems Computer Centre, Inc.	90-0061	10/16/89
Ken Miller, Kinder-Care, Inc., Kinder-Care Learning Center, Inc.	89-2838	10/17/89
Tull Gearraald, Kinder-Care, Inc., Kinder-Care Learning Center, Inc.	89-2839	10/17/89
Starchild Special Investment Partnership, L.P., Kinder-Care, Inc., Kinder-Care Learning Center, Inc.	89-2840	10/17/89
Christopher C. Skase, Kirk Kerkorian, MGM/UA Communications Co.	90-0013	10/17/89
Mercy Health System, Province of Cincinnati, Mercy Health Care System, Mercy Health Care System	90-0014	10/17/89



## TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 10-16-89 AND 10-27-89—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Moevid Shipping AS, Keyes Offshore Limited Partnership, Keyes Offshore Limited Partnership	90-0049	10/17/89
The Morgan Stanley Leveraged Equity Fund II, L.P., SIBV/MS Holdings, Inc., SIBV/MS Holdings, Inc.	89-2785	10/18/89
The Morgan Stanley Leveraged Equity Fund II, L.P., Jefferson Smurfit Group plc, Jefferson Smurfit Corporation	89-2786	10/18/89
Jefferson Smurfit Group plc, SIBV/MS Holdings, Inc., SIBV/MS Holdings, Inc.	89-2787	10/18/89
Kellwood Company, Mr. Gabriel Hakim, Sr., Crownstut Manufacturing Corp., Heflin Manufacturing	89-2876	10/18/89
A.A. Emmerson, Jack A. Erickson, Erickson Lumber Company	90-0001	10/18/89
Paramount Communications, Inc., Ford Motor Company, TransSouth Financial Corporation	90-0002	10/18/89
Tenneco Inc., L. Clifford Schroeder, Dixie Container Corporation	90-0005	10/18/89
Cleveland-Cliffs Inc., Cleveland-Cliffs Inc., J&L-Cliffs Ore Partnership	90-0018	10/18/89
Super Club N.V., A. Barrie Bergman, The Record Bar, Inc.	90-0041	10/18/89
Super Club N.V., A.C. Israel, Turtle's, Inc.	90-0066	10/18/89
TRW Inc., Title USA Insurance Corporation, Title USA Insurance Corporation of New York	90-0108	10/18/89
Ralston Purina Company, Nestle SA, Beech-Nut Corporation, Beech-Nut Nutrition Corporation	89-2813	10/19/89
Bayer AG, International Minerals & Chemical Corporation, Mallinckrodt, Inc.	89-2854	10/19/89
Koret, Inc., Mr. Bernard Levy, Paul Reed, Inc.	89-2859	10/19/89
Koret, Inc., Mr. Victor Levy, Paul Reed, Inc.	89-2860	10/19/89
Saratoga Partners II, L.P., H. Paul Kizer, Birchfield Mining, Inc.	90-0019	10/19/89
The Procter & Gamble Company, Noxell Corporation, Noxell Corporation	89-2844	10/20/89
Anheuser-Busch Companies, Inc., Harcourt Brace Jovanovich, Inc., Sea World, Inc. HBJ Parks, Inc., Coleridge	89-2879	10/20/89
Quincy Newspapers, Inc., American Family Corporation, KTIV Television Co.	90-0064	10/20/89
C.W. Lui, The Estate of James Campbell, deceased, Concord Hotel Associates, a Hawaii limited partnership	90-0065	10/20/89
Acadia Partners, L.P., North American Ventures, Inc., Butler International, Inc.	90-0067	10/20/89
Hohoku Kohsan Co., Ltd., Richard R. Kelly, Hotel Operating Co. of Hawaii, Ltd.	90-0076	10/20/89
New York Venture Fund, Inc., Mulford Securities Corp., Mulford Securities Corp.	90-0086	10/20/89
Eastern Enterprises, The George A. Caldwell Co., The George A. Caldwell Co.	90-0095	10/20/89
Lotus Development Corporation, Sybase, Inc., Sybase, Inc.	90-0100	10/20/89
International Business Machine Corporation, Mr. Douglas A. Home and Mrs. Brenda P. Home, Home Properties, Inc.	90-0104	10/20/89
International Business Machine Corporation, Mr. Donald Nichols, JDN Enterprises, Inc.	90-0105	10/20/89
Gordon Investment Corporation, Shepherd Products Limited, Shepherd Products Limited	90-0109	10/20/89
The Atlantic Foundation, Peter Karmanos, Jr., Compuware Corporation	90-0115	10/20/89
Super Club N.V., David Bronstad, Best Video, Inc.	89-2883	10/23/89
The Morgan Stanley Leveraged Equity Fund II, L.P., Sweetheart Holdings Inc., Sweetheart Holdings Inc.	90-0054	10/23/89
United Technologies Corporation, SGC Holding Company, Inc., SGC Holding Company, Inc.	90-0058	10/23/89
Bayer AG, Agfa Copel Inc., Agfa Copel Inc.	90-0091	10/23/89
Copal Company Limited, Agfa Copel Inc., Agfa Copel Inc.	90-0092	10/23/89
Acadia Partners, L.P., BA Acquisition Corporation, BA Acquisition Corporation	90-0094	10/23/89
Warburg, Pincus Capital Company, L.P., Charter Network Company L.P., Charter Network Company L.P.	89-2868	10/24/89
Air Line Pilots Association, International, Airline Acquisition Corp., Airline Acquisition Corp.	89-2882	10/24/89
Airline Pilots Association, International, UAL Corporation, UAL Corporation	90-0079	10/24/89
Odyssey Partners, L.P., The May Department Stores Company, Caldor, Inc.	90-0080	10/24/89
The Prospect Group, Inc., Noel Group, Inc., Noel Group, Inc.	89-2880	10/25/89
Hawker Siddeley Group Public Limited Company, Middleton Aerospace Corporation, Middleton Aerospace Corp.	90-0021	10/25/89
JVP Inc., University Mechanical Contractors, Inc., University Mechanical Contractors, Inc.	89-2833	10/26/89
Maxwell Communications Corporation plc, Bell & Howell Company, Merrill Publishing Company	89-2846	10/26/89
Ciments Francais, Frank V. Carlow Trust, Frank V. Carlow Trust	89-2867	10/26/89
Archer-Daniels-Midland Company, Estate of Edna Collingwood, Collingwood Grain, Inc.	90-0017	10/26/89
The Equitable Life Assurance Society of the U.S., Maus Freres, County Seat Stores, Inc.	90-0042	10/26/89
Carolina Hunt Trust Estate, First Executive Corporation, First Executive Corporation	90-0046	10/26/89
American Cable TV Investors 5, Ltd., Mr. Jack Kent Cooke, 1st CableVision, Inc., 2nd CableVision of Knoxville	90-0069	10/26/89
Maxwell Communication Corporation plc, Maxwell Communication Corporation plc, Merrill Publishing Company	90-0082	10/26/89
General Motors Corporation, Jaguar, plc, Jaguar, plc	90-0083	10/26/89
Toei Shoji K.K., Thomas T. Enomoto, Kalauao Investment Co., Inc.	89-2851	10/27/89
Toei Shoji K.K., Thomas T. Gentry, Kalauao Investment Company, Inc.	89-2852	10/27/89
VMS Strategic Land Fund, VMS Strategic Land Trust, VMS Strategic Land Trust	90-0006	10/27/89
VMS Strategic Land Fund, VMS Strategic Land Fund II, VMS Strategic Land Fund II	90-0007	10/27/89
VMS Institutional Mortgage Fund, VMS Mortgage Investors L.P., VMS Mortgage Investors L.P.	90-0008	10/27/89
VMS Institutional Mortgage Fund, VMS Mortgage Investors L.P. II, VMS Mortgage Investors L.P. II	90-0009	10/27/89
VMS Institutional Mortgage Fund, VMS Mortgage Investors L.P. III, VMS Mortgage Investors L.P. III	90-0010	10/27/89
VMS Institutional Mortgage Fund, VMS Short Term Income Trust, VMS Short Term Income Trust	90-0011	10/27/89
VMS Institutional Mortgage Fund, VMS Hotel Investment Fund, VMS Hotel Investment Fund	90-0012	10/27/89
The Dow Chemical Company, Dow-United Technologies Composite Products, Inc., Dow-United Technologies Composite Products, Inc.	90-0027	10/27/89
United Technologies Corporation, Dow-United Technologies Composite Products, Inc., Dow-United Technologies Composite Products, Inc.	90-0028	10/27/89
McGraw-Hill, Inc., Maxwell Communication Corporation plc, Merrill Publishing Company	90-0081	10/27/89
Hon Industries, Inc., LADD Furniture, Inc., The Gunlocke Company	90-0085	10/27/89
Kirk Kerkorian, Southwest Securities, Marina Hotel & Casino	90-0102	10/27/89
Corporate Capital Limited, New Cayman Islands company, New Cayman Islands company	90-0130	10/27/89
Dr. Maurizio Gucci, New Cayman Islands company, New Cayman Islands company	90-0131	10/27/89
Corporate Capital Limited, Arabian Investment Banking Corporation (INVESTCORP) E.C., Gucci American, Inc.	90-0134	10/27/89
Diploma P.L.C., John S. Dyson, JSD Corporation	90-0137	10/27/89
Mr. and Mrs. Wolfgang and Margaretha Ley, Mr. and Mrs. Robert and Marie Gray, St. John Knits, Inc.	90-0149	10/27/89
Allegiance Capital Corporation, Glaxo Holdings PLC, Glaxo Holdings PLC	90-0151	10/27/89
General Motors Corporation, Harry Gray, Mel Klein & Partners, L.P., IMA Holdings Corp.	90-0155	10/27/89
Mitsuru Iwasaki, Edward J. DeBartolo, Maxim's de Paris Suite Hotel	90-0161	10/27/89
NVCompanies, Inc., Donald G. Zellner, Zellner Housing Corporation	90-0163	10/27/89



**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-26305 Filed 11-7-89; 8:45 am]

BILLING CODE 6750-01-M

## **GENERAL SERVICES ADMINISTRATION**

### **Performance Review Board Membership; Senior Executive Service**

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Knott, Deputy Director of Personnel, General Services Administration, 18th and F Streets NW., Washington, DC 20405 (202) 566-0398.

**SUPPLEMENTARY INFORMATION:** Section 4313(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 performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Carlene Bawden, Associate Administrator for Administration.
2. Paul E. Chistolini, Deputy Regional Administrator, National Capital Region.
3. Roger Daniero, Deputy Commissioner, Federal Supply Service.
4. Richard H. Hopf, Associate Administrator for Acquisition Policy.
5. Eric Lee, Regional Administrator, Region 8.
6. James A. Lobmaster, Chief of Staff.
7. Margaret E. Neustadt, Controller, Information Resources Management Service.
8. John Wynn, Director, Office of Small and Disadvantaged Business Utilization.

Dated: October 30, 1989.

Gregory L. Knott,

Deputy Director of Personnel.

[FR Doc. 89-26282 Filed 11-7-89; 8:45 am]

BILLING CODE 6820-01-M

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Alcohol, Drug Abuse, and Mental Health Administration**

#### **Establishment of Committee on Substance Abuse Prevention**

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) the Secretary, Health and Human Services, announces the establishment of the Advisory Committee on Substance Abuse Prevention on October 31, 1989.

Dated: November 2, 1989.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-26214 Filed 11-7-89; 8:45 am]

BILLING CODE 4160-20-M

### **Health Care Financing Administration**

[BPD-621-P]

RIN 0938-AE10

#### **Medicare Program; Outpatient Prescription Drugs: List of Covered Home IV Drugs—Extension of Public Comment Period**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice cross-references a document published elsewhere in this issue of the Federal Register that extends the public comment period for a notice document concerning the proposed list of covered home IV drugs under the outpatient prescription drug benefit published September 7, 1989 (54 FR 37239).

**DATE:** The comment period is extended to January 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michelle Brugg, 303-966-4683.

**SUPPLEMENTARY INFORMATION:** On September 7, 1989 (54 FR 37239), we published a proposed notice entitled Outpatient Prescription Drugs: List of Covered Home IV Drugs. This document cross-references a document published in the proposed rule section of this issue of the Federal Register, which extends the public comment January 8, 1990.

Timothy C. Miller,

Office of Regulations Management.

[FR Doc. 89-26403 Filed 11-6-89; 10:35 am]

BILLING CODE 4120-01-M

## **Health Resources and Services Administration**

### **Advisory Council: Renewal**

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. Appendix II), the Health Resources and Service Administration announces the renewal the Secretary, HHS, with concurrence by the General Services Administration, of the following advisory committee.

Council	Termination date
National Advisory Committee on Rural Health.	Oct. 29, 1991.

Dated: November 3, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-26289 Filed 11-7-89; 8:45 am]

BILLING CODE 4160-15-M

## **National Institutes of Health**

### **National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program**

**AGENCY:** National Institutes of Health, PHS, HHS.

**ACTION:** Notice.

**SUMMARY:** Pending approval by the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act of 1980, the National Institutes of Health (NIH) announces the availability of educational loan repayment under the National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program. ("Program") The Program, which is authorized by section 487A of the Public Health Service (PHS) Act (42 U.S.C. 288-1), as added by section 634 of the Health Omnibus Programs Extension of 1988 (Pub. L. 100-607), provides for the repayment of a sizeable portion of the accumulated educational loan debt of health professionals who agree to conduct, as employees of the NIH, research with respect to AIDS. The Program provides for repayment up to \$20,000 of the principal and interest of the educational loans of such health professionals for each year of such obligated service. The Program is limited to health professionals who have a substantial amount of educational loan debt relative to income, and who were not employed by the NIH during the period of November 4, 1987 through November 3, 1988. The purpose of the



Program is to increase the number of persons conducting AIDS research at the NIH. The NIH, through this notice, invites health professionals interested in engaging in AIDS research to apply for participation in the NIH AIDS Research Loan Repayment Program.

**DATE:** Interested persons may request information about the Program beginning on November 8, 1989.

**ADDRESS:** Information regarding the Program may be obtained by calling or writing: Mr. Marc Horowitz, J.D., Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Building 1, room 201, 9000 Rockville Pike, Bethesda, Maryland 20892 (301-496-0357).

**SUPPLEMENTARY INFORMATION:** On November 4, 1988, the United States Congress enacted Public Law 100-607, the "Health Omnibus Programs Extension of 1988", which in part, directs the NIH to establish a program of educational loan repayment to attract additional investigators into AIDS research. The Program provides for the repayment of a sizeable portion of the accumulated educational loan debt of health professionals who are employed by the NIH after November 4, 1988, to engage in AIDS research.

Under the Program, the NIH will repay qualified educational loan debt incurred by health professionals to pay for their undergraduate, graduate, and/or medical educational expenses that exceeds 20% of the annual NIH salary or stipend at the rate of one-third of the debt each year, up to the statutory limit of \$20,000 per year for each year of obligated service, if an individual selected to participate in the Program, agrees to serve at least 2 years as an employee of the NIH engaged in AIDS research. Under the Program, participants may annually receive a pro rata share of the total available program funds, up to 1/3 of their accumulated debt or the statutory limit of \$20,000, whichever is less.

NIH will repay lenders for the principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified Government (Federal, State, local) and commercial educational loans obtained by participants for: (1) Undergraduate, graduate, and health professional school tuition expenses; (2) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (3) reasonable living expenses,

including the cost of room and board, transportation and commuting costs.

The following loans are *not* repayable under the Program: (1) Loans not obtained from a Government entity or commercial lending institution, such as loans from friends and relatives; (2) loans for which contemporaneous documentation is not available; and (3) loans, or those portions of loans, obtained for educational or living expenses which exceed the "reasonable" level as determined by the standard school budget for the year in which the loan was made and are not judged by the NIH to be reasonable based on appropriate contemporaneous documentation.

In addition, for educational loans which contain provisions for loan forgiveness in exchange for a future service obligation, the NIH will *not* repay loans and/or penalties that may result from failure to serve as required under the conditions of such loans. This includes, but is not limited to: (1) Physicians Shortage Area Scholarship Program; (2) Public Health and National Health Service Corps Scholarship Program; (3) Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Programs; and (4) Indian Health Service Scholarship Program.

Finally, payments will *not* be made under the Program for loans which participants have already repaid.

In return for the repayment of their educational loans, participants must agree to: (1) Engage *primarily* in AIDS research as employees of the NIH for a minimum period of 2 years; (1) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); and (3) pay monetary damages as required for breach of the 2 year service obligation. Applicants must submit a signed contract, prepared by the NIH, containing this service agreement at the time they apply for consideration under the Program. Substantial monetary penalties will be imposed for breach of contract.

AIDS research could include such activities as studies of the human immunodeficiency virus, opportunistic agents, epidemiology, the pathophysiology of AIDS infection, the development of models of AIDS infection, cofactors predisposing to AIDS and the development of prophylactic and therapeutic regimes. AIDS researchers include scientists who are intellectually engaged in the process of providing scientific direction and guidance in programs of original AIDS research, specifically epidemiologists, statisticians and others, who are involved in the design and conduct of research studies. The duties of such

scientists may include the generation and design of studies; the collation and analysis of data; and/or the preparation and publication, as author or co-author, of studies in peer-reviewed journals.

Since the Program is designed for health professionals who have not yet repaid their educational loan debt, it is anticipated that most participants will still be in the development stages of their careers. Consequently, it is expected that most participants will be appointed as Clinical Associates (under the Commissioned Corps or service fellowship programs), or as Staff or Senior Staff Fellows. Participants who are more senior may be employed as NIH Special Experts, or may be appointed in the competitive Civil Service or as Commissioned Officers in the Commissioned Corps.

Initial contracts will be executed to cover a 2 year service period. At the conclusion of this initial contract, participants may apply and be recommended for a 1 year continuation contract, under normal application and approval procedures. Continuation contracts may be approved on a year to year basis, up to a maximum of 5 years, contingent upon appropriation of funds.

Loan repayment contracts will be approved by the NIH contingent upon a firm employment commitment having been made and verified by the appropriate NIH Personnel Office, and after passage of the appropriation act for the fiscal year during which the applicant will enter on duty. In some instances, this may result in some delay between the firm employment commitment and final contract approval. Loan repayment may *not* be made prior to the participant's entrance on duty as an employee of the NIH.

Under the Program, payments will be made directly to lenders on a quarterly basis at the completion of each quarter of the participants' satisfactory service.

#### Eligibility Criteria

Specific eligibility criteria with regard to participation in the NIH AIDS Research Loan Repayment Program include the following.

(1) Participants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.V.M., or equivalent degree.

(2) Participants must be U.S. citizens or permanent residents.

(3) Participants must have educational debt in excess of 20% of their annual NIH salary or stipend at entrance on duty, resulting from governmental or commercial loans obtained to support their undergraduate and/or graduate education.



(4) Individuals employed by the NIH during the period November 4, 1987 through November 3, 1988 are *ineligible*.

(5) Participants may be appointed under a temporary or permanent employment mechanism, so long as their employment has the potential to last a minimum of 2 years.

(6) Individuals with existing service obligations to Federal, State, or other entities will *not* be considered for the Program *unless and until* the existing service obligation is discharged.

(7) Applicants will *not* be excluded from consideration under the Program on the basis of race, color, creed, religion, sex, handicap, age, national origin, or political affiliation.

#### Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1980. A Request for OMB Review and Approval of information collection associated with the program is being prepared by the NIH, and will be sent to OMB for review and approval prior to implementation of the Program.

Assignment of the Catalog of Federal Domestic Assistance number for the Program is pending.

Dated: November 3, 1989.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 89-26389 Filed 11-7-89; 8:45 am]

BILLING CODE 4140-01-M

#### Public Health Service

##### Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 54 FR 40911-13, October 4, 1989) is amended as follows:

(1) To change the title of the Office of Biosafety to Office of Health and Safety and revise the functional statement.

(2) To transfer the responsibility for physical security activities to the Office of Program Support.

Section HC-B, Organization and Functions, is hereby amended as follows:

1. Under the heading *Office of Biosafety (HCA1)*, delete the title and statement in its entirety and substitute the following:

*Office of Health and Safety (HCA1).* The Office of Health and Safety: (1) Takes the lead in developing and implementing a current, model occupational Health and Safety Program (HSP) for CDC workers that emphasizes prevention of illnesses and injuries, promotion of healthy and safe work practices, and protection of the environment; (2) administers Federal regulations for the packaging and shipping of etiologic agents; (3) provides consultation to individuals and organizations nationally and internationally on health and safety related issues; (4) issues permits for the importation and subsequent distribution of etiologic agents, hosts, and vectors; (5) serves as a World Health Organization Collaborating Center for Applied Biosafety Programs and Training; (6) coordinates activities relative to the implementation of the National Environmental Protection Act (NEPA) for CDC programs and facilities.

2. Under the heading *Office of Program Support (HCA5)*, insert the following as item (4): "(4) plans, directs, and coordinates a physical security program for CDC facilities;" and renumber items (4) through (6) of the functional statement as items (5) through (7).

Effective Date: October 27, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89-26292 Filed 11-7-89; 8:45 am]

BILLING CODE 4180-18-M

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

[AZ-020-09-4213-01]

##### Phoenix District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the Phoenix District Advisory Council meeting.

DATE: December 7, 8, 1989, 8 a.m.

ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona 85027.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets December 7-8, 1989. A tour of the Kingman Resource Area will occur on December 7. The formal meeting will be held at the Kingman Resource Area office, 2475 Beverly

Avenue, Kingman, Arizona at 9 a.m. on December 8.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978. The agenda for the meeting includes:

- Kingman Resource Management Plan
- BLM Management Updates
- Business from Floor
- Public Comments and Statements
- Future Meetings and Agenda Topics

**SUPPLEMENTARY INFORMATION:** This is a public meeting and the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters are welcome.

Dated: October 31, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-26332 Filed 11-7-89; 8:45 am]

BILLING CODE 4310-32-M

#### Establishment of 14 day Camping Limit on Public Lands Within the Phoenix District, AZ

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Establishment of 14 day camping limit on all public lands within the Phoenix District, AZ.

**SUMMARY:** In accordance with 43 CFR Part 8364, Subpart 8364.1 and Part 8365, a maximum camping stay of 14 days per party is established for all public lands administered by the BLM, Phoenix District of Arizona unless otherwise specifically designated. Persons may occupy any one site or multiple sites within a twenty-five mile radius on public lands not closed or otherwise restricted to camping for a total period of not more than 14 days in any 28 day period. The 14 day limit may be reached either through a number or separate visits or through a period of continuous occupation. Following the 14 days period, persons may not relocate within a distance of twenty-five miles of the site that was previously occupied. The authorized officer may give written permission for extension of the 14 day limit if extenuating circumstances necessitate.

Additionally, no person, except those holding valid mining, tunnel or millsite claims, with a current notice on file with the BLM office responsible for management of the lands where the supplies are located, may leave personal property or supplies unattended on



public lands within the Phoenix District for a period of more than 24 hours without written permission of the authorized officer.

These restrictions apply year round on all public lands used for camping or occupancy administered by the BLM, Phoenix District, Arizona, unless specifically designated. Camping is defined as the erection or use of a tent or structure of natural or synthetic material; or preparing a sleeping bag or other bedding material for use; or mooring of a vessel for the apparent use of overnight occupancy. Occupancy is defined as the taking or holding possession of a camp or residence.

**EFFECTIVE DATE:** November 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Carole Hamilton, Area Manager, Lower Gila Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

**SUPPLEMENTARY INFORMATION:** This occupancy and camping stay limit is being established to assist the Bureau of Land Management in reducing the incidence of unauthorized long-term occupancy, and provide consistency to visitors moving from one BLM district to another. Presently, California, Utah and New Mexico have 14 day camping limits in effect.

Of equal importance is the problem of resource allocation. Long term camping precludes equal opportunities for other members of the public to camp in the same area, creating user conflicts. This ruling is also designed to prevent excessive impacts to soil, vegetation and other resources caused by long-term camping.

Dated: October 30, 1989.  
Henri R. Bisson,  
District Manager.  
[FR Doc. 89-26301 Filed 11-7-89; 8:45 am]  
BILLING CODE 4333-10-M

[ID-942-09-4730-12]

#### Idaho; Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10 a.m., October 30, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines, subdivision of section 27, and a metes-and-bounds survey in section 27, T. 9 N., R. 17 E., Boise Meridian, Idaho, Group No. 781, was accepted October 24, 1989.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: October 30, 1989.  
Jerold E. Knight,  
Acting Chief Cadastral Surveyor for Idaho.  
[FR Doc. 89-26283 Filed 11-7-89; 8:45 am]  
BILLING CODE 4310-68-M

[CO-930-00-4214-10; COC-51046]

#### Notice of Proposed Withdrawal; Opportunity for Public Meeting; Colorado

October 30, 1989.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Department of Energy has requested withdrawal of public land near Naturita, Colorado, for 5 years. The land is proposed as a permanent disposal site for radioactive uranium mill tailings. If this site is designated for permanent disposal, administrative jurisdiction will be transferred to Department of Energy for management. This notice will segregate the land from operation of the public land laws, including location and entry under the mining laws for up to 2 years. The land will continue to be open to mineral leasing.

**DATE:** Comments on this proposed withdrawal or request for a public meeting must be received on or before February 6, 1990.

**ADDRESS:** Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius at 303/236-1752.

**SUPPLEMENTARY INFORMATION:** The Department of Energy filed application on October 20, 1989, to withdraw the following described public land from settlement, sale, location or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

New Mexico Principal Meridian  
Dry Flats Site

T. 46 N., R. 16 W.,  
Sec. 25, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 36, NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ .

The area described aggregates approximately 360 acres in Montrose County. The purpose of this withdrawal is to segregate the land and provide for protection until requirements are completed for a

permanent transfer of administrative jurisdiction to the Department of Energy under the authority of the Uranium Mill Tailings Radiation Control Act of 1978; 92 Stat. 3021, 42 U.S.C. 7801, as amended.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The lands remain open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final and construction is started.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

All persons who desire to submit comments, suggestions, or objections, or who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the publication of this notice.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the transfer of administrative jurisdiction takes place prior to that date.

The temporary segregation of this land in connection with the application shall not affect the administrative jurisdiction over the land and will not authorize any use of the land by the Department of Energy.

Robert S. Schmidt,  
Chief, Branch of Realty Programs.  
[FR Doc. 89-28284 Filed 11-7-89; 8:45 am]  
BILLING CODE 4310-JB-M

[ID-943-90-4214-11; IDI-05284]

#### Proposed Continuation of Withdrawal; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 589.91 acres in the Salmon National Forest continue for the period of years shown below. The lands are now being used for 2 communication sites, 14 recreation sites,



and 10 administrative sites. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing, except for those portions overlapped by the Frank Church River of No Return Wilderness Area.

**EFFECTIVE DATE:** Comments should be received on or before February 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, ID 83706, 208-344-1720.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 1564 be continued for the period of years shown below pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

#### Boise Meridian

##### To be continued for 20 years

McDonald Flat Recreation Area (formerly Forney Recreation Area)

T. 20 N., R. 18 E., unsurveyed,  
Sec. 25, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , and NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

Deep Creek Recreation Area

T. 21 N., R. 19 E., unsurveyed,  
Sec. 27, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ .

Twin Creek Recreation Area

T. 26 N., R. 21 E., unsurveyed,  
Secs. 3 and 4, metes and bounds.

Long Tom Recreation Area

T. 23 N., R. 16 E., unsurveyed,  
Sec. 27, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  (that portion lying west of the north bank of the Salmon River).

Ebenezer Recreation Area

T. 23 N., R. 17 E., unsurveyed,  
Sec. 19, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  (that portion northwest of the Salmon River).

Middle Fork Recreation Area

T. 23 N., R. 16 E., unsurveyed,  
Sec. 28, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 33, N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  (that portion lying north of the Salmon River).

Bankers Island Recreation Area

T. 23 N., R. 17 E., unsurveyed,  
Sec. 20, unpatented portion of S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

Cache Bar Recreation Area

T. 23 N., R. 16 E., unsurveyed,  
Sec. 19, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  (that portion north of the Salmon River).

Stein Mountain Lookout Administrative Site

T. 25 N., R. 22 E.,  
Sec. 32, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ .

Long Tom Lookout Administrative Site

T. 23 N., R. 16 E., unsurveyed,

Sec. 10, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 15, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ .

Stormy Peak Lookout Administrative Site

T. 23 N., R. 16 E., unsurveyed,  
Sec. 3 SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

##### To be continued for 30 years

Wagonhammer Recreation Area

T. 24 N., R. 21 E.,  
Sec. 22, metes and bounds.

Cougar Recreation Area

T. 20 N., R. 20 E.,  
Sec. 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$ .

Yellowjacket Lake Recreation Area

T. 20 N., R. 16 E., unsurveyed,  
Sec. 14, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 23, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ .

Williams Lake Recreation Area

T. 20 N., R. 21 E.,  
Sec. 33, lots 1 to 6, inclusive.

Iron Lake Recreation Area

T. 18 N., R. 19 E.,  
Sec. 11, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , and NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

Copper Creek Administrative Site (formerly Cooper Creek Administrative Site)

T. 20 N., R. 19 E., unsurveyed,  
Sec. 18, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

Hughes Creek Administrative Site (formerly Hughes Creek Administrative Site Addition No. 1)

T. 25 N., R. 21 E., unsurveyed,  
Secs. 15 and 22, metes and bounds.

Williams Creek Recreation Area (formerly Williams Creek Administrative Site)

T. 20 N., R. 20 E.,  
Sec. 12, S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , and N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

Lake Mountain Electronic Communications Site (formerly Lake Mountain Lookout Administrative Site)

T. 20 N., R. 20 E.,  
Sec. 34, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

Indianola Administrative Site

T. 24 N., R. 19 E., unsurveyed,  
Sec. 24, metes and bounds.

Yellowjacket Administrative Site

T. 19 N., R. 17 E., unsurveyed,  
Sec. 9, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

Middlefork Peak Lookout Administrative Site

T. 19 N., R. 15 E., unsurveyed,  
Sec. 25, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  (portion outside of Frank Church River of No Return Wilderness Area).

Baldy Mountain Electronic/Communications Site (formerly Baldy Mountain Administrative Site)

T. 21 N., R. 21 E.,  
Sec. 17, SE $\frac{1}{4}$ SW $\frac{1}{4}$ .

##### To be continued for 40 years:

Colson Creek Administrative Site

T. 23 N., R. 16 E., unsurveyed,  
Sec. 24, W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

Ulysses Lookout Administrative Site

T. 24 N., R. 20 E., unsurveyed,  
Sec. 9, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ .

The areas described aggregate 589.91 acres.

The withdrawal is essential for protection of substantial capital improvements on the sites. The withdrawal closed the land to surface entry and mining, but not to mineral leasing. No changes in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: October 27, 1989.

William E. Ireland,  
Chief, Realty Operations Section.  
[FR Doc. 89-26285 Filed 11-7-89; 8:45 am]  
BILLING CODE 4310-C6-M

#### National Park Service

#### Martin Luther King, Jr., National Historic Site Advisory Commission Meeting

**AGENCY:** Martin Luther King, Jr., National Historic Site, National Park Service, Interior.

**ACTION:** Notice of advisory commission meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the



Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

**DATE:** November 16, 1989.

**ADDRESS:** The Martin Luther King, Jr., Center for Nonviolent Social Change, Inc., Freedom Hall Complex, Room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312.

**SUPPLEMENTARY INFORMATION:** The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site and Preservation District. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson  
Mr. William W. Allison  
Mr. Arthur J. Clement  
Mr. John Cox  
Ms. Barbara Faga  
Mrs. Christine King Farris  
Mrs. Valena Henderson  
Mr. C. Randy Humphrey  
Dr. Elizabeth A. Lyon  
Rev. Joseph L. Roberts  
Mrs. Coretta Scott King, Ex-Officio Member  
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include the status of park development and interpretive activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: October 27, 1989.

Robert M. Baker,  
Regional Director, Southeast Region.  
[FR Doc. 89-26300 Filed 11-7-89; 8:45 am]  
BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-305]

### Investigation

In the matter of certain aramid fiber honeycomb, unexpanded block or slice precursors of such aramid fiber honeycomb, and carved or contoured blocks or bonded assemblies of such aramid fiber honeycomb.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 27, 1989, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hexcel Corporation, 11555 Dublin Boulevard, P.O. Box 2212, Dublin, California 94568-0705.

The complaint alleges unfair methods of competition and unfair acts in violation of section 337 in the importation into and the sale in the United States of certain aramid fiber honeycomb, unexpanded block or slice precursors of such aramid fiber honeycomb, and carved or contoured blocks or bonded assemblies of such aramid fiber honeycomb made by a process which embodies misappropriated trade secrets, the effect or threat of which is to destroy or substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation pursuant to section 337 and issue exclusion orders and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**FOR FURTHER INFORMATION CONTACT:** T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1575.

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of

the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on October 27, 1989, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale, of certain aramid fiber honeycomb, unexpanded block or slice precursors of such aramid fiber honeycomb, or carved or contoured blocks or bonded assemblies of such aramid fiber honeycomb, by reason of alleged misappropriation of trade secrets, the effect or threat of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Hexcel Corporation, 11555 Dublin Boulevard, P.O. Box 2312, Dublin, California 94568-0705.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: EuroComposites, S.A., B.P. 95 Zone Industrielle, L-6401 Echternach, Luxembourg; EuroComposites Corporation, 1815 E. Center Street, Suite 100, Anaheim, California 92805; Dr. Guy Weinand, Val des Roses, 19, Strassen, Luxembourg.

(c) T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401E, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to § 19 CFR 201.16(d) and 53 FR 33034, 33059 (Aug. 29, 1988), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final



determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: October 27, 1989.

**Kenneth R. Mason,**  
Secretary.

[FR Doc. 89-26266 Filed 11-7-89; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-305]

#### Change of Commission Investigative Attorney

In the matter of certain aramid fiber honeycomb, unexpanded block or slice precursors of such aramid fiber honeycomb, and carved or contoured blocks or bonded assemblies of such aramid fiber honeycomb.

Notice is hereby given that, as of this date, James M. Gould, Esq., of the Office of Unfair Import Investigations has been designated as the Commission investigative attorney in the above-cited investigation instead of T. Spence Chubb, Esq.

The Secretary is requested to publish this notice in the *Federal Register*.

Dated: November 1, 1989.

Respectfully submitted,

**Jeffrey R. Whieldon,**

Acting Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 89-26267 Filed 11-7-89; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-306]

#### Certain Bath Accessories and Component Parts Thereof; Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 28, 1989, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Baldwin Hardware Corporation, 841 E. Wyomissing Boulevard, P.O. Box 15048, Reading, Pennsylvania 19612. A supplement to the complaint was filed on October 23, 1989. The complaint, as supplemented, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bath accessories by reason of

alleged direct and induced infringement of: (1) U.S. Letters Patent Des. 299,097; (2) U.S. Letters Patent Des. 299,096; (3) U.S. Letters Patent Des. 296,637; (4) U.S. Letters Patent Des. 299,398; (5) U.S. Letters Patent Des. 299,397; and (6) U.S. Letters Patent Des. 299,604, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

#### FOR FURTHER INFORMATION CONTACT:

John R. Kroeger, Esquire, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1573.

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 3304, 33057 (Aug. 29, 1988).

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on October 27, 1989, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain bath accessories and component parts thereof by reason of alleged direct and induced infringement of: (1) U.S. Letters Patent Des. 299,097; (2) U.S. Letters Patent Des. 299,096; (3) U.S. Letters Patent Des. 296,637; (4) U.S. Letters Patent Des. 299,398; (5) U.S. Letters Patent Des. 299,397; and (6) U.S. Letters Patent Des. 299,604; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Baldwin Hardware Corporation, 841 E. Wyomissing Boulevard, P.O. Box 15048, Reading, Pennsylvania 19612.

(b) The respondents are the following companies alleged to be in violation of

section 337, and are the parties upon which the complaint is to be served: Franksu Enterprise Corp., 2F, No. 23-1, Lane 62, Chi Nan Road, Sec. 2, P.O. Box 55756, Taipei, Taiwan; Frank Su, 2F, No. 23-1, Lane 62, Chi Nan Road, Sec. 2, P.O. Box 55756, Taipei, Taiwan; Frank's Locks, 2F, No. 23-1, Lane 62, Chi Nan Road, Sec. 2, P.O. Box 55756, Taipei, Taiwan; Garrett International, Inc., 850 W. Quaking Aspen, Salt Lake City, Utah 84123; Kemp & George, 306 Dartmouth Street, Boston, Massachusetts 02116; Frank's Brassware, c/o Designer Lines, 3481 Opal Street, Riverdale, California 92509.

(c) John R. Kroeger, Esquire, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401K, Washington, DC, 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057, 33063 (Aug. 29, 1988). Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 3034, 33059 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order of a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: October 27, 1989.

**Kenneth R. Mason,**  
Secretary.

[FR Doc. 26265 Filed 11-7-89; 8:45 am]

BILLING CODE 7020-02-M



**[Investigation No. 337-TA-307]****Investigation**

In the matter of certain catalyst components and catalysts for the polymerization of olefins.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 6, 1989, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Himont Incorporated and Himont U.S.A., Incorporated, Three Little Falls Centre, 2801 Centerville Road, P.O. Box 15439, Wilmington, Delaware 19850-5439. A supplement to the complaint was filed on October 19, 1989. The complaint, as supplemented, alleges violations of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain catalyst components and catalysts for the polymerization of olefins, by reason of alleged direct, induced and contributory infringement of (1) claims 1-3, 5, 7-8, 10-12, 14 and 16-19 of U.S. Letters Patent 4,476,289 and (2) claims 1-15 and 17 of U.S. Letters Patent 4,636,486; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**FOR FURTHER INFORMATION CONTACT:** Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1572.

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of

Practice and Procedure, 53 Fed. Reg. 33034, 33057 (Aug. 29, 1988).

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on November 1, 1989, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, into the United States, the sale for importation, or the sale within the United States after importation of certain catalyst components and catalysts for the polymerization of olefins by reason of alleged direct, induced or contributory infringement of (1) claims 1, 2, 3, 5, 7, 8, 10, 11, 12, 14, 16, 17, 18, or 19 of U.S. Letters Patent 4,476,289 or (2) claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, or 17 of U.S. Letters Patent 4,636,486, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—Himont Incorporated, Three Little Falls Centre, 2801 Centerville Road, P.O. Box 15439, Wilmington, Delaware 19850-5439; Himont U.S.A., Inc., Three Little Falls Centre, 2801 Centerville Road, P.O. Box 15439, Wilmington, Delaware 19850-5439.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Toho Titanium Company, Limited, No. 17 Mori Building, 26-5 Toranomon, 1 Chrome Minato Ku, Tokyo, Japan; Fina Oil and Chemical Company, 8350 N. Central Expressway, Dallas, Texas 75221.

(c) Juan Cockburn, Esq., Officer of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401Q, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the names respondents in accordance with § 201.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057, 33063 (Aug. 29, 1988). Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33059 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: November 2, 1989.

Kenneth R. Mason,  
Secretary.

[FR Doc. 89-26268 Filed 11-7-89; 8:45 am]

BILLING CODE 7020-02-M

**[Investigation No. 337-TA-298]****Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement**

In the matter of certain low friction drawer supports, components thereof, and products containing same.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: GM International, Inc.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 1, 1989.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that



information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**Written Comments:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20438, on or before November 20, 1989. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

By order of the Commission.

Issued: November 1, 1989.

Kenneth R. Mason,  
Secretary.

[FR Doc. 89-26269 Filed 11-7-89; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31526]

**Laurinburg and Southern Railroad Co., et al.; Lease and Operation Exemption; Southern Railway Co.**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts Laurinburg and Southern Railroad Company and its subsidiary, Yadkin Valley Railroad Company, from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, for the lease and operation of two lines of railroad in Forsyth, Stokes, Surry, Wilkes and Yadkin Counties, NC, which are presently owned and operated by Southern Railway Company, a subsidiary of the Norfolk Southern Corporation. These lines run between Rural Hall, NC, and North Wilkesboro, NC, and between Mount Airy, NC, and Brook Cove, NC, totalling 101.7 miles. The exemption is subject to employee protective conditions.

**DATES:** This exemption is effective on November 20, 1989. Petitions for reconsideration must be filed by December 5, 1989.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31526 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.  
(2) Petitioners' representatives: Fritz R. Kahn, Suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005-2301; and Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

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

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: November 1, 1989.

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

Noreta R. McGee,

Secretary.

[FR Doc. 89-26399 Filed 11-7-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

November 1, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information: (1) The title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours)

associated with the collection; and, (7) an indication as to whether section 3504(h) of Public Law 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

### Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Request that applicant for naturalization appear for interview.

(2) N-430. Adjudications Division (COADN), Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The information requested on this form is needed in order to prepare a Certificate of Naturalization for an eligible petitioner as prescribed in section 338 of the Immigration and Nationality Act.

(5) 350,000 respondents at .083 hours per response.

(6) 29,050 estimated annual burden hours.

(7) Not applicable under 3504(h).

### Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Aircraft/Vessel report.

(2) I-92. Inspections Division (COINS) < Immigration and Naturalization Service.

(3) On occasion.

(4) Businesses or other for-profit, Federal agencies or employees. This form is part of the manifest requirements of sections 231 and 251 of the Immigration and Nationality Act and is used by other agencies for data collection and statistical analyses.

(5) 600,000 estimated annual respondents at .18 hours per response.



(6) 108,000 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 89-26333 Filed 11-7-89; 8:45 am]

BILLING CODE 4410-10-M

#### Antitrust Division

##### Pursuant to the National Cooperative Research Act of 1984—Joint Research Agreement Between Corning Inc. and NGK Insulators, Ltd.

Notice is hereby given that, on October 12, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Corning Incorporated filed a written notification, on behalf of Corning Incorporated and NGK Insulators, Ltd., simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under the specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Research Agreement and its general areas of planned activities are given below.

The parties to the Joint Research Agreement are as follows:

—Corning Incorporated, a New York corporation with its principal place of business at Corning, New York, 14831; and

—NGK Insulators, Ltd., a Japanese Corporation, with its principal place of business at 2-56, Suda-cho, Mizuhoku, Nagoya 467, Japan.

The nature and objective of the Joint Research Agreement is as follows:

—To conduct joint research relating to the development of new catalyst supports or substrates not currently in commercial production for use in catalytic converters in exhaust gas systems of motor vehicles to control air pollution, using innovative technologies. Research tasks to be undertaken shall be determined by the parties in the course of work under the Agreement.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 26336 Filed 11-7-89; 8:45 am]

BILLING CODE 4410-01-M

##### Pursuant to the National Cooperative Research Act of 1984—Advanced Television Test Center, Inc./Cable Television Laboratories, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Television Test Center, Inc. ("Test Center") and Cable Television Laboratories, Inc. ("CableLabs") on October 2, 1989 have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture and its general area of planned activity are given below.

On July 26, 1989, Test Center and CableLabs entered into an agreement to coordinate testing efforts to facilitate the development of data that the Federal Communications Commission and its Advisory Committee on Advanced Television Service, as well as the Advanced Television Systems Committee, will require and utilize to determine appropriate actions with regard to the introduction of advanced television service in the United States. The parties may also undertake additional ATV tests not required by the Advisory Committee on Advanced Television Service.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-26335 Filed 11-7-89; 8:45 am]

BILLING CODE 4410-01-M

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-77]

##### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 54FR43506, Notice Number 89-74, October 25, 1989.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING: November 15, 1989, 8:30 a.m. to 5 p.m. Meeting has been cancelled.

#### CONTACT PERSON FOR MORE

INFORMATION: Ms. Catherine Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2367).

Dated: November 2, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-26308 Filed 11-7-89; 8:45 am]

BILLING CODE 7510-01-M

#### NATIONAL SCIENCE FOUNDATION

##### Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by December 8, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit



system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the *Federal Register* on July 17, 1989.

The application received is as follows:

#### 1. Applicant

William R. Fraser, Point Reyes Bird Observatory, Stinson Beach, California 94970.

#### Activity for Which Permit Requested

Taking. The applicant is conducting a study of the effects of the January 1989 fuel oil spill near Arthur Harbor, Antarctica on seabirds. The applicant requests permission to band, weigh and measure many sea birds, as well as to place radio transmitters on some of the birds to measure foraging efficiency. Species to be taken are as follows:

Species	Number
Adelie Penguin.....	4150
Giant Fulmar.....	400
Kelp Gull.....	100
South Polar Skua.....	1100
Brown Skua.....	50
Blue-eyed shag.....	500

#### Location

Palmer Station and nearby islands in Arthur Harbor.

#### Dates

January 1990-March 1990.

Charles E. Myers,

Permit Office.

[FR Doc. 89-26224 Filed 11-7-89; 8:45 am]

BILLING CODE 7555-01-M

#### Meeting; Industrial Advisory Committee for Computer and Information Science and Engineering

The National Science Foundation Announces the Following Meeting:

**Name:** Industrial Advisory Committee for Computer and Information Science and Engineering.

**Date and Time:** November 20, 1989, 8:30 a.m.-3:30 p.m.

**Place:** National Science Foundation, 1800 G Street, NW., Room 523, Washington, DC 20550.

**Type of Meeting:** Part open.

**Contact Person:** Odessa Dyson, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, Washington, DC 20550, (202) 357-7636.

**Minutes:** May be obtained from contact person listed above.

**Purpose of Meeting:** To provide a forum enabling the Assistant Director and other senior staff of the Directorate to obtain industry views pertaining to desirable research directions.

**Agenda:** 8:30 a.m.-Noon—Review CISE Programs and General Discussion; Noon—Lunch; 1:00 p.m.-3:30 p.m.—CISE Long Range Plans.

**M. Rebecca Winkler,**

**Committee Management Officer.**

[FR Doc. 89-26350 Filed 11-7-89; 8:45 am]

BILLING CODE 7555-01-M

#### Meeting; Advisory Panel for Cultural Anthropology; Part Open

The National Science Foundation announces the following meeting:

**Name:** Advisory Panel for Cultural Anthropology, NSF.

**Date and Time:** November 27 & 28, 1989, 9:00 a.m.-5:00 p.m. each day.

**Place:** National Science Foundation, 1800 G Street, NW., Room 1243, Washington, DC 20550.

**Type of Meeting:** Part Open—Open 11/28: 10-11 a.m.; Closed 11/27: 9 a.m.-5 p.m.; Closed 11/28: 9 a.m.-10 a.m.; 11 a.m.-5 p.m.

**Contact Person:** Dr. Stuart Plattner, Program Director, Cultural Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357-7804.

**Minutes:** May be obtained from contact person listed above.

**Purpose of Meeting:** To provide advice and recommendations concerning support for research in physical anthropology.

**Agenda:** Open—General discussion of the current status and future plans of the Anthropology Program. Closed—To review and evaluate research proposals as part of the selection process for awards.

**Reason for Closing:** 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 the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

**Committee Management Officer.**

[FR Doc. 89-26351 Filed 11-7-89; 8:45 am]

BILLING CODE 7555-01-M

#### Division of Ocean Sciences; Meeting

The National Science Foundation announces the following meeting:

**Name:** Advisory Panel for Ocean Sciences Research, NSF.

**Date and Time:** November 28, 29, 1989; 8:30 a.m.-5:00 p.m.

**Place:** American Association for the Advancement of Science, 1333 H Street, NW., Washington, DC 20005.

**Type of Meeting:** Closed.

**Contact Person:** Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, Room 609, National Sciences Foundation, Washington, DC 20550, Telephone (202) 357-9600.

**Minutes:** May be obtained from the Contact Person at the above address.

**Purpose of Meeting:** To provide advice and recommendations concerning support for research in oceanography.

**Agenda:** Closed—To review and evaluate research proposals as part of the selection process for awards.

**Reason for Closing:** 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 the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

**Committee Management Officer.**

[FR Doc. 89-26352 Filed 11-7-89; 8:45 am]

BILLING CODE 7555-01-M

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

#### Florida Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (FPC, the licensee), for operation of the Crystal River 3 Nuclear Generating Station, located in Citrus County, Florida.

The amendment, requested by the licensee by letter of August 25, 1989, would replace the current Technical Specifications (TS) with a set of TS based on the new Babcock & Wilcox Owners Group Standard Technical Specifications currently under review by the staff. The adoption of Owners Group approved TS is part of an industry-wide initiative to standardize and improve TS. Crystal River 3 is the lead plant for



adoption of the Bobcock & Wilcox Owners Group standardized TS.

The changes in the TS can be grouped into 4 categories: non-technical changes, more stringent requirements, relocation of requirements to other controlled documents, and relaxations of existing requirements.

Non-technical changes are intended to make the TS easier to use for plant operations personnel.

More stringent requirements are either more conservative than corresponding requirements in the current TS, or are additional restrictions which are not in the current TS. The more stringent requirements provide an additional safety margin.

Relocation of requirements involved items that are currently in the TS but do not meet the criteria set forth in the Commission's Interim Policy Statement on Technical Specification Improvement. These items may be removed from the TS and placed in some other controlled document. Once these items have been relocated, the licensee generally would be able to revise them under the provisions of 10 CFR 50.59 without a license amendment.

The relaxation of existing requirements is based on operating experience. When restrictions are shown to provide little or no safety benefit, and place a burden on the licensee, their removal from the TS may be justified. In most cases, relaxations have previously been granted to individual plants on a plant-specific basis.

For further details regarding the proposed changes in the TS, see the application for amendment dated August 25, 1989, which is available in the Local Public Document Room and the Commission's Public Document Room.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 8, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida, 32629. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish

those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow, Director, Project Directorate II-2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of the Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to A.H. Stephens, General Counsel, Florida Power Corporation, MAC-A5D, P.O. Box 14042, St. Petersburg, Florida 33733, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its



technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this section, see the application for amendment dated August 25, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida, 32629.

Dated at Rockville, Maryland, this 1st day of November 1989.

For the Nuclear Regulatory Commission,  
Herbert N. Berkow,

Director, Project Directorate II-2, Division of  
Reactor Projects—I/II, Office of Nuclear  
Reactor Regulation.

[FR Doc. 89-26303 Filed 11-7-89; 8:45 am]

BILLING CODE 7590-01-M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Evidence for Application of Overall Minimum.

(2) *Form(s) submitted:* G-319 and G-320.

(3) *OMB Number:* 3220-0083.

(4) *Expiration date of current OMB clearance:* 12-31-89.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 290.

(9) *Total annual responses:* 290.

(10) *Average time per response:* 417 hours.

(11) *Total annual reporting hours:* 121

(12) *Collection description:* Under section 3(f)(3) of the Railroad Retirement Act the total monthly benefits payable to a railroad employee and his or her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act.

#### ADDITIONAL INFORMATION OR

**COMMENTS:** Copies of the proposed forms and supporting documents can be obtained from Ronald J. Hodapp, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Ronald J. Hodapp,

Director of Information, Resources  
Management.

[FR Doc. 89-26286 Filed 11-7-89; 8:45 am]

BILLING 7905-01-W

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review By Office of Management and Budget

*Agency Clearing Officer:* Kenneth A. Fogash, (202) 272-2142.

*Upon Written Request Copy Available*

*From:* Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-1002.

New, Rule 15c2-6 questionnaire.  
File No. 270-326.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance a questionnaire regarding compliance with Rule 15c2-6.

Three hundred twenty-five respondents incur an estimated average burden of fifteen minutes to comply with this questionnaire.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the cost of Commission rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms to Kenneth Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Project 3235-0500], Room 3208, New Executive Office Building, Washington, DC 20543.

Dated: November 1, 1989.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-26252 Filed 11-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27414; File No. SR-Amex-89-23]

### Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to the Exchange's Rules and Policies with Respect to Common Stock Voting Rights

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1989, the American Stock Exchange Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend Section 122 of the Amex Company Guide by basing its voting rights policy upon the provisions of Rule 19c-4 under the Act<sup>1</sup> and rescinding its current rules and policies with respect to common stock voting rights.

It is proposed that section 122 of the Company Guide be amended as follows: (All added material is italicized; all deleted material is [bracketed].)

§ 122 [Common] Voting Rights. *No [class of common stock] equity security shall be eligible for listing unless it was or is proposed to be issued in a transaction permitted by SEC Rule 19c-4.*

The Exchange will not approve an application for the listing of a non-voting common stock issue unless: (i) *The rights of the holders of such shares are, except for voting, substantially the same*

<sup>1</sup> On July 7, 1988, the Commission adopted Rule 19c-4, under the Act, regarding shareholder voting rights. The Rule prohibits national securities exchanges and associations from listing or quoting the common stock or other equity securities of a domestic company that has issued a class of securities or taken other corporate action that has the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of common stock. See Securities Exchange Act Release No. 34-25891 (July 7, 1988), 53 FR 26376.



as those of the holders of the company's voting common stock; and (ii) the company agrees to provide such holders copies of its annual report, proxy and any other material sent generally to the holders of its voting securities. [The Exchange may approve the listing of a common stock which has the right to elect only a minority of the board of directors. (See also SEC Rule 19c-4).]

## II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### (1) Purpose

In July 1988 the SEC adopted Securities Exchange Act Rule 19c-4, which establishes uniform minimum voting rights listing and quotation standards for all marketplaces. The Exchange has now determined to rescind its present rules and policies with respect to common stock voting rights, as set forth in Section 122 of the Amex Company Guide, in favor of applying the uniform minimum voting rights listing standards for all equity securities as set forth in Rule 19c-4.

While the Exchange will consider applications to list non-voting classes of stock,<sup>17</sup> no such security shall be eligible for listing unless its holders have substantially the same rights, except for voting, as do holders of the company's other classes of common stock. Moreover, issuers will be required to agree to provide such holders with copies of annual reports, proxies and any other material sent generally to the holders of other publicly held classes of common stock.

#### (2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is

intended to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-89-23 and should be submitted by November 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

<sup>17</sup> 17 CFR 200.30-3(a)(2) (1989).

Dated: November 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-26315 Filed 11-7-89; 8:45 am]

BILLING CODE 8010-01-W

[Release No. 34-27417; File No. SR-CBOE-89-22]

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Fines for Failure to Perform Certain Reporting Duties

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Significant provisions of the proposed new rule are summarized below.

#### Rule 6.51A Fines for Failure to Perform Certain Reporting Duties

##### Subsection (a) Definitions

This subsection defines terms used elsewhere in the rule.

Subsection (b) Fine for failure to report accurate transaction times

This subsection establishes a summary fine to be imposed upon a member who submits inaccurate or no transaction times to the Exchange for a significant percentage of transactions executed during a given month. A fine schedule is included which ranges from \$100, if 30% of a member's times during the month are inaccurate, to \$500, if 50% or more of such times are inaccurate. If a member incurs such a fine twice within a nine-month period, any subsequent fine imposed under the rule during that nine-month period will be calculated under a repetitive fine provision. Such a fine will be calculated as the sum of the normal fine amount plus an amount equal to the most recently incurred total fine for failing to report accurate transaction times.

The rule sets forth a test for determining whether or not a time shall

<sup>18</sup> Currently, section 122 provides that the Exchange will not approve an application for the listing of a non-voting common stock issue.



be considered accurate. In general, if a time is within five minutes of the time for the transaction submitted by the contra-party or the time is within five minutes (10 minutes for Standard and Poor's 100 Stock Index ("OEX") transactions) of the time the transaction was disseminated by the Exchange's price reporter, such time shall be deemed accurate. Otherwise, with certain specified exceptions, it shall be considered inaccurate.

The rule provides that any imprecision in the accuracy test shall be no defense to the imposition of a fine. Such imprecision has been counterbalanced by the allowance of the five-minute differential in the accuracy test and the requirement that a minimum percentage of transaction times must be inaccurate before a fine is incurred. The benefits of a complete and accurate audit trail justify this policy.

Subsection (c) Fine for failure to submit trade information to Standard and Poor's 100 Stock Index ("OEX") price reporter

This subsection establishes a summary fine to be imposed upon a member who fails to submit the required information to the OEX price reporter for a significant percentage of OEX sale transactions executed during a given month. The fine shall be \$1,000 if 50% or more of such sale transactions are not submitted to the price reporter.

The rule provides that any unidentified errors or omissions which occur in the price reporting system shall be no defense to the imposition of a fine. The possibility that a small, but significant, percentage of trade information actually submitted for OEX price reporting may not be entered accurately into the price reporting system is counterbalanced by the percentage of transactions which must not be reported before a fine is incurred.

Subsection (d) Referral to Business Conduct Committee

In lieu of imposing a fine under the proposed rule, the conduct which would otherwise be covered by the proposed rule may be referred to the Exchange's Business Conduct Committee for handling under regular, not summary, disciplinary procedures. In such a case, any sanction imposed would not be governed by the proposed rule.

Subsection (e) Treatment as minor violation

If a fine imposed under the proposed rule does not exceed \$2,500, is uncontested, and is promptly paid, the improper conduct which led to such fine shall be treated and reported to

regulatory authorities as a minor violation of Rule 6.51.

Subsection (f) Billing of Fines

Fines imposed under the proposed rule will be billed to the member and/or his or her clearing firm. When the bill is issued, the Exchange will set a time period which shall be no shorter than 15 days for the member to request verification of a fine.

Subsection (g) Collection of Fines

The clearing firm of a member upon whom a fine is imposed under the proposed rule shall be required to collect the fine. Certain collection procedures are provided.

Subsection (h) Requests for Verification

This subsection establishes a process whereby a member may request verification of a fine which has been assessed against such member under the proposed rule. Request for verification shall deal solely with factual issues and the application of the proposed rule thereto. This would include such matters as consideration of evidence that accurate times actually submitted were keypunched incorrectly, determination of whether an exception to the general accuracy test applies, confirmation that the computation of the applicable fine is correct, and determination that the appropriate clearing firm for a member has been billed.

Exchange employees shall verify the accuracy of the fine for which a request for verification was made and determine whether the fine should remain as billed or be modified or eliminated. The member who requested verification may be required to submit documentary evidence or other information. The burden shall be on the member to produce such pertinent evidence or information.

The determination made on a request for verification is not appealable. However, the fine which is the subject of a request for verification may be protested under a separate procedure.

Subsection (i) Protests

This subsection establishes a procedure whereby a member may protest the assessment of a fine under the proposed rule. A member will have a specified time period in which to file a written statement initiating the protest. The statement must identify the fine objected to and give reasons for such objection. It must also include a request for a hearing before the Protest Committee if such a hearing is desired.

The filing fee will be \$100 for a simple protest or \$300 for a protest which will include a hearing.

The Protest Committee shall consist of members of the Exchange's floor procedure committee which has jurisdiction over the station(s) at which the majority of transactions which resulted in the imposition of the fine were executed. If a hearing is held, the Protest Committee shall conduct the hearing and determine all questions concerning the admissibility of evidence. A member shall have the right to present arguments and evidence at the hearing which supports his or her protest. Formal rules of evidence shall not apply. Witnesses shall testify under oath and may be questioned by the Protest Committee and a representative of the Exchange. A transcript of the hearing shall be taken and become part of the record.

The Protest Committee shall decide the outcome of a protest based on the written statement and supporting documents submitted by the protesting member and the data and other information furnished by Exchange staff. The Protest Committee may request the production of additional documentary evidence from the member or additional information from Exchange staff. If a hearing was held, all admitted evidence and arguments presented shall also be taken into account. The Protest Committee may decrease or leave unchanged the fine protested. Alternatively, the Protest Committee may increase the fine if, based on the facts, normal application of the rule dictates the fine be increased. The Protest Committee shall not have the power to increase fines based on its own discretion. Finally, a decision of the Protest Committee may be appealed under the Exchange's normal appeal procedures.

Subsection (j) Suspension of Fines Under Unusual Circumstances

Under unusual circumstances the appropriate floor procedure committee, with the approval of the President of the Exchange, may suspend application of summary fines under the proposed rule. Such a suspension order shall be in writing and shall state the reasons therefor.

The rule also contains examples illustrating how various provisions of the proposed rule operate. These examples will be communicated to the membership in a floor circular.



## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

### (A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Proposed Rule 6.51A establishes summary fine procedures for a member's failure to perform certain reporting duties which are currently required under Rule 6.51. The fines are for:

- (1) failure to accurately report transaction times, and
- (2) failure to submit trade information to the OEX price reporter.

Accurate transaction times and price reporting of all transactions are significant components in the establishment of a complete audit trail for trades effected at the Exchange. The purpose of the proposed summary fine procedures is to enable the Exchange to penalize members who are deficient in meeting their reporting duties. The overall objective is to deter such conduct and thereby ensure establishment of the necessary audit trail information.

A summary fine approach is being proposed as the most efficient method to encourage better performance of the reporting duties on a floorwide basis. Using objective criteria and computer generated reports, the Exchange will have the ability to immediately impose fines on all Market-Makers and Floor Brokers who are failing to meet specified levels of compliance. Use of the Exchange's normal disciplinary procedures on a case-by-case basis for this purpose would be impracticable. Introduction of numerous transaction reporting cases would clog the regular disciplinary process, which is geared toward handling more serious rule violations. Moreover, imposition of summary fines should yield much speedier results. At the same time, in lieu of imposing a summary fine in any given case, the conduct of the member involved may be handled under normal disciplinary procedures. So, for example, serious or repetitive failure to satisfy reporting obligations may still be handled under existing disciplinary

procedures, in which case any sanction imposed would not be governed by proposed Rule 6.51A.

As proposed, fines not exceeding \$2,500 imposed under Rule 6.51A, which are not contested and are promptly paid, would be treated and reported as minor violations of Rule 6.51. Such fines would be reported to the SEC on a quarterly basis. Quarterly reports would identify the name of each member fined in the relevant period, the nature and date or period of the violation, the fine imposed, and the date such penalty became final. The purpose of such proposed treatment is to permit the Exchange to meet its reporting requirements on a timely basis and in an efficient manner.

The Exchange believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder. In particular, the proposed rule is consistent with the following sections of the Act which provide, among other things, that the rules of the Exchange:

- Are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest (section 6(b)(5));
- Provide that its members shall be appropriately disciplined for violation of the provisions of the rules of the Exchange (section 6(b)(6)); and
- Provide a fair procedure for the disciplining of members (section 6(b)(7)).

### (B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

Dated: November 2, 1989.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-26316 Filed 11-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27418; File No. SR-CBOE-89-18]

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Priority of Bids and Offers

On August 18, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19(b)-4 thereunder,<sup>2</sup> a proposed rule change to

<sup>1</sup> 17 CFR 200.30-3(a)(12) (1989).

<sup>2</sup> 15 U.S.C. 78a(b)(1) (1982).

<sup>3</sup> 17 CFR 240.19b-4 (1989).



permit combination orders which are executed in conjunction with stock orders (conversions and reversals) the same priorities as combination orders that do not involve stock transactions and to update Exchange Rule 6.45 to reflect that Board Brokers are no longer on the Exchange.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27224 (September 6, 1989), 54 FR 37857 (September 13, 1989). No comments were received on the proposed rule change.

Currently, Exchange rules provided that if there are two or more bids for the same option contract, the highest bid is given priority. If two or more bids represent the highest price and one such bid is displayed by a Board Broker or Order Book Official, the bid displayed by the Board Broker or Order Book Official has priority. If two or more bids represent the highest price and a bid displayed by a Board Broker or Order Book Official is not involved, priority is given to the bids in the sequence in which they are made. These priority rules do not apply in the case where a member is holding a spread order, a straddle order, or a combination order and bidding on the basis of a total credit or debit for the order and that member has determined that the order may not be executed by a combination of transactions with or within the bids and offers displayed by the Board Broker or Order Book Official or announced by members in the trading crowd. The member may execute the spread, straddle, or combination at the total credit or debit without giving priority to bids or offers of members in the trading crowd or of the Board Broker or Order Book Official that are no better than the bids or offers comprising such total credit or debit. A stock/option order, such as a buy write or other similar trading strategy, that only involves one option series has priority over the bids and offers of members in the trading crowd but not over the bids and offers of the Board Broker or Order Book Official.

The current proposal will update Exchange Rule 6.45 to reflect the fact that Board Brokers are no longer on the Exchange. The amended rule will refer to bids and offers displayed in the customer limit order book instead of to bids and offers displayed by Board Brokers or Order Book Officials. In addition, the current proposal will substitute the term "member" for other

uses of the term "Floor Broker" or "Board Broker."

Substantively, the current proposal will afford combination orders which are executed in conjunction with stock (conversions and reversals) the same priorities as combination orders that do not involve stock. The Exchange believes that the current proposal will allow such combination orders to be more efficiently executed. The Exchange also believes that the priority of the public customer order limit book will not be greatly affected since the two-sided option order which is part of a conversion/reversal will only be able to touch the book on one side.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6.<sup>3</sup> Specifically, the Commission finds that affording combination orders which involve stock the same priorities as combination orders that do not involve stock is consistent with section 6(b)(5) in that it will perfect the mechanism of a free and open market by enabling combination orders which involve stock to be more efficiently executed. The Commission believes that the proposed rule change will not substantially affect the customer limit order book since the two-sided option order which is part of a conversion/reversal will only be able to touch the book on one side. The Commission also believes that the CBOE updating its rules to reflect the fact that Board Brokers are no longer on the Exchange is a proper administrative decision of the CBOE and will not alter the substance and effect of the obligations.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>4</sup> that the proposed rule change (SR-CBOE-89-18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Dated: November 2, 1989.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-26320 Filed 11-7-89; 8:45 am]

BILLING CODE 8010-01-M

<sup>3</sup> 15 U.S.C. 78f (1982).

<sup>4</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>5</sup> 7 CFR 200.30-3(a)(12) (1989).

[Release No. 34-27413; File No. SR-MSE-89-8]

**Self-Regulatory Organizations;  
Midwest Stock Exchange, Inc.; Order  
Approving Proposed Rule Change  
Relating to an Increase in the Number  
of Shares Subject to the Guaranteed  
Pricing Parameters of the BEST  
System From 1099 to 2099**

On September 6, 1989, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Article XX, Rule 34 ("BEST Rule").

The proposed rule change was noticed in Securities Exchange Act Release No. 27270 (September 20, 1989), 54 FR 40223 (September 29, 1989). No comments were received on the proposal.

Rule 34 provides that the MSE Guaranteed Execution System (the "BEST System") is available to Exchange members and, where applicable, to members of a participating exchange who send orders to the Exchange Floor through a foreign exchange linkage established pursuant to Rule 39. The BEST System includes all issues in the MSE Specialist System that are traded in the Dual Trading System and the NASDAQ/NMS securities. Currently, Rule 34 requires that all agency orders (i.e. orders for the accounts of non-broker/dealers) from 100 up to and including 1,099 shares be filled within certain guaranteed pricing parameters.<sup>3</sup> The Exchange has proposed to increase the number of shares subject to the guaranteed pricing parameters on agency orders from 1099 to 2099.<sup>4</sup> The Exchange believes that the larger size guarantees will enhance the competitiveness of the Exchange by attracting additional order flow.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19-b (1989).

<sup>3</sup> Generally, under Rule 34, market orders are guaranteed execution at the best bid and offer, while limit orders are guaranteed execution based on trading in the primary market.

<sup>4</sup> The number of shares on orders eligible for mandatory automatic execution over the MSE's Automatic Execution ("MAX") System, however, will remain at 1,099.



requirements of Section 6(b)(5) of the Act.<sup>5</sup> The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that "the rules of the exchange \* \* \* facilitat[e] transactions in securities \* \* \* and perfect the mechanism of a free and open market" while protecting the public interest. By allowing a customer to obtain up to 2,099 shares at the guaranteed best price prevailing at the time of his order, the Commission believes that public customers will benefit from receiving executions of a greater number of shares within the guaranteed pricing parameters of Rule 34. Moreover, the proposed rule change will increase the depth of the MSE market by raising the minimum execution guarantee.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Dated: November 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-26253 Filed 11-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27411; File No. SR-MSTC-89-09]

**Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by Midwest Securities Trust Company Concerning Modification to Interim Accounting Procedure for the Processing of Large Cash Dividends Involving Due Bills**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 6, 1989, Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described below (SR-MSTC-89-09). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change clarifies

and revises MSTC's interim accounting procedure for the processing of large cash dividends involving due bills.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

**(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The purpose of the proposed rule change is to clarify MSTC's interim accounting procedure applied to large cash distributions and extraordinary cash dividends ("Special Cash Dividends"). Previously, participants were required to settle due bills on those book-entry movements representing trades settling from the payable date through the due bill redemption date (i.e., ex-dividend date + 4) outside of the depository facilities. (Due bills are utilized in order to correctly assign a particular dividend or distribution to the buyer in a transaction that would settle after the appropriate record date.) Handling due bills and payments in this manner has been cumbersome and has caused collection delays for some participants. The interim accounting procedure will begin the day after record date and end on the due bill redemption date. Under the new procedure, participants will receive daily net credits or debits, as appropriate, beginning on the day after payable date, for the net result of the previous day's book-entry movements and settling trade activity.

The proposed rule change is consistent with section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions involving Special Cash Dividends.

**(B) Self-Regulatory Organization's Statement on Burden on Competition**

MSTC does not believe that any

burdens will be placed on competition as a result of the proposed rule change.

**(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act<sup>2</sup> and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

You are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at MSTC's principal office. All submissions should refer to File number SR-MSTC-89-09 and should be submitted by November 29, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 31, 1989.

[FR Doc. 89-26317 Filed 11-7-89; 8:45 am]

BILLING CODE 8010-01-M

<sup>1</sup> 15 U.S.C. 78s(b)(3) (1981).

<sup>5</sup> 15 U.S.C. 78f (1982).

<sup>6</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>7</sup> 17 CFR 200.30-3(a)(12) (1989).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1981).



[Release No. 34-27415; File No. SR-PHLX-89-50]

**Self-Regulatory Organizations;  
Proposed Rule Change by the  
Philadelphia Stock Exchange, Inc.  
Relating to Crossing, Facilitation, and  
Solicited Orders on the Exchange's  
Equity and Index Options Floor**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 10, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's  
Statement of the Terms of Substance of  
the Proposed Rule Change**

(Additions are italicized.)

(a) No change.

(b) *Facilitation Orders. A Floor Broker holding an options order for a public customer and a contrasale order may cross such orders in accordance with paragraph (a) above or may execute such orders as a facilitation cross in the following manner:*

(i) *A legible "F" must be recorded on the floor ticket for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities.*

(ii) *The Floor Broker shall request markets for the execution of all options components of the order. After providing an opportunity for such markets to be made, the Floor Broker shall announce that he holds an order subject to facilitation and shall bid (or offer) in between the market for each options component and disclose all terms and conditions of the order including all securities which are components of the order.*

(iii) *After all market participants in the crowd are given a reasonable opportunity to accept all terms and conditions made on behalf of the public customer whose order is subject to facilitation, the Floor Broker may immediately thereafter cross all or any remaining part of such order and the facilitation order at each customer's bid or offer by announcing by public outcry that he is crossing and by stating the quantity and price(s).*

*Once a Floor Broker has announced an order as subject to facilitation and*

*has established a bid (or offer) in between the market for the option(s) to be facilitated, the order cannot be broken up by a subsequent superior bid or offer for just one component to the facilitated order.*

(c) *Solicited Orders. For the purpose of this Rule, a solicitation occurs whenever an order, other than a cross, is presented for execution in the trading crowd resulting from an away-from-the-crowd expression of interest to trade by one broker dealer to another.*

*If a member appears in the trading crowd in response to a solicitation, other trading crowd participants must be given a reasonable opportunity to respond to the order which prompted the solicitation. The solicitor or his representative must give all information to the trading crowd which was given to the solicited member before the solicited member may respond to the order.*

**II. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

The purpose of the proposed rule change is to correlate the procedures on the PHLX equity and index options floor with those adopted by the American Stock Exchange ("AMEX") and the Chicago Board Options Exchange ("CBOE").

The proposed rule change sets out procedures for handling facilitation orders. The proposal is intended to provide means for a member firm to take the other side of (or "facilitate") a customer options order. It is designed to provide the customer a fill at a better price, or in greater size, than would otherwise be available on the floor, but to shield the member firm from having its side of the trade taken by traders on the floor while leaving the customer order unexecuted. The proposal accomplishes this by first having the executing floor broker request markets

for all options components of the order. The broker then indicates that he has an order subject to facilitation and announces a bid or offer inside the market for each options component. He also discloses any contingencies to the order (such as stock to be traded in connection with the order). Market participants are then given a reasonable opportunity to trade with the customer order, provided they accept all terms and conditions of the order. Thereafter, the floor broker immediately crosses any remaining unexecuted part of the order with the firm facilitation order.

Use of the facilitation provisions of Rule 1064 is an alternative to, not a substitute for, use of the crossing rule. A broker holding a customer order and a facilitation order is permitted to cross them using the procedures in either paragraph (a) or proposed paragraph (b).

Additionally, once a broker has announced an order is subject to facilitation and has established a market for it, the order is permitted to trade at the established price notwithstanding a subsequent bid or offer for just one component of the order. This is intended to prevent a market maker from blocking the facilitation. A market maker willing to trade all components at a superior price would be permitted to do so. This provision is adapted from the current CBOE facilitation Rule 6.74.

The next section of the proposed rule deals with "solicited" orders. These are defined as orders presented for execution in the trading crowd resulting from an away-from-the-crowd expression of trading interest by one broker-dealer to another. The rule provides that, if a member appears in a trading crowd in response to such a solicitation, other trading crowd participants must be given a reasonable opportunity to respond to the order and must be provided the same information (e.g., concerning a related stock order) given to the solicited member. This section is intended to address situations where two traders meet in a crowd and in shotgun fashion a bid or offer is made and taken before other crowd participants can reasonably react. The AMEX has adopted a similar provision under its Rule 950.

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.



### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

### *III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### *IV. Solicitation of Comments*

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 2, 1989.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-26318 Filed 11-7-89; 8:45 a.m.]  
BILLING CODE 8010-01-M

[Release No. 34-27416; File No. SR-PHLX-89-49]

### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Floor Employee Termination Notices and Order and Decorum Rules**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and IV below, which Items have been prepared by the self-regulatory organization. The PHLX has requested accelerated approval of this proposal to codify several rules that provide for (1) order, decorum and safety on the Exchange, (2) the ability to more efficiently enforce compliance with the Exchange's new card key access/security system, and (3) the ability of the Exchange to better monitor changes in Exchange member clearing arrangements.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Pursuant to Rule 19b-4 under the Act, the Exchange proposes to codify the following regulations respecting order and decorum pursuant to PHLX Rule 60. These regulations are entirely new material and appear below:

#### **Regulation 7—Required Filing for Floor Member Firm Employee Termination Notices with the Exchange**

Following the termination of any employee of a member/participant firm who has been issued an Exchange access card and trading floor badge, a completed "Termination Notice" must be submitted to the Director of

Regulatory Services of the Exchange as soon as possible, but no later than 9:30 a.m. the next business day by the member/participant firm employer. Further, every effort should be made to obtain the terminated employee's access card and trading floor badge and to submit these to the Security Department.

1st Occurrence: \$100

2nd Occurrence: \$200

3rd Occurrence: Sanctions are discretionary with the Business Conduct Committee.

#### **Regulation 8—Attempt to Circumvent the Security System of the Exchange**

It is strictly prohibited for any member/participant or employee of a member/participant firm to attempt to circumvent the security system of the Exchange.

1st Occurrence: \$250

2nd Occurrence: \$500

3rd and thereafter: Sanctions are discretionary with the Business Conduct Committee.

#### **Regulation 9—Required Filing for the Commencement or Termination of a Business Relationship between Members/Participants and their Clearing Organizations**

Following the commencement or termination of a clearing arrangement between members/participants and their clearing organization, a completed "Clearing Arrangement Notice" must be submitted to the Director of Regulatory Services of the Exchange as soon as possible, but no later than 9:30 a.m. the next business day by such clearing organization.

1st Occurrence: \$100

2nd Occurrence: \$200

3rd Occurrence: Sanctions are discretionary with the Business Conduct Committee.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78b(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1989).

<sup>3</sup> See letter from William W. Uchimoto, General Counsel, PHLX, to George Scargle, Staff Attorney, Division of Market Regulation, dated October 30, 1989.



**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The purpose of the proposed rule change is to provide an effective means for the Exchange to implement a card key access/security system to control admission to its trading floors. The proposed rule change will also provide an effective means for the Exchange to monitor changes in member clearing arrangements in order to preclude unauthorized trading on the Exchange floors by persons who have their clearing arrangements severed by requiring that members provide notice to the Exchange of changes in clearing arrangements between members/participants and their clearing organizations. The proposed regulations will assist the Exchange in keeping track of active floor members and clerical employees while controlling unauthorized access to its trading floors by removing access codes for terminated floor personnel from the security system and ensuring that members have in effect their clearing arrangements at the earliest possible occasion.

The proposed rule change is based on section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest. Additionally, the proposed rule change is consistent with, and is an implementation of, PHLX Rule 60. Assessments shall not exceed \$1,000 per occurrence for breaches by members or their employees of regulations which relate to the administration of order, decorum, health, safety and welfare on the Exchange, and higher fines and sanctions may be imposed only by the PHLX Business Conduct Committee.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The PHLX does not believe that the proposed rule change will impose any burden on competition.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission finds that there is good cause to approve the PHLX's proposed rule change prior to the thirtieth day after the date of

publication of notice of filing in the Federal Register. The Commission agrees with the Exchange that there is an urgent need to codify rules providing for order, decorum and safety on the PHLX. This need is particularly urgent because the Exchange recently has implemented a new card key access/security system. In addition, the substance of Regulation 7 (Required Filing for Floor Member Firm Employee Termination Notices with the Exchange) was noticed in the Federal Register for the full thirty-day period, and the Commission did not receive any comments on that proposal.<sup>4</sup> The Commission also finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b) (5) and (6) of the Act,<sup>5</sup> which require that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest and rules providing for appropriate discipline of members for violations of rules of the Exchange.

The proposed rule change should assist the Exchange in keeping track of active floor members and clerical employees while controlling unauthorized access to its trading floors by removing access codes for terminated floor personnel from the security system. The proposed rule change should also assist the Exchange in precluding unauthorized trading on the Exchange floors by persons who have their clearing arrangements severed as well as ensuring that members have in effect their clearing arrangements at the earliest possible occasion. Furthermore, because fines shall not exceed \$1,000 per occurrence for breaches by members or their employees of regulations which relate to the administration of order, decorum, health, safety and welfare on the Exchange, and because higher fines and sanctions may be imposed only by the PHLX Business Conduct Committee, the Commission finds that the proposed rule change is consistent with existing PHLX Rule 60.

<sup>4</sup> See Securities Exchange Act Release No. 27032 (July 13, 1989), 54 FR 30493 (July 20, 1989) (File No. SR-PHLX-89-42). File No. SR-PHLX-89-42 was withdrawn when File No. SR-PHLX-89-49, the subject of this approval order, was filed. See letter from William W. Uchimoto, General Counsel, PHLX, to Mary Revell, Branch Chief, Division of Market Regulation, dated October 3, 1989.

<sup>5</sup> 15 U.S.C. 78f(b) (5) and (6).

**IV. Solicitation of Comments and Conclusion**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to the file number in the caption above and should be submitted by November 29, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Dated: November 2, 1989.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-26319 Filed 11-7-89; 8:45 am]  
BILLING CODE 8010-01-M

[Rel. No. IC-17199; (812-7038)]

**Chicago Milwaukee Corp., et al.; Application**

October 31, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** Chicago Milwaukee Corporation ("CMC"), CMC Real Estate Corporation ("CMC Real Estate"), and Milwaukee Land Company ("MLC").

**RELEVANT 1940 ACT SECTIONS:** Orders requested under section 17(d) and Rule 17d-1 thereunder, under section 17(b) from section 17(a), and under section

<sup>6</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>7</sup> 17 CFR 200.30-3(a)(12) (1989).



6(c) from section 8(b) and Rules 8b-5 and 8b-16 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order in connection with a proposal to transfer Applicants' real estate assets to an affiliate followed by an in-kind distribution to CMC's common shareholders, and an order granting an exemption from the requirement that CMC Real Estate file a registration statement on Form N-2 and annual amendments thereto with the Commission for the period that it has been a registered investment company.

**FILING DATES:** The application was filed on May 18, 1988, and amendments thereto were filed on October 11, 1988, and February 7 and September 20, 1989.

**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 November 27, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, Chicago Milwaukee Corporation, CMC Real Estate Corporation, and Milwaukee Land Company, 547 West Jackson Boulevard, Chicago, Illinois 60606.

**FOR FURTHER INFORMATION CONTACT:** James E. Banks, Staff Attorney (202) 727-3026, or Brion R. Thompson, Special Counsel, (202) 727-3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicants' Representations

1. CMC, CMC Real Estate, and MLC (collectively, "Applicants") each are registered under the 1940 Act as a closed-end, non-diversified, management investment company. CMC Real Estate is a wholly-owned subsidiary of CMC and MLC is a

wholly-owned subsidiary of CMC Real Estate.

2. Applicants propose to transfer their real estate assets<sup>1</sup> through a two-tier partnership structure consisting of CMC Heartland Partners (the "Operating Partnership"), a Delaware general partnership, and Heartland Partners, L.P. ("Heartland"), a Delaware limited partnership that owns 99.99% of the Operating Partnership. MLC will own the remaining .01% general partnership and will serve as Heartland's general partner and the Operating Partnership's managing general partner.

3. Applicants propose to transfer their real estate assets to the Operating Partnership. In return, Heartland will issue units to CMC representing Class A limited partnership interests in Heartland for immediate distribution to CMC's common shareholders. CMC will also contribute approximately \$5 million of working capital to the Operating Partnership. Heartland and the Operating Partnership will assume most of CMC Real Estate's liabilities for claims remaining under its plan of reorganization, certain other contingent liabilities, and pending litigation to which Applicants are parties. CMC Real Estate will be required to contribute to Heartland approximately \$18.7 million, in part to fund the settlement or other resolution of the litigation and disputed claims in connection with the bankruptcy proceedings. In consideration of this contribution, Heartland will issue to CMC Real Estate a Class B limited partnership interest in Heartland.

4. In addition, Applicants will enter into the following agreements in connection with the transfer of their real estate assets. First, CMC and the Operating Partnership will enter into an agreement that will permit the Operating Partnership to use some of CMC's office space, facilities, and personnel and CMC to use some of the Operating Partnership's personnel. Each will periodically reimburse the other for the excess of the costs of the facilities and personnel supplied by it.

5. Second, Heartland and the Operating Partnership will enter into an agreement with CMC whereby CMC, on request, will furnish to Heartland and the Operating Partnership various management services for a ten year

term. In return, the Operating Partnership will pay CMC an annual fee equal to 1.5% of the sum of the aggregate market value, as of the date of the distribution, of (i) the real estate properties transferred to the Operating Partnership in the transfer, and (ii) the net proceeds received by Heartland in respect of any issuances of additional units after the distribution. The management agreement will require the Operating Partnership to reimburse CMC for all out-of-pocket expenses incurred by CMC pursuant to the management agreement.

6. Third, CMC will enter into an employment agreement with Edwin Jacobson, the President and CEO of CMC, whereby Mr. Jacobson will serve as the Operating Partnership's President and CEO (the "Jacobson Employment Agreement"). Mr. Jacobson will be paid an annual base salary of \$350,000, which is approximately 77.8% of his current base salary with CMC. Mr. Jacobson's current base salary with CMC will be reduced by \$350,000 after the transfer. In addition, Mr. Jacobson's employment agreement has an incentive feature designed to encourage him to maximize the value of the Operating Partnership and distribute value to the unitholders. Specifically, once cash distributions to the unitholders have exceeded the value of the real estate business transferred to the Operating Partnership, Mr. Jacobson will be entitled to receive incentive payments equal to 10% of the value of all amounts distributed to the unitholders. During the term of his employment agreement with the Operating Partnership, Mr. Jacobson will have the right to continue his employment with CMC and to pursue other employment and business activities not in competition with the activities of the Operating Partnership. Mr. Jacobson, however, will be required to devote an amount of time to the activities of the Operating Partnership determined by MLC's Board of Directors to be required of him to accomplish the business objectives of the Operating Partnership.

7. Applicants represent that the consent of the majority of the outstanding shares of CMC's common and noncumulative preferred stock, considered without distinction as to class, is required to approve the transfer, distribution, and related agreements.

8. Each applicant initiated their registration under the 1940 Act by filing a notice of registration on Form N-8A with the SEC in 1988. However, Applicants have not filed a registration statement on Form N-2 and the annual

<sup>1</sup> Applicants' real estate assets include approximately 31,250 acres of scattered parcels in 12 states, most of which are former railroad rights-of-way located in rural locations. Also included are former station grounds, rail yards, approximately 900 acres of land acquired by MLC for industrial sites, approximately 70,000 acres of mineral rights, and approximately 2,500 acres of MLC's timber properties.



amendments thereto, as closed-end investment companies are required to do under section 8(b) of the 1940 Act and Rules 8b-5 and 8b-16 thereunder. In addition, Applicants have not filed any of the periodic reports required under the 1940 Act and the rules thereunder.

9. CMC and MLC now propose to file their respective registration statements on Form N-2 with the SEC on or prior to November 14, 1989, the annual amendments thereto, and the periodic reports required under section 30(d) of the 1940 Act and Rule 30d-1 thereunder. In addition, CMC will commence filing semi-annual reports on Form N-SAR under Rules 30b1-1 and 30b1-2 under the 1940 Act on a consolidated basis containing, among other things, financial information with respect to MLC within the specified time period after completion of the semi-annual period ending December 31, 1989.

#### Applicants' Legal Analysis

1. Applicants request an order under sections 17(b) and 17(d) of the 1940 Act and Rule 17d-1 thereunder. Applicants are affiliated persons of each other and of Heartland, and the Operating Partnership within the meaning of section 2(a)(3) of the 1940 Act. Further, Mr. Jacobson is an affiliated person of CMC and the Operating Partnership by virtue of being the President and Chief Executive Officer of each entity. Thus, the transfer of Applicants' real estate assets would involve both a purchase or sale of securities between an investment company, an affiliated person and a company controlled by such investment company, and a joint transfer transaction among affiliated persons.

2. Applicants assert that the transfer of the real estate assets and the distribution of the partnership interests is fair and reasonable and will not involve any overreaching. Specifically, Applicants state that the transfer of the real estate assets was undertaken by CMC's board of directors after due investigation and consideration of the benefits to CMC's shareholders, and the terms of the separation were unanimously approved by the board of directors. In addition, Applicants believe that the distribution of the partnership units is fair and reasonable to the common shareholders because it will be made on a pro rata basis to all common shareholders and no common shareholder will receive any special right or benefit in relation to any other common shareholder. Applicants also believe that the transfer and distribution is fair and reasonable because it will be effectuated in full compliance with CMC's charter and will have no effect on CMC's ability to satisfy the dividend

preference and liquidation preference of the preferred shareholders. Applicants state that following the transfer and distribution, CMC's securities portfolio will provide an asset coverage greatly in excess of the amount required to cover CMC's liquidation and dividend preferences as well as the 200% asset coverage requirement required by section 18(a) of the 1940 Act.

3. Applicants also assert that their participation in the related agreements will not be on a basis different from or less advantageous than that of any other participant because the related agreements were considered and unanimously approved by CMC's board of directors (with Mr. Jacobson not participating, as to his employment compensation agreement) in its business judgment as arrangements fairly designed to maximize the value of CMC's real estate assets for the benefit of CMC's common shareholders as the initial holders of the Heartland units. According to the application, CMC's directors considered that the sharing agreement was designed to reduce the cost to Applicants, Heartland, and the Operating Partnership (and ultimately CMC's shareholders) of operating their respective businesses. Applicants further assert that CMC's directors viewed the management agreement as a commercially feasible means of retaining the resources and expertise of CMC for Heartland and the Operating Partnership in their continuing real estate business. Also, the CMC board considered the opinions of two independent accounting firms to confirm their business judgement that the employment compensation agreement with Mr. Jacobson is fair and reasonable and that such agreement is comparable to compensation arrangements for similarly situated executives in the real estate industry.

4. In addition, Applicants request an order under Section 6(c) of the 1940 Act exempting CMC Real Estate from the requirement in section 8(b) and Rules 8b-5 and 8b-16 thereunder that it file Form N-2 with the SEC and the annual amendments thereto for the period that it has been a registered investment company. Applicants assert that the requested order under section 6(c) is appropriate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act. Applicants assert that registration and reporting by CMC Real Estate is unnecessary for the protection of CMC's shareholders and the general public because CMC Real Estate will be liquidated and merged into CMC. According to the application, CMC and

MLC are not seeking relief from the registration and reporting provisions of the 1940 Act that are applicable to registered closed-end investment companies. Therefore, CMC and MLC will be required to file their respective registration statements on Form N-2, the annual amendments thereto, and the required periodic reports. In addition, CMC will file semi-annual reports on Form N-SAR containing, among other things, current financial information with respect to itself and MLC.

Applicants further assert that, since CMC Real Estate is a wholly-owned subsidiary of CMC, all of the information that would have been contained in CMC Real Estate's registration statement will be reflected in the registration statement filed by CMC.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-26254 Filed 11-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17198; 812-6527]

**T. Rowe Price Spectrum Fund Inc., et al.; Notice of Application October 31, 1989**

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** T. Rowe Price Spectrum Fund, Inc. (the "Spectrum Fund"), T. Rowe Price Growth Stock Fund, Inc., T. Rowe Price New Horizons Fund, Inc., T. Rowe Price New Era Fund, Inc., T. Rowe Price New Income Fund, Inc., T. Rowe Price Prime Reserve Fund, Inc., T. Rowe Price Growth and Income Fund, Inc., T. Rowe Price Short-Term Bond Fund, Inc., T. Rowe Price High Yield Fund, Inc., T. Rowe Price Equity Income Fund, T. Rowe Price GNMA Fund, T. Rowe Price International Trust, and each open-end management investment company (1) advised by, or in the future advised by, T. Rowe Price Associates, Inc. ("Price Associates") or its affiliate, Rowe Price-Fleming International, Inc. ("Price-Fleming") or distributed by, or in the future distributed by, T. Rowe Price Investment Services ("Investment Services") and (2) that holds itself out to investors as a related fund for the purposes of investment and investor services (collectively, the "Price Funds"), Price Associates, Investment Services, T. Rowe Price Services ("Price



Services"), and Price-Fleming (collectively, the "Applicants").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Sections 6(c) and 17(b), for exemption from sections 12(d)(1) and 17(a), and under 17(d) and Rule 17d-1 permitting transactions otherwise prohibited by section 17(d).

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the Spectrum Fund to acquire shares of Price Funds in excess of the limitations imposed by section 12(d)(1) and to permit certain affiliated transactions otherwise prohibited by sections 17 (a) and (d) and Rule 17d-1.

**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 November 24, 1989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 100 East Pratt Street, Baltimore, Maryland 21202.

**FOR FURTHER INFORMATION CONTACT:** Bibb L. Strench, (202) 272-2856, or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:**

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. The Spectrum Fund is a no-load, open-end management investment company that is organized as a Maryland corporation with series capability. The Spectrum Fund will only invest in shares of certain Price Funds, and, for temporary defensive purposes, money market instruments. The Price Funds are no-load, open-end investment companies that operate without 12b-1 plans.

2. Price Associates is a publicly held company and registered as an investment adviser under the Investment Advisers Act of 1940.

Investment Services is a registered broker-dealer and Price Services is a registered transfer agent, under the Securities Exchange Act of 1934. Both are wholly-owned subsidiaries of Price Associates.

3. Shares of the Spectrum Fund will be offered and sold only to small individual investors investing primarily through tax-advantaged retirement accounts organized under the provisions of the Internal Revenue Code but also through other accounts established for long-term investment purposes. The Spectrum Fund is designed to provide a simple cost-effective response to investor demand for broad diversification through investments in two specific fund portfolios with differing objectives. When combined with savings on retirement fiduciary fees, Spectrum Fund would likely be a less expensive investment alternative for Price Fund shareholders who invest through retirement plans.

4. The Spectrum Fund will consist of two portfolios: the Growth Fund and the Income Fund (the "Portfolios"). The Growth Fund will invest in five Price common stock funds; the Income Fund will invest in five Price bond funds; and both Portfolios will invest in a Price equity income fund and a Price money-market fund (collectively, with any other Price Fund in which the Growth Fund and the Income Fund could invest in, the "Underlying Funds").

5. The initial allocation of assets will be determined by Price Associates and will be adjusted periodically in accordance with quantitative and analytical analyses administered by Price Associates. Further, fundamental analysis also will be applied to the allocation process and used by the officers of Spectrum Fund to make the allocation decisions. Each Portfolio of the Spectrum Fund will allocate its assets among the Underlying Funds in accordance with predetermined percentage ranges. For the Income Fund, these ranges will be:

Fund	Investment range (percent of income fund assets)
Prime Reserve Fund .....	5-30
Short-Term Bond Fund .....	0-15
New Income Fund .....	15-30
GNMA Fund .....	5-20
High Yield Fund .....	10-25
International Bond Fund .....	5-20
Equity Income Fund .....	10-25

For the Growth Fund, the ranges will be:

Fund	Investment range (percent of equity fund assets)
Equity Income Fund .....	5-20
Growth and Income Fund .....	5-20
New Era Fund .....	10-25
Growth Stock Fund .....	15-30
New Horizons Fund .....	10-25
International Stock Fund .....	5-20
Prime Reserve Fund .....	0-25

As matters of fundamental policy, the Underlying Funds or the percentage ranges may only be changed by shareholder vote. Neither the Growth Fund nor the Income Fund will be able to purchase shares of any Price Fund if, as a result of such purchase, they would hold in the aggregate more than fifteen percent of any class or classes of the outstanding securities of that fund. The difference between the upper limit and the lower limit of the percentage range may be no greater than fifteen percent, except for temporary investments in a money market fund.

6. The expenses of the Spectrum Fund will be minimal. Price Associates will charge no advisory fee. However, shareholders of each Portfolio will indirectly pay their proportional share of the advisory fees and expenses paid by shareholders of the Underlying Funds. Under the advisory fee structure for the Price Funds, the creation and operation of the Spectrum Fund, to the extent it attracts additional assets to the Price Funds, will reduce the "group" fee component of Price Fund advisory fees and, thus, reduce the expense ratio of the Underlying Funds.<sup>1</sup>

7. Price Services will act as the shareholder servicing agent for the Spectrum Fund and arrange for all other services necessary for the operation of the Spectrum Fund. All expenses (shareholder servicing, legal, accounting, etc.) will be paid for in accordance with a Special Servicing Agreement (the "Agreement") to be entered into between and among the Spectrum Fund, the Underlying Funds and Price Services. The Agreement will generally

<sup>1</sup> Under a partial group fee arrangement, the advisory fee due Price Associates is split into two components—a "group" fee and an "individual fund" fee. The group fee is based on the combined net assets of all of the Price Funds distributed by Price Services other than certain institutional and private label products. Each Price Fund pays, as its portion of the group fee, an amount equal to the ratio of its daily net assets to the daily net assets of all Price Funds. The individual fund fee is based on the net assets of that Price Fund and recognizes the different characteristics of each fund, the degree and skill required to manage each fund and the relative value that can be, and has been, added by that fund's investment adviser.



require the Spectrum Fund to pay for services to be rendered by Price Services and reimburse Price Services for payments for services obtained from other persons, except to the extent those service fees and payments, or a portion of them, are paid by the Underlying Funds.

8. The Board of Directors/Trustees of an Underlying Fund will determine whether the aggregate expenses of the Spectrum Fund are greater than or less than the estimated savings to the Underlying Fund from the operation of the Spectrum Fund. If the aggregate financial benefits to the Underlying Funds exceed the costs of the Spectrum Fund, there will be no charge to the Spectrum Fund for the services under the Agreement. The expenses will be passed through to the Underlying Funds in proportion to the average daily value of each Underlying Fund's shares held by each Portfolio, provided further that no Underlying Fund will bear such expenses in excess of the estimated savings to it. If the aggregate financial benefits to the Underlying Funds do not exceed the costs of the Spectrum Fund, the Spectrum Fund will pay that portion of costs determined to be excessive.

9. The determination of whether and the extent to which the benefits will exceed the costs will be based on a cost-benefit analysis set forth in the application and summarized below. The Directors/Trustees for each Underlying Fund, prior to authorizing its fund to be a party to the Agreement, will review and approve or disapprove the cost-benefit analysis and review annually its continued appropriateness for each Underlying Fund. In making these determinations, the Directors/Trustees will consider such factors as they apply to each Underlying Fund as: the amount of Spectrum Fund expenses to be absorbed by each Underlying Fund; the amount of assets invested in each Underlying Fund by the Spectrum Fund; the average and median account sizes for the Underlying Fund and Spectrum Fund; the rate at which variable expenses are incurred by Spectrum Fund and Underlying Funds; and the rate at which fixed expenses are incurred by Spectrum Fund and by Underlying Funds. The Directors/Trustees will also consider the extent to which investors in Spectrum Fund would have purchased one or more of the Underlying Funds; the extent to which an investment in Spectrum Fund represents a consolidation of or reduction in the rate of increase in the number of accounts in the Underlying Funds; and the extent to which accounts in Spectrum Fund represent exchanges

from the Underlying Funds or new investments.

10. Based on actual expense data from the Underlying Funds and certain conservative assumptions with respect to the Spectrum Fund, Applicants believe that the costs arising from the existence and operation of the Spectrum Fund will be fully offset by benefits which are presumed to be generated for the Underlying Funds and directly inure to such Funds. The expenses of the Spectrum Fund may be divided into two groups—fixed and variable. The fixed expenses of the Spectrum Fund, which include accounting, legal, registration, directors' fees, and organizational costs, are expected to be less than the average of such expenses for the Underlying Funds. This is primarily due to the Portfolios' investment policies which are limited to the purchase and sale of shares in the Underlying Funds. The variable expenses, which relate to shareholder servicing such as transfer agency costs and the costs of mailing and printing prospectuses, shareholder reports, and proxies, are expected to be at the same rate as such expenses incurred on average for the Underlying Funds. However, the proposed arrangement is expected to create economies to the Underlying Funds due primarily to a reduction in the shareholder servicing costs to the Underlying Funds of servicing the Spectrum Fund.<sup>2</sup> The relatively low fixed costs of the Spectrum Fund and the anticipated net savings generated by the Spectrum Fund for the Underlying Funds will effectively create a zero expense ratio for the Spectrum Fund.

11. Apart from expected savings to the Underlying Funds, the Spectrum Fund will also create direct expense-saving benefits for the various retirement plan shareholders. Spectrum Fund retirement plan shareholders will pay only one \$10 annual fiduciary fee for each Portfolio of

<sup>2</sup> A comparison of the shareholder servicing costs which the Underlying Funds would bear as a result of an investment through the Spectrum Fund with the shareholder servicing costs of direct investment by shareholders holding accounts of average size demonstrates the economies associated with the proposal. For example, Applicants assume that the \$100 million invested in the Income Fund would result in 8,800 shareholders (based on the average account size of \$11,400 of the Underlying Income Funds). Assuming that each of the 8,800 shareholders in the Income Fund would invest, in its absence, in any two of the Underlying Funds for a total of 17,600 accounts would result in the Underlying Income Funds bearing approximately \$625,000 in shareholder servicing costs annually. This compares with virtually no shareholder servicing costs to the Underlying Income Funds with respect to an investment of \$100 million (because the Income Fund would open only two accounts in the Underlying Income Funds). Thus, the excess of benefits (\$625,000) over costs (\$426,000) to the Underlying Income Funds would be \$199,000.

the Spectrum Fund, rather than two to seven times this amount depending on the number of Underlying Funds in which they otherwise would have directly invested.

## Applicants' Legal Analysis

### A. Section 12(d)(1)

1. Under sections 12(d)(1) (A) and (B), the Spectrum Fund generally could not purchase (and the Underlying Funds could not sell), without an exemptive order, more than three percent of the outstanding voting securities of an Underlying Fund, securities issued by each Underlying Fund having an aggregate value in excess of five percent of the value of the total assets of the Spectrum Fund, or securities issued by each Underlying Fund having an aggregate value in excess of ten percent of the value of the total assets of the Spectrum Fund.

2. Section 12(d)(1) is intended to prevent the pyramiding of investment companies, the layering of fees, and undue organizational complexities. Applicants represent that none of the negative effects associated with fund holding companies are present with respect to the proposed arrangement and that the Spectrum Fund will provide the benefits of diversification and account cost savings to small and retirement-oriented investors. Spectrum Fund shareholders will not be subject to two advisory fees, distribution costs, directly or indirectly, or a sales load. Applicants represent that concerns under section 12(d)(1) regarding the largely illusory value of diversification and "wash transactions" that achieve no investment purpose are answered by the differing investment objectives of the two portfolios and monitoring of "wash transactions."<sup>3</sup> Wash transactions will be monitored on a periodic basis, including the use of a computer assisted program. In addition, where such transactions indicate that a particular asset class (e.g., small cap stocks or high dividend paying stocks) held by the Growth or Income Fund is over-represented, holdings of that asset class will be reduced. Congress' concern about concentration of control and undue influence will be minimized because the Spectrum Fund will "mirror" vote its shares in each Underlying Fund, has agreed to limitations on its redemption rights, and will not acquire more than fifteen

<sup>3</sup> A "wash transaction" is one in which one Underlying Fund would buy the same security that another is selling, thus burdening the fund holding company with brokerage costs for a transaction that achieves no investment purpose.



percent in the aggregate of any Underlying Fund. Finally, the inherent conflicts of interest are mitigated by separate, independent boards of directors for the Spectrum Fund and the Underlying Funds.

#### B. Section 17(d)

1. Because the Spectrum Fund and the Underlying Funds are each advised by Price Associates, the Spectrum Fund and the Underlying Funds could be deemed to be affiliates of one another. Applicants seek an order under sections 6(c), 17(d) and Rule 17d-1 to permit the Spectrum Fund to enter into a joint arrangement pursuant to the special servicing agreement (see paragraphs 7-10 above). Applicants believe that the proposed transactions are structured to assure that the participation of the Spectrum Fund, the Underlying Funds, Price Associates, and Price Services is advantageous to all the Applicants and is not on a basis less advantageous or different from those of the other Applicants.

2. Each Underlying Fund will bear expenses of the Spectrum Fund only to the extent such expenses are less than the benefits of the Spectrum Fund to each Underlying Fund. The payment of Spectrum Fund expenses by any Underlying Fund will be reviewed and approved by that fund's board of directors/trustees, including a majority of the independent directors/trustees, all of whom are unaffiliated with the independent directors of Spectrum Fund. Thus, the Underlying Funds will each participate in the arrangement on an equitable basis. The Spectrum Fund, by paying its proportionate share of the expenses of the Underlying Funds, will also participate with the Underlying Funds on an equal basis.

#### C. Section 17(b)

Purchases by Spectrum Fund of the shares of the Underlying Funds and the sale by the Underlying Funds of their shares to Spectrum Fund could be deemed to be principal transactions between affiliated persons under section 17(a). Therefore, Applicants seek an order under sections 6(c) and 17(b) exempting Applicants from the provisions of section 17(a) to permit the Price Funds to sell their shares to the Spectrum Fund. Applicants believe that such relief should be granted for the same reasons set forth under the discussion of sections 12(d) and 17(d).

#### Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Shares of the Spectrum Fund will be offered and sold (including sales by exchanges or transfers between the Portfolios) only to individuals investing through tax-advantaged retirement accounts organized under the provisions of the Internal Revenue Code (and distributions therefrom) and to individuals investing through other accounts established for long-term investment purposes (collectively, "Long-Term Investors"), in both cases subject to an aggregate \$30,000 investment limit during any one calendar year. Appropriate procedures and controls will be instituted to ensure the Spectrum Fund is limited to such Long-Term Investors.

2. Spectrum Fund will operate under a fundamental investment policy of allocating its assets to specified Underlying Funds according to a schedule of percentage ranges; changes in either an Underlying Fund or a percentage range must be submitted to shareholders for approval. Except for temporary investments in a money market fund for defensive purposes, the difference between the upper limit and the lower limit may not be greater than 15%.

3. No Portfolio of Spectrum Fund will purchase or otherwise acquire shares of any Underlying Fund if, as a result of such purchase, Spectrum Fund would own in the aggregate more than 15% of the outstanding securities of any Underlying Fund. Spectrum Fund's holdings in that Underlying Fund may temporarily exceed this 15% limitation under the standards set forth in section 5(c) of the 1940 Act.

4. Redemptions from any Underlying Fund by Spectrum Fund will be limited to 1% of the Underlying Fund's assets in any period of less than 30 days, except where necessary to meet Spectrum Fund shareholders redemption requests.

5. Exchanges into and out of any Portfolio of Spectrum Fund will be limited to two "round trips" per year. A "round trip" is one exchange into and one exchange out of a Portfolio.

6. A majority of Spectrum Fund's directors will not be "interested persons," as defined in section 2(a)(19) of the 1940 Act (the "Independent Directors"). Further, none of the Independent Directors will be directors of any Underlying Fund.

7. Spectrum Fund will vote its shares in each Underlying Fund in proportion to the vote of all other holders of the securities of each respective Underlying Fund.

8. Spectrum Fund will not offer any Portfolio in addition to the Growth Portfolio and Income Portfolio without first filing an amended application for and being granted further exemptive relief under section 6(c) of the 1940 Act.

9. Neither Spectrum Fund nor any Underlying Fund will establish a distribution plan under Rule 12b-1 of the 1940 Act or sell its shares with a sales load. Spectrum Fund will not be charged an advisory fee by Price Associates or Price-Fleming or any affiliated person.

10. The Board of Directors, including a majority of the Independent Directors, will establish procedures to monitor "wash transactions" among the Underlying Funds,

and will take appropriate action to keep wash transactions at a *de minimis* level.

11. The Directors of Spectrum Fund will cause a report to be filed with the Division of Investment Management within 60 days of the close of each of Spectrum Fund's first two fiscal years, summarizing the actual expenses involved in the operation of Spectrum Fund.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-26255 Filed 11-7-89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

[CM-8/1320]

### Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on November 16 and 17, 1989, at NASA Headquarters, 600 Independence Avenue, Washington, DC in Room 521J at 10 a.m.

Study Group 2 deals with matters relating to the space research services among other things. The purpose of the meeting is to review the results of the recent Final Meeting of Study Group 2 and to organize activities for participation in newly formed international working parties.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. John Postelle, ARC Professional Services Group, Herndon, Virginia 22070, phone (703) 834-5607.

Dated: October 31, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89-26213 Filed 11-7-89; 8:45 am]

BILLING CODE 4710-07-M

[Pub. Notice CM-8/1322]

### Chairman's Special Ad Hoc Subcommittee of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the Chairman's Special Ad Hoc Subcommittee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet November 28, 1989, in Room 1105, Department of



State, 2201 C Street NW., Washington, DC. The meeting will be held from 9:30 a.m. to 4:30 p.m.

The Chairman's Special Ad Hoc Subcommittee studies issues assigned to it by the U.S. CCIR National Committee. The purposes of this meeting are (1) to prepare U.S. positions on Resolutions and Opinions of a general nature to be considered by the XVIIth Plenary Assembly of the CCIR, May 1990 and (2) to coordinate U.S. activities with respect to CCIR preparations for the 1992 World Administrative Radio Conference (WARC-92) on allocations.

Members of the general public may attend and participate in the meeting, subject to available seating and the instructions of the Chairman. Requests for further information should be directed to the Chairman: Mr. Warren G. Richards, CIP/RSP, Department of State, 2201 C Street NW., Washington, DC, 20520; telephone (202) 647-0049; telefax (202) 647-5957.

Dated: October 31, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89-28287 Filed 11-7-89; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 89-089]

#### Pilotage Study

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of completion of pilotage study; availability to the public; request for comments.

**SUMMARY:** In July 1989, the Commandant of the Coast Guard appointed a study group to examine issues relating to the pilotage requirements. Notice of the study was published in the *Federal Register* on July 26, 1989, [54 FR 31136]. The study is now complete and a copy of the Report of the Pilotage Study Group is available from the Coast Guard. Comments are requested on the recommendations of the pilotage study. **DATES:** Comments must be received on or before February 6, 1990.

**ADDRESSES:** Copies of the Report of the Pilotage Study Group may be obtained from: Merchant Vessel Personnel Division (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-0217. Comments should be submitted to: The Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 89-089), U.S. Coast Guard, Washington, DC 20593-0001. Between

8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-LRA-2), Room 3600, U.S. Coast Guard Headquarters, 210 Second Street, SW., Washington, DC 20593, (202) 267-1477.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Hartke, Merchant Vessel Personnel Division (G-MVP/12), (202) 267-0217.

**SUPPLEMENTARY INFORMATION:** The Commandant of the U.S. Coast Guard appointed a study group to examine a number of issues relating to pilotage requirements. Issues the study group examined include: pilotage requirements; the extent of pilotage waters; variations in requirements due to vessel size, route or cargo; requirements for a pilot's license; requirements for recertification; pilot responsibility aboard the vessel; and the proper roles for Federal and State Governments. The study group has completed its report, and it is now available for public review and comments. The pilotage study report is the product of the study group, a group brought together to study and make recommendations regarding a number of issues relating to pilotage requirements, independent of Coast Guard program oversight. Any legislative or regulatory initiatives resulting from study recommendations would be started only after publication of the report and receipt of comments from interested parties. Interested persons are invited to submit written data, views, or arguments. Written comments should include the docket number (CGD 89-089), the name and address of the person submitting the comments, and the specific recommendations to which each comment is addressed. All comments received will be considered before further action is taken.

Dated: November 1, 1989.

J. D. Sires,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-26248 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

### Aviation Lighting Equipment Certification Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of a change in airport lighting equipment certification program.

**SUMMARY:** The Federal Aviation Administration (FAA) announces a change in the certification process for airport lighting equipment funded under the Airport Improvement Program (AIP). The current process requires FAA personnel to inspect, review design drawings and witness tests, to confirm that the equipment meets applicable FAA specifications. A list of manufacturer's products meeting these specifications is then published in Advisory Circular 150/5345-1, Approved Airport Equipment. Under the new process, an independent testing laboratory will verify whether a product meets the applicable FAA specifications. The FAA will continue to publish a listing of certified manufacturers products that have been verified by the testing laboratory.

**EFFECTIVE DATE:** The effective date of the change in the certification program is January 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Retta M. Cameron, Federal Aviation Administration, Engineering and Specifications Division, 800 Independence Ave., SW., Washington, DC 20591, (202) 267-8746.

**SUPPLEMENTARY INFORMATION:** Since the inception of Federal airport grant programs, the FAA has witnessed testing of airport lighting equipment to ensure that specifications were met and published a list of all approved equipment. Airport lighting was the only manufactured product subject to such an approval for funding eligibility under the grant programs. Due to limited available resources at the FAA, it was decided that the equipment approval process for airport lighting equipment should be treated in the same manner as other procurements funded by the grant programs, i.e., certification by airport sponsors.

The manufacturers of airport lighting equipment did not want the FAA to eliminate the approval process and the "Approved Airport Equipment" list. In order to retain the process, the manufacturers proposed an alternative approach wherein their products would be inspected by a commercial test laboratory rather than FAA personnel, and the FAA would continue to publish a list of certified equipment based on findings by the test laboratory. The FAA agreed to this proposal. Advisory Circular 150/5345-1, Approved Airport Equipment, is being revised to reflect this change.

ETL Testing Laboratories, Inc. Cortland, New York, was selected by a committee of airport lighting equipment manufacturers to administer the



certification program. ETL will perform the validation of certification by witness-testing and periodic inspection of certified equipment. This program will be funded by the equipment manufacturers. The FAA will publish a list of manufacturers products that are certified in the program as meeting the applicable FAA specifications. Lighting equipment approved by the FAA prior to this change will be accepted for the ETL certification program without additional product qualification testing for a period of five years, provided sufficient documentation exists to support a certified status. The manufacturers will still be subject to ETL's quality control audit, site production testing and inspections. If at any time a FAA standard or specification is changed, the applicable equipment must then be recertified and verified by ETL.

An Industry Technical Advisory Committee (ITAC) was formally established by the airport lighting equipment manufacturers in May 1989 to assist ETL in program activities and has reviewed and adopted the ETL Procedural Guide and License Agreement. The FAA has also reviewed these documents and concurs with the ETL Aviation Lighting Equipment Certification Program.

Issued in Washington, DC, November 2, 1989.

Retta M. Cameron,

*Electrical Engineer, Engineering & Specifications Division.*

[FR Doc. 89-26257 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### Research, Engineering, and Development Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Federal Aviation Administration Research, Engineering, and Development Advisory Committee to be held Wednesday, December 13, 1989, at 9:00 a.m. The meeting will take place in the MacCracken Room, 10th floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows:

- Procurement Integrity Briefing.
- Update on R.E.D. Plan and 1990 Conference.
- Response to R.E.D. Process Subcommittee.
- 1990 R.E.D. Budget Briefing.
- Comprehensive National Human Factors Plan Briefing.

#### • Subcommittee Reports.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. John E. Turner, Executive Director, Research, Engineering, and Development Advisory Committee, ADM-1, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3555.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on November 2, 1989.

John E. Turner,

*Executive Director Research, Engineering, and Development Advisory Committee.*

[FR Doc. 89-26258 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-13-M

#### Federal Highway Administration

##### Environmental Impact Statement; Hillsborough, Pasco and Herndon Counties, FL

**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 Hillsborough County, Pasco County, and Hernando County, Florida.

**FOR FURTHER INFORMATION CONTACT:** Dennis Luhrs, District Engineer, Federal Highway Administration, 227 N. Bronough, room 2015, Tallahassee, Florida 32301. Telephone: (904) 681-7231.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Florida Department of Transportation will prepare an Environmental Impact Statement (EIS) for a proposal to construct a new limited access expressway from the proposed Northwest Expressway in Hillsborough County to U.S. 98 in Hernando County.

The new expressway route will be between U.S. 19 and U.S. 41. The project length is roughly 43 miles.

Construction of a new expressway is considered necessary to provide for the projected year 2010 traffic demand. Alternatives under consideration include (1) taking no action; (2) widening the existing U.S. 19 and U.S. 41 roadways; and (3) constructing a four/six lane, limited access highway on new location. Incorporated into and studied with the various build alternatives will

be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings were held in Brooksville and New Port Richey in August, 1988 and March, 1989. In addition, public hearings will be held. Public notice was given of the time and place of the meetings, and will be given for the hearings. The draft EIS will be available for public and agency review and comments prior to the public hearing. No formal scoping meeting is planned at this time. All affected relevant Federal, State, and local agencies have been afforded the opportunity to participate in regularly scheduled technical committee meetings for this project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: October 16, 1989.

Dennis Luhrs,

*District Engineer, Tallahassee, Florida.*

[FR Doc. 89-26288 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-22-M

##### Environmental Impact Statement; Pulaski County, AR

**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 Pulaski County, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Richard Fairbrother, Division Administrator, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas, 72201; or Mike Webb, Urban Planner, Environmental Division, Arkansas State Highway and Transportation



Department, P.O. Box 2261, Little Rock, Arkansas, 72203, Telephone: (501) 569-2281.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Arkansas State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct a freeway connecting I-40 and U.S. 67/167 serving northern Pulaski County, Arkansas, including Sherwood, Jacksonville, and North Little Rock. Population in Pulaski County is expected to increase by approximately 190,000 people between 1980 and 2010 to a total population of approximately 530,000. Most of the growth is expected to occur in Sherwood, at the eastern end of the facility, Maumelle to the southwest, and northwest Little Rock further southwest. The proposed facility will connect these three rapidly growing areas of the County across the northwest part of the metropolitan area via I-40 and I-430. In addition, the proposed facility will provide an improved connection between the National Guard training facility at Camp Joseph T. Robinson and the Little Rock Air Force Base at Jacksonville. Improved access to the North Little Rock Municipal Airport will also be provided. There are no east-west arterials north of 47th/McCain across northern Pulaski County. The size of Camp Robinson and the scarcity of undeveloped corridors across the area necessitate the prompt identification of the facility alignment so that right-of-way may be preserved.

Alternatives to be considered are: (1) The "Do-Nothing" Alternative where roads are constructed according to the regional plan with the exception of the proposed facility; (2) the "Reconstruction" Alternative where roads on the regional plan are upgraded to handle traffic forecast for the proposed facility; (3) the "Mass Transit" Alternative; and (4) the "New Location" Alternative considering several different alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including conservation groups and groups and individuals who have voiced opposition to the project in the past and to major Arkansas newspapers. Also, a series of public involvement sessions have been held in a mobile trainer situated directly in the areas to be affected. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the

public hearing. A formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address 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: October 30, 1989.

Charles Boyd,

District Engineer, Little Rock, Arkansas.

[FR Doc. 89-26338 Filed 11-7-89; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: November 1, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

#### Internal Revenue Service

OMB Number: 1545-0159

Form Number: IRS Form 3520

Type of Review: Extension

Title: Creation of or Transfers to Certain Foreign Trusts

Description: Form 3520 is filed by U.S. persons who create or transfer property to a foreign trust. IRS uses 3520 to determine the identity of the transferor of property and determine if the transfer is subject to an exercise tax

Respondents: Businesses or other for-profit, Small Businesses or organizations

Estimated Number of Respondents: 500

Estimated Burden Hours Per

Response/Recordkeeping:

Recordkeeping: 5 hours, 44 minutes

Learning about the law or the form: 35

minutes

Preparing, copying, assembling, and sending the form to IRS: 43 minutes

Frequency of Response: On occasion

Estimated Total Recordkeeping/

Reporting Burden: 3,525 hours

OMB Number: 1545-0240

Form Number: IRS Form 6118

Type of Review: Extension

Title: Claim of Income Tax Return

Preparers

Description: Form 6118 is used by preparers to file for refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer

Respondents: Individuals or households, Business or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 10,000

Estimated Burden Hours Per

Response/Recordkeeping:

Recordkeeping: 13 minutes

Learning about the law or the form: 11 minutes

Preparing the form: 8 minutes

Copying, assembling, and sending the form to IRS: 20 minutes

Frequency of Response: On occasion

Estimated Total Recordkeeping/

Reporting Burden: 8,900 hours

Clearance Officer: Garrick Shear (202)

535-4297, Internal Revenue Service,

Room 5571, 1111 Constitution Avenue,

NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202)

395-6880, Office of Management and

Budget, Room 3001, New Executive

Office Building, Washington, DC 20503

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 89-26294 Filed 11-7-89; 8:45 am]

BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: November 1, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.



**Bureau of Alcohol, Tobacco and Firearms**

OMB Number: 1512-0100.

Form Number: ATF F 1740.1 and ATF 1740.2.

Type of Review: Extension.

Title: Environmental Information and Supplemental Information on Water Quality Considerations.

Description: ATF F 1740.1 and 1740.2 implement regulations of the Clean Water Act and the National Environmental Policy Act (NEPA). The NEPA authorizes ATF through ATF F 1740.1 to require a license or permit application to state the location of existing or proposed activities concerned with land, air pollution, water and activities related to an ATF permit or license issued.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,400 hours.

OMB Number: 1512-0115.

Form Number: ATF Form 5220.4.

Type of Review: Extension.

Title: Monthly Report—Export Warehouse Proprietor.

Description: Proprietors who are qualified to operate export warehouses that handle untaxed tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor including receipts, dispositions and on-hand quantities. ATF F 5220.4 is used for product accountability and is examined by regional office personnel.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 227.

Estimated Burden Hours Per Response: 49 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 2,206 hours.

OMB Number: 1512-0205.

Form Number: ATF REC 5110/01-ATF F 5110.40.

Type of Review: Extension.

Title: Distilled Spirits Records and Monthly Report of Production Operations.

Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in industry, and plan efficient allocation of field resources,

audit plant operations and compilation of statistics for government economic analysis.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 122.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 2,928 hours.

OMB Number: 1512-0357.

Form Number: ATF REC 5170/6.

Type of Review: Extension.

Title: Wholesale Dealers

Applications, Letterheads and Notices Relating to Operations (variation in format or preparation of records).

Description: To ascertain that the revenue is not placed in jeopardy and protection of the revenue, such as alternate record formats.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,029.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 515 hours.

OMB Number: 1512-0372.

Form Number: ATF REC 5400/2.

Type of Review: Extension.

Title: Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data by—Licensed Explosives Manufacturers and Manufacturers (Limited).

Description: These records, prepared by explosives manufacturers and explosives manufacturers (limited) provide ATF with the ability to trace explosives used in crime.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,201.

Estimated Burden Hours Per Response: 65 hours.

Frequency of Response: Other.

Estimated Total Reporting Burden: 78,065 hours.

OMB Number: 1512-0378.

Form Number: ATF REC 5530/1.

Type of Review: Extension.

Title: Applications and Notices—Manufacturers of Nonbeverage Products.

Description: Reports (letterhead applications and notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits

on which drawback will be claimed. Reports ensure that operations are in compliance with law; prevents spirits from diversion to beverage use. Protects the revenue.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 640 hours.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 640 hours.

OMB Number: 1512-0461.

Form Number: ATF REC 5110/11.

Type of Review: Extension.

Title: Marks and Labels on Containers of Distilled Spirits.

Description: The marking, branding and labeling of containers of spirits by distilled spirits plants provide the data to identify, trace, and quantify the spirits.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 254.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-26295 Filed 11-7-89; 8:45 am]

BILLING CODE 4810-25-M

**Public Information Collection Requirements Submitted to OMB for Review**

Date: November 2, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980 Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the



Treasury, room 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

#### Departmental Offices

OMB Number: 1505-0065.

Form Number: None.

Type of Review: Extension.

Title: Privacy Act—Form of Request for Notification of Whether a Record Exists, Form of Request to Amend Records, Form of Request for Appeal of Refusal to Amend Records.

Description: Requests records pursuant to the Privacy Act. The Privacy Act provides that a U.S. Citizen or resident alien may seek access or amendment to their records or any information pertaining to them maintained in a system of records and referenced by personal name or identifier.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,966.

Estimated Burden Hours Per

Response: 1 hour.

Frequency of Response: Voluntarily as required.

Estimated Total Reporting Burden: 2,966 hours.

OMB Number: 1505-0066.

Form Number: None.

Type of Review: Extension.

Title: FOIA—Form of Request for Information and Appeal of Denial, Waiver of Fees.

Description: Requests information pursuant to the Freedom of Information Act (FOIA). The public submits FOI requests in writing, signed by requester; reasonably describe records; agree to pay fees for search, review and duplication or state up to what amount will be paid; state whether copies are desired or inspection of records is preferred.

Respondents: Individuals or households, State or local governments, Farms, Businesses, or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 29,267.

Estimated Burden Hours Per

Response: 45 minutes.

Frequency of Response: Voluntarily as required.

Estimated Total Reporting Burden: 29,950 hours.

Clearance Officer: Dale A. Morgan (202) 566-2693, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management

and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-26296 Filed 11-7-89; 8:45 am]

BILLING CODE 4810-25-M

#### Public Information Collection Requirements Submitted to OMB for Review

Date: November 2, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

##### Alcohol, Tobacco and Firearms

OMB Number: 1512-0163.

Form Number: ATF Form 5210.5 (3068).

Type of Review: Extension.

Title: Manufacturer of Tobacco Products Monthly Report.

Description: ATF F 5210.5 (3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of and statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 120.

Estimated Burden Hours Per

Response: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,440 hours.

OMB Number: 1512-0418.

Form Number: ATF Form 5000.12.

Type of Review: Extension.

Title: Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

Description: Application to practice before the Bureau is necessary so that the Bureau may evaluate the qualifications of applicants in order to assure only competent, reputable persons are authorized to represent claimants.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 8.

Estimated Burden Hours Per

Response: 1 hour.

Frequency of Response: Initial application and renewal every five years.

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-26297 Filed 11-7-89; 8:45 am]

BILLING CODE 4810-25-M

#### Public Information Collection Requirements Submitted to OMB for Review

Date: November 2, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

##### Internal Revenue Service

OMB Number: 1545-0055.

Form Number: 1001.

Type of Review: Revision.

Title: Ownership, Exemption, or Reduced Rate Certificate.

Description: This form is used by owners of certain types of income to report to a withholding agent both the ownership and any reduced or exempt tax rate under tax conventions or treaties, and if appropriate, to claim a release of tax withheld at source. The withholding agent uses the information to determine the appropriate withholding.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 100,000.



**Estimated Burden Hours Per Response/Recordkeeping:**

Recordkeeping—4 hours, 32 minutes.  
Learning about the law or the form—1 hour.

Preparing the form—24 minutes.  
Copying, assembling, and sending the form to IRS—1 hour, 7 minutes.

**Frequency of Response:** On occasion.

**Estimated Total Recordkeeping/Reporting Burden:** 665,000 hours.

**Clearance Officer:** Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

**OMB Reviewer:** Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.  
**Lois K. Holland,**

**Departmental Reports Management Officer.**  
[FR Doc. 89-26298 Filed 11-7-89; 8:45 am]

**BILLING CODE 4810-25-M**

**Public Information Collection Requirements Submitted to OMB for Review**

Date: November 2, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Bureau Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

**OMB Number:** 1545-0099.

**Form Number:** 1065 and Schedules D and K-1.

**Type of Review:** Resubmission.

**Title:** U.S. Partnership Return of Income, Capital Gains and Losses, Partner's Share of Income, Credits, Deductions, etc.

**Description:** Internal Revenue Code section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.

**Respondents:** Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

**Estimated Number of Respondents:** 1,900,026.

**Estimated Burden Hours Per Response/Recordkeeping**

Form	1065	Sched. D (Form 1065)	Sched. K-1 (Form 1065)
Recordkeeping.....	65 hrs., 3 mins.....	5 hrs., 1 min.....	26 hrs., 47 mins.....
Learning about the law or the form.....	30 hrs., 47 mins.....	2 hrs.....	10 hrs., 41 mins.....
Preparing the form.....	55 hrs., 32 mins.....	4 hrs., 58 mins.....	25 hrs., 33 mins.....
Copying, assembling, and sending the form to IRS.....	6 hrs., 26 mins.....	48 mins.....	4 hrs., 1 min.....

**Frequency of Response:** Annually.  
**Estimated Total Recordkeeping/Reporting Burden:** 1,005,280,628 hours.  
**OMB Number:** 1545-0155.

**Form Number:** 3468.

**Type of Review:** Resubmission.

**Title:** Computation of Investment Credit.

**Description:** Taxpayers are allowed a credit against their income tax for investment in certain property used in their trade or business. Form 3468 is used to compute this investment tax credit. The information collected is used by the IRS to verify that the credit has been computed correctly.

**Respondents:** Farms, Businesses or other for-profit, Small businesses or organizations.

**Estimated Number of Respondents:** 360,000.

**Estimated Burden House Per Response/Recordkeeping:**

Recordkeeping—22 hours, 29 minutes.  
Learning about the law or the form—6 hours, 57 minutes.

Preparing and sending the form to IRS—7 hours, 37 minutes.

**Frequency of Response:** On occasion.

**Estimated Total Recordkeeping/Reporting Burden:** 13,341,600 hours.

**Clearance Officer:** Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

**OMB Reviewer:** Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.  
**Lois K. Holland,**

**Departmental Reports Management Officer.**

[FR Doc. 89-26299 Filed 11-7-89; 8:45 am]

**BILLING CODE 4810-25-M**

**Customs Service**

[T.D. 89-94]

**Recordation of Trade Name; "TRIPLE FAT GOOSE"**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of recordation.

**SUMMARY:** On August 30, 1989, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "TRIPLE FAT GOOSE" was published in the *Federal Register* (54 FR 35983). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or

arguments submitted in writing by any person in opposition to the recordation and received not later than October 30, 1989. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "TRIPLE FAT GOOSE" is recorded as the trade name used by Turbo Sportswear, Inc., a corporation organized under the laws of the State of New Jersey, located at One Walnut Street, Perth Amboy, New Jersey 08862. The trade name is used in connection with men's and boy's downfilled outdoor and active sportswear manufactured in Korea.

**EFFECTIVE DATE:** November 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Bettie Coombs, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-5765).

Dated: November 2, 1989.

**Marvin M. Amernick,**  
Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 89-26291 Filed 11-7-89; 8:45 am]

**BILLING CODE 4820-02-M**



**Internal Revenue Service**

[Delegation Order No. 232 (Rev. 1)]

**Delegation of Authority****AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Delegation of authority.

**SUMMARY:** The Taxpayer Ombudsman, Internal Revenue Service, delegates to the Assistant Commissioner (Employee Plans and Exempt Organizations) the authority under Subtitle J, the "Omnibus Taxpayer Bill of Rights," to modify or rescind Taxpayer Assistance Orders. The text of the delegation order appears below.

**EFFECTIVE DATE:** October 23, 1989.**FOR FURTHER INFORMATION CONTACT:**

Gary Glossop, C-PRP, room 1027, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone (202) 377-9104 (not a toll-free call).

**Order No. 232 (Rev. 1)**

Effective date: October 23, 1989.

**Delegation of Authority to Issue and Authority to Modify or Rescind, Taxpayer Assistance Orders (TAOs)**

Pursuant to the authority of the Taxpayer Ombudsman by Section 7811 of the Internal Revenue Code added by the Technical and Miscellaneous Revenue Act of 1988, under Subtitle J, the "Omnibus Taxpayer Bill of Rights", to issue Taxpayer Assistance Orders and the authority to modify or rescind Taxpayer Assistance Orders, is hereby delegated as follows:

**1. The authority to issue Taxpayer Assistance Orders**

(a) to release property of a taxpayer levied upon (subject to exception set forth in paragraph 3.) or

(b) to cease any action, or refrain from taking any action, with respect to a taxpayer (subject to exception set forth in paragraph 3.) under—

1. Subchapter F of Chapter 1 (relating to exempt organizations).

2. Chapter 24 (relating to the collection of income tax at source on wages and backup withholding).

3. Chapter 64 (relating to collection).

4. Chapter 66 (relating to the statute of limitations).

5. Chapter 68 (relating to the additions to tax, additional amounts, and assessable penalties).

6. Subchapter B of Chapter 70 (relating to bankruptcy and receiverships).

7. Chapter 78 (relating to discovery of liability and enforcement of title) is delegated to the officials listed below:

Assistant Commissioner (International) Regional Commissioners

District Directors and Assistant

Directors

Service Center Directors and Assistant

Directors

Director, Austin Compliance Center and Assistant Director

Regional Problem Resolution Officers

Problem Resolution Officers

2. The authority in paragraph 1.(a) and (b) may be redelegated by the Assistant Commissioner (International), Regional Commissioners, District Directors, Service Center Directors and Director, Austin Compliance Center only to Assistant Problem Resolution Officers.

3. The authority to issue TAOs to release a principal residence of a

taxpayer levied upon or to cease any action regarding a principal residence, is delegated to:

Assistant Commissioner (International) Regional Commissioners.

4. The Authority to Modify or Rescind Any Taxpayer Assistance Order is delegated to the officials listed below:

Assistant Commissioner (International) for the Problem Resolution Officer or Assistant Problem Resolution Officer on his/her staff.

Assistant Commissioner (Employee Plans and Exempt Organizations) for cases under his/her jurisdiction.

The Regional Commissioner who is the line supervisor of the Regional Problem Resolution Officer or Assistant Regional Problem Resolution Officer who issued the order.

Regional Directors of Appeals for cases in the appeals process in their jurisdiction.

The Director or Assistant Director who is the line supervisor of the Problem Resolution Officer or Assistant Problem Resolution Officer who issued the order.

The Director or Assistant Director, Austin Compliance Center for the Problem Resolution Officer or Assistant Problem Resolution Officer on their staff who issued the order.

5. The authority in paragraphs 3 and 4 may not be redelegated.

6. This Order supersedes Delegation Order No. 232 effective January 1, 1989.

Dated: October 23, 1989.

Approved.

Damon O. Holmes,

Taxpayer Ombudsman.

[FR Doc. 89-26211 Filed 11-7-89; 8:45 am]

BILLING CODE 4830-11-M



# Sunshine Act Meetings

Federal Register

Vol. 54, No. 215

Wednesday, November 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 45889, October 31, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., November 6, 1989.

**CHANGES IN THE MEETING:** One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Renovation proposals regarding the Federal Reserve Bank of New York. (This item was originally announced for a closed meeting on November 1, 1989.)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26513 Filed 11-6-89; 3:56 pm]

BILLING CODE 6210-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

### NOTICE OF MEETING

**TIME AND DATE:** 4:00 p.m., Monday, November 13, 1989.

**PLACE:** Marriott's Harbor Beach Resort, 3030 Holiday Drive, Fort Lauderdale, FL 33316, (305) 525-4000.

**STATUS:** Open.

### MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Proposed Amendment to: Sections 701.6 and 741.9, NCUA's Rules and Regulations, Administrative Fees and Interest on Delinquent Payments of Operating Fee, Share Insurance Premium, and Capitalization Deposit.
6. Regulatory Review, NCUA's Rules and Regulations:
  - a. Final Rule: part 700, Definition of Risk Assets; and parts 702 and 741, Reserving Requirements.
  - b. Proposed Rules—Amendments to: Section 701.26, Credit Union Service Contracts; part 724, Trustees and Custodians of Pension Plans; part 749, Records Preservation Program; and Request for Comments—§ 701.19, Retirement Benefits for Employees of Federal Credit Unions.
7. Fiscal Year 1990 Operating Fee Assessment.
8. Legislative Update.

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-26495 Filed 11-6-89; 2:53 pm]

BILLING CODE 7535-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

### Notice of Meeting

**TIME AND DATE:** 9:30 a.m., Wednesday, November 15, 1989.

**PLACE:** Filene Board Room, 7th Floor, 1776 G Street, NW, Washington, DC 20456.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Appeal of Insurance Application Denial. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Action under section 203 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-26496 Filed 11-6-89; 2:53 pm]

BILLING CODE 7535-01-M

## RESOLUTION TRUST CORPORATION

### Notice of Cancellation of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced meeting of the Board of Directors of the Resolution Trust Corporation scheduled to be held on Tuesday, November 7, 1989 at 2:30 p.m. (open session) has been **CANCELLED**.

No earlier notice of this cancellation of the meeting was practicable.

Dated: November 3, 1989.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 89-26402 Filed 11-6-89; 9:55 am]

BILLING CODE 6714-01-M



# Corrections

Federal Register

Vol. 54, No. 215

Wednesday, November 8, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 270

[Docket No. RM89-6-000; Order No. 515]

#### Establishment of Deadlines for First Sellers to Make and Report Refunds

##### Correction

In rule document 89-18649 beginning on page 32805 in the issue of Thursday, August 10, 1989, make the following correction:

##### § 270.101 [Corrected]

On page 32809, in the third column, in § 270.101, the first paragraph should be designated "(e)".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 116, 117, and 302

[SW H-FRL 3372-6]

#### Reportable Quantity Adjustments; Delisting of Ammonium Thiosulfate

##### Correction

In rule document 89-15746 beginning on page 33426 in the issue of Monday, August 14, 1989, make the following corrections:

1. On page 33442, in Table 2, in the 3rd column, the 18th entry should be aligned with "Arsenic Acid".

2. On page 33443, in the same table, in the first column, the superscript following "Beryllium", "Beryllium dust", and "Cadmium" should be a double dagger.

3. On the same page, in the same table, the 20th entry from the bottom should be aligned with "Chromic Acid".

4. On page 33444, in the same table, in the third column, remove the last entry.

5. On page 33445, in the table, at the top of the third column, insert "1 (0.454)" in the space aligned with "Lead Arsenate".

6. On the same page, in the same table, in the same column, the 36th and 37th entries from the bottom should be aligned with "Nickel cyanide" and "Nickel chloride", respectively.

7. On page 33446, in the table, in the 2nd column, move the 36th through 39th entries up a line each.

8. On page 33456, in the table, in the last column, the 17th entry from the bottom should read "100 (454.4)".

9. On page 33457, in the same table, in the seventh column, remove the 17th entry.

10. On page 33458, in the same table, in the third column, there are two regulatory synonyms for "Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-". "Bis(2-chloroethoxy) methane" and "Dichloromethoxy ethane" should be on separate lines.

11. On the same page, in the same table and column, there are two regulatory synonyms for "Ethane, 1,1'-oxybis(2-chloro-". "Bis(2-chloroethyl) ether" and "Dichloroethyl ether" should be on separate lines.

12. On page 33462, in the table, in the third column, in the 14th through 17th lines, indent "2-nitrophenol" and "Phenol, 4-nitro-". "4-Nitrophenol" is a separate synonym and should have appeared (also indented) on its own line.

13. On page 33465, in the table, in the eighth column, the 14th entry from the bottom should read "100 (45.4)".

14. On page 33466, in the table, in the first column, the symbol following "Thallium" should be a double dagger.

15. On page 33467, in the table, in the third column, the last three entries should be indented.

16. On page 33468, in the table, in the first column, the symbol following "Zinc" should be a double dagger.

17. On the same page, in the same table and column, "Zinc fluoride" was misspelled.

18. On page 33474, in the last column, the symbols aligned with "KO88", "KO90", and "KO91", respectively, should read " ".

19. On page 33476, in the table, in the footnotes, " " should be replaced with " 1\*".

BILLING CODE 1505-01-D



# 42 CFR Part 1001

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Wednesday  
November 8, 1989

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## Part II

### Department of Housing and Urban Development

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Office of the Assistant Secretary for  
Community Planning and Development

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24 CFR Parts 570, 577, 578, 840, and 841  
Supportive Housing Demonstration  
Program; Final Rule



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Assistant Secretary for Community Planning and Development****24 CFR Parts 570, 577, 578, 840, and 841****[Docket No. R-89-1433; FR-2581-F-04]****RIN 2506-AA98****Supportive Housing Demonstration Program****AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.**ACTION:** Final rule.

**SUMMARY:** On January 9, 1989 (54 FR 736), HUD published a notice, for immediate effect, of changes to the Supportive Housing Demonstration rule (24 CFR Parts 840 and 841), implementing amendments to the program made by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). (A codification of the changes was published March 27, 1989 (54 FR 12433).) The notice also invited the public to comment on the changes. Today's final rule responds to the public comments, revises the rule in parts 840 and 841, and publishes it redesignated as 24 CFR parts 577 and 578.

**EFFECTIVE DATE:** Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the regulation's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

**FOR FURTHER INFORMATION CONTACT:** James Forsberg, Department of Housing and Urban Development, room 7228, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6300. Hearing or speech-impaired individuals may call TDD number (202) 755-5965. (These numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980.

Expedited review has been requested by December 8, 1989, so that the application process described in this rule may be carried out following OMB approval of the necessary collections of information.

Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the Federal Register, at the same time that the rule's effective date is published.

Public reporting burden for this collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided elsewhere in this document. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, by no later than December 8, 1989 to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**I. Background**

The Supportive Housing Demonstration Program was authorized in 1987 by subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11381-11388) (McKinney Act) to develop innovative approaches to providing housing and supportive services to the homeless. On June 24, 1988, HUD published a final rule for the program (53 FR 23898), which was codified as 24 CFR part 840 (transitional housing) and part 841 (permanent housing for the handicapped homeless).

On November 7, 1988, the President approved the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100-628) (1988 Amendments Act), which made several changes to the program. Section 485 of the 1988 Amendments Act required that HUD publish a notice, for immediate effect, within 60 days of enactment implementing the amendments to the program. The notice of the changes, combined with a notice of funds availability, was published on January 9, 1989 (54 FR 736). (The changes were

then published in codified form on March 27, 1989 (54 FR 12433).) Although the changes announced in the Notice were effective for this year's funding round, HUD invited public comments on the changes for consideration in a final rule, and this final rule responds to the comments.

In addition to changes to the rule by the 1988 Amendments Act, several other changes have been made to the rule to reflect the Secretary's priority to end the tragedy of homelessness in this country. Some of these changes represent an effort to simplify the application and selection processes and to add clarifications to the rule that the Department believes are desirable after meetings with homeless service providers across the country, as well as the experience gained in the past two years with the program. The Supportive Housing program has been moved from the Office of the Assistant Secretary for Housing to the Office of the Assistant Secretary for Community Planning and Development during a Departmental reorganization, in order to combine most of HUD's programs that serve the homeless population under one Assistant Secretary. For this reason, the final rule has been designated as 24 CFR part 577 (transitional housing) and Part 578 (permanent housing for the handicapped homeless), and Parts 840 and 841 will be removed.

**II. Public Comments**

HUD received public comments from the State agencies, one local government agency, and two private nonprofit organizations. Two of the comments were on provisions in the June 24, 1988 final rule. Although the January 9, 1989 notice requested comments on the 1988 Amendments Act changes only, HUD is responding to those comments, as well as comments on the changes announced in the January notice, in today's publication. The comments focused on the following areas:

**1. Maximum Period of Residence in Transitional Housing (Section 577.5)**

One commenter believed that the rule should allow for an additional flexible six-month grace period on the maximum period of residence for residents of transitional housing, because some residents need the extra time to locate affordable housing, employment, child care, or personal financial management training. When first enacted, section 422(12)(A) of the McKinney Act defined transitional housing as a project "that has as its purpose facilitating the movement of homeless individuals to independent living within a reasonable



amount of time, as determined by the Secretary." The June 24, 1988 Supportive Housing final rule provided for a maximum period of residence of 18 months. Section 443 of the 1988 Amendments Act amended the definition of transitional housing to provide for a 24-month period of residence "or such longer period as the Secretary determines is necessary to facilitate the transition of homeless individuals to independent living" (emphasis supplied). The amended definition of transitional housing, announced in the January 9, 1989 Notice and adopted in this final rule, does not limit the "longer period" to a definite period, such as six months, but reflects the discretion allowed by section 433.

#### 2. Limitations on New Construction (Sections 577.112 and 578.112)

HUD received a comment on the limitation on projects involving new construction. The commenter argued that new construction activities should not be limited to projects involving state universities, because new construction is often just as cost-effective, if not more so, than rehabilitation of existing structures.

Until enactment of section 449(b) of the 1988 Amendments Act, assistance to defray the cost of new construction of facilities was not authorized under the Supportive Housing program. Section 449(b) allows advances for new construction, but imposes very strict limitations on the projects that will qualify for a new construction advance. These limitations are statutory and are outside the discretion of HUD.

#### 3. Limitation on Use of Assistance (Sections 577.125 and 578.125)

One commenter stated that funding should not be limited to new programs or to the expansion of existing ones, but that the rule should recognize that current levels of services provided by existing programs are equally deserving of funding. Because the Supportive Housing program was established as a demonstration program to determine innovative approaches to providing supportive housing for the homeless, HUD believed it was appropriate to fund new projects that could be studied to determine their success. Another goal of the program was, and still is, to increase the number of supportive housing facilities available to assist homeless individuals and families.

HUD believes these justifications are still convincing, but also recognizes that there are existing programs that may need and deserve assistance with rehabilitating structures to bring them to a level that meets State or local

government health and safety standards. This will help to assure that available housing for the homeless meets applicable standards. Therefore, the rule has been changed to allow funding for improvements to existing facilities where the improvements are necessary to meet health and safety standards.

#### 4. Matching Funds (Sections 577.130 and 578.130)

A commenter asserted that, when used as a matching source of funds, volunteer time should be valued at prevailing wages and salaries, rather than at \$5 an hour (§§ 577.130(c) and 578.130(c)). The commenter felt that a project with a strong volunteer component as an integral part of its program should be rewarded. HUD agrees that volunteers play a vital role in providing housing and supportive services to the homeless. However, HUD believes that the legislative history of section 452 of the 1988 Amendments Act reflects the intent of Congress that these services be valued at \$5 an hour.

Section 452 allows the value of volunteer time and services to be considered as matching funds for Supportive Housing funds, at a rate to be determined by the Secretary. The legislative history of this provision shows that the House Committee on Banking, Finance and Urban Affairs authorized volunteer time and services to be counted as a source of matching funds because such sources were authorized in the Emergency Shelter Grants (ESG) program and the two programs should be uniform in approach. According to the House Report, the Committee believed that the value of volunteer time and services should be calculated "in the same manner as in the Emergency Shelter Grants Program." (H.R. Rep. No. 100-718, part II, 100th Cong., 2d Sess. 38 (1988).) HUD interprets this to mean that Congress intended that the value of volunteer time and services in the Supportive Housing program should be calculated at \$5 an hour, which is the value used for calculating such services in the ESG program (24 CFR 576.71(b)).

The commenter also expressed the opinion that the matching source requirement should be reduced from 50 percent to 25 percent and, in addition, that other Federal funds, such as Federal Emergency Management Agency (FEMA), Community Services Block Grants (CSBG), and ESG, should be eligible matching resources.

Section 425 of the McKinney Act requires that recipients supplement advances for acquisition/substantial rehabilitation or new construction and grants for moderate rehabilitation with

an equal amount of funds from non-Federal sources. HUD does not have the discretion to depart from this statutory requirement that recipients match these types of assistance dollar for dollar.

A 1988 amendment to section 425 requires that matching sources for advances for acquisition/substantial rehabilitation or new construction and grants for moderate rehabilitation be from non-Federal sources. HUD has changed the final rule in §§ 577.130(b) and 578.130(b) to indicate that the only assistance for which HUD will require that matching funds be from non-Federal sources is for advances for acquisition/substantial rehabilitation or new construction and grants for moderate rehabilitation. The change also clarifies that HUD does not consider Community Development Block Grants (CDBG) or CSBG funds to be Federal funds for matching purposes.

Section 423 allows HUD to provide grants for payment of operating costs "not to exceed 75 percent of the annual operating costs" of transitional housing projects, and "not to exceed 50 percent of the annual operating costs \* \* \* for the first year of operation, and not to exceed 25 percent \* \* \* for the second year of operation" of permanent housing for handicapped homeless persons. Under this statutory authorization of assistance for operating costs, HUD does not have the discretion to pay more than 50 percent of such costs for the first year of operation and 25 percent for the second year in the case of permanent housing for handicapped homeless persons. However, HUD has changed the final rule to allow assistance for operating costs for transitional housing for up to 75 percent of such costs during the first two years of operation, and up to 50 percent for three years thereafter. This increase up to the statutory limit for two years provides projects with more assistance during the crucial start-up years but recognizes that, after the initial years of a project, there should be a broad base of community support for the project and, therefore, greater resources from private sources should be available to replace McKinney Act funds.

HUD has also changed the final rule in § 577.117 with regard to grants for employment assistance programs (EAPs). Grants for EAPs were authorized for transitional housing projects in the 1988 Amendments Act, although the legislation was silent on the recipient's percentage share of the cost. In implementing EAP assistance in the January 1989 Notice, HUD made available assistance for EAPs for up to 50 percent of the costs for up to five



years. In order to make EAP assistance consistent with operating costs assistance, HUD has changed the final rule to allow EAP assistance for up to 75 percent of the costs during the first two years of operation, and up to 50 percent for three years thereafter.

#### 5. Ranking Criteria (Sections 577.215 and 578.215)

One commenter addressed the point system used to score applications in the competition for funding. (The rule provides the criteria under which applications are ranked, but it does not set forth the actual number of points awarded under a particular criterion.) The commenter stated that it understood that applicants without site control receive no points under that criterion. The commenter believed that scoring should be based instead on a sliding scale, taking into consideration the likelihood of an applicant's securing site control within a specified period of time. The commenter also believed that the number of points awarded on the basis of the site control criterion (25 percent of the maximum points that may be awarded) was too high.

Section 450 of the 1988 Amendments Act provides that the extent to which an applicant has control of the site of a proposed project will be a ranking criterion. During the 1989 funding competition, applicants that demonstrated ownership or a contract of sale, a 10-year lease, or an option to buy or lease for 10 years were awarded the maximum number of points possible under this criterion. Applicants could also receive points, on a sliding scale, depending on the likelihood of site control within six months after notification of an award. For example, points were awarded for a lease for less than a 10-year period (with the option to extend at the sole discretion of the applicant), or for a showing that the applicant was engaged in negotiations with a specific seller or lessor for a specific property, with reasonable hopes of consummation by the time awards are made.

HUD does not routinely include in its rules the number of points awarded under ranking criteria. This allows HUD the flexibility to change the point system as necessary, based on the experience gained with each funding round, especially in the case of new programs such as Supportive Housing. However, the number of points that will be awarded for each ranking criterion in a specific funding round will be included in the application package for that round. HUD believes that will give sufficient notice to applicants of the method HUD will use in ranking

applications. HUD will take the comment regarding the number of points for site control into account when deciding the ranking system for the 1990 funding competition.

The commenter also questioned why applications requesting grants for operating costs only are downgraded in scoring. HUD does not differentiate between requests for funds for acquisition or rehabilitation of a structure and funds for operating costs during the review and ranking process. In the past, points were given if an applicant did not include costs for supportive services in the operating budget, since HUD wanted to encourage projects to make use of supportive services that were available in the community. This particular provision has been eliminated from the final rule in § 577.215(b)(4) in recognition of the fact that often there are not sufficient funds or services available. HUD will still consider the extent to which an applicant proposes to use or coordinate with other public or private entities to provide supportive services. This policy is consistent with one of the initiatives under the Secretary's priority on homelessness, which is to mobilize all the nation's resources, both public and private.

HUD believes the supportive services offered to residents of transitional housing are a vital part of the goal of ending homelessness. Although the McKinney Act treats the cost of providing supportive services as an operating cost, HUD has separated supportive services costs from operating costs in the final rule to emphasize the importance the Department places on them. This change is discussed elsewhere in the preamble.

#### 6. Environmental Review by Applicants (sections 577.220(c) and 578.220(b))

One commenter addressed the change that requires States, metropolitan cities, urban counties, and other units of general local government to assume responsibility for the environmental review. The commenter believes that HUD's environmental review procedures in 24 CFR part 58, for which HUD requires the applicants described above to assume responsibility, are too time-consuming and strict, causing delays in beginning construction. The commenter thought that there should be a provision for a waiver of compliance with HUD procedures for applicants that are subject to other state and local environmental review requirements.

Section 482 of the 1988 Amendments Act provides that the regulations and procedures applicable under section 104(g) of the Housing and Community

Development Act of 1974 are to be applied to the Supportive Housing program. Section 104(g) authorizes HUD to assign the Federal environmental responsibilities to grantees deemed to have the legal capacity for environmental review (States, metropolitan cities, urban counties, and other units of general local government) and to define how the responsibilities are to be performed. The regulations at 24 CFR part 58 describe the requirements for grantees that assume the responsibilities.

The 1988 Amendments Act recognizes that the objectives of the Supportive Housing program are best served by a consolidation of environmental review responsibilities at the applicant level. Many applicants seek funding under other McKinney Act programs, and a single environmental review should often suffice for those applicants. According to the Report of the House Committee on Banking, Finance and Urban Affairs, the intent of section 482 of the 1988 Amendments Act was to expedite the consideration of applications. However, the Report states that the Committee expects all applicants to adhere to all requirements of the National Environmental Policy Act (NEPA) and that "this amendment does not lessen any requirement for any project to comply with the NEPA standards." (See H.R. Rep. No. 100-718, part II, 100th Cong., 2d Sess. 39 (1988).)

The requirements of statutes, Executive Orders, and the regulations of oversight agencies that are imposed on applicants through Part 58 cannot be waived. Requirements arising out of a statute or Executive Order to not allow for waivers. Those that are regulatory, i.e., the Council on Environmental Quality NEPA regulations (40 CFR parts 1500-1508) and the Advisory Council on Historic Preservation regulations (36 CFR part 800), make some provision for "emergencies," but these are for conditions more extreme than a concern for processing delays. Compliance with the review processes and time periods under the authorities listed in 24 CFR 58.5 is mandatory—whether responsibility for review is assigned to the applicant under section 104(g) or retained and exercised by HUD under 24 CFR part 50. In addition, HUD has no legislative authority to allow the applicability of State or local environmental requirements to substitute for the Federal requirements.

In §§ 577.220(b)(3) and 578.220(b)(3), the final rule clarifies that applicants assuming responsibility for environmental reviews may arrange for local governments, with the appropriate



technical capability, to conduct the technical review, as long as the applicants still retain all legal responsibilities, *i.e.*, independently evaluate information submitted and assume responsibility for its accuracy, scope, and content. Applicants may also adopt prior reviews conducted by HUD or another governmental unit if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (*e.g.*, a determination that no environmentally significant changes have occurred since the review was done).

#### 7. Location of Projects in Floodplains (sections 577.220(e) and 578.220(e))

HUD received a comment on the floodplains restriction contained in the January 9 notice for the permanent housing for the handicapped homeless component of the Supportive Housing program. Under that provision, all projects for the handicapped homeless were deemed to be critical actions (*i.e.*, any activity for which even a slight chance of flooding would be too great). The Floodplain Management Guidelines implementing Executive Order 11988, Floodplain Management (43 FR 6030 (Feb. 10, 1978)), require that all critical actions proposed to be located in a 500-year floodplain comply with an eight-step public notification and decision-making process. The commenter argued that, by classifying all projects involving handicapped groups as critical actions, the restriction conflicts with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3620), as amended by the Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988). These statutes prohibit discrimination based on handicap.

The commenter also argued that the restriction was contrary to a Supreme Court opinion in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), which held that a city ordinance requiring a special use permit for a group home for the mentally retarded was invalid as applied under the Equal Protection clause. In reviewing various objections of the City Council to the home's location, the Court dismissed the Council's objection to locating the home in a 500-year floodplain by pointing out that concern with the possibility of a flood could hardly be based on distinction between the home and facilities such as nursing homes, homes of convalescents or the aged, or sanitariums or hospitals, all of which

could have been located on the site without obtaining a special use permit.

The commenter also asserted that the eight-step process would result in disqualification of a proposed site in the 500-year floodplain if another property is for sale outside the floodplain, regardless of whether the alternative property was affordable or met the occupants' needs. The commenter argued that the issue of personal or physical safety was never a factor in the original establishment of flood zones.

HUD notes that, while floodplain restrictions were established under the National Flood Insurance Program before Executive Order 11988 was issued in 1977, the Executive Order requires agencies to take action "to minimize the impact of floods on human safety, health and welfare." The implementing Floodplain Management Guidelines, issued by the U.S. Water Resources Council the following year (43 FR 6030, Feb. 10, 1978), indicate that a key question with regard to critical actions is whether, given the flood warning lead time available, "occupants of buildings such as hospitals, schools and nursing homes [would] be insufficiently mobile to avoid loss of life and injury." Under the Executive Order, personal safety in flood situations is thus a significant consideration in decisionmaking on both the location and the design of facilities proposed for Federal assistance. (HUD also notes that the Executive Order and Guidelines require consideration only of practicable alternative sites outside the floodplain, and do not require rejection of floodplain sites in favor of unaffordable, inaccessible, or otherwise ill-suited non-floodplain locations.)

Finally, HUD views the *Cleburne* case as inapposite to the Executive Order process; in apparent contrast to the local permitting process cited in the *Cleburne* case, HUD considers hospitals, nursing homes, and convalescent homes assisted under its programs to be critical actions that are subject to the Executive Order process when located in a 500-year floodplain. Moreover, proposed location of such facilities in the 500-year floodplain can lead to rejection of the site only if practicable location alternatives exist; the most likely outcome is a review of project design to ensure occupant safety, rather than site rejection.

Upon reconsideration, nevertheless, HUD has amended the final rule, since HUD has concluded that the treatment of all projects for handicapped persons under this program as critical actions is overinclusive. Persons with one type of handicap may experience no difficulty

in evacuating a structure or following instructions on safety in the event of flooding, while persons with another type might have varying degrees of difficulty. However, because there is an insufficient basis at this time for differentiating among handicapped groups to be served by facilities assisted under the permanent housing program, the rule will not treat any project for the handicapped as a critical action. For the same reason, HUD is also revising the transitional housing rule to eliminate treatment of facilities under that program for the developmentally disabled, chronically mentally ill, mobility impaired as critical actions. All Supportive Housing projects will be subject to the eight-step process only when located in a 100-year floodplain, which is the restriction that applies to all non-critical actions in accordance with Executive Order 11988.

HUD is developing a proposed rule to provide an agency-wide floodplain regulation. When that rule is published, HUD will seek public comment on the scope of the definition of "critical action," any may revisit this issue when a more educated decision can be made with regard to differentiating among handicapped groups.

#### III. Other Changes

As a result of the effort to simplify the application and selection process and to clarify the rule, HUD has made several other changes to the program, and has reorganized the rule. A discussion of the major changes follows, but the reader is advised to read the rule carefully for minor changes and reorganization not discussed in the preamble.

##### Definitions Section (577.5 and 578.5)

In the definition of applicant for the permanent housing for handicapped homeless persons program, the rule now provides that an applicant may be the State housing finance agency or the State agency that customarily implements housing programs for the State and that is identified by statute to participate in housing programs in the State. HUD has interpreted section 424(a)(2)(F)(ii) of the McKinney Act as allowing States to designate such an agency to fulfill the State's responsibilities in a permanent housing project.

The definitions of moderate rehabilitation and substantial rehabilitation have been changed to distinguish between the two types of rehabilitation. Under the McKinney Act, the two types were originally distinguished by the amount of assistance allowed—up to \$200,000 for



substantial rehabilitation and up to \$100,000 for moderate rehabilitation. The assistance for substantial rehabilitation was in the form of an advance, which was subject to repayment under certain conditions. The assistance for moderate rehabilitation was in the form of a grant. The legislative history indicates that Congress intended that "moderate rehabilitation should be limited to modest rehabilitation activity the cost of which the Secretary determines is too low to necessitate an advance." (H.R. Rep. No. 100-174, 100th Cong., 1st Sess. 78 (1987)).

In the 1988 Amendments Act, Congress removed the amount of assistance as a distinction by authorizing grants for up to \$200,000 for moderate rehabilitation but, at the same time, retaining the \$200,000 limitation for advances for substantial rehabilitation. The characterization of the assistance as "advances" for substantial rehabilitation and "grants" for moderate rehabilitation was unchanged by the 1988 Amendments Act. HUD believes some distinction should be made between the two types of assistance—especially since the advances for substantial rehabilitation are subject to repayment. Therefore, the final rule now contains definitions of the two types of rehabilitation that are based on the extent of rehabilitation to the structure, as indicated by the comparison between the cost of rehabilitation and the fair market value of the structure before rehabilitation. Rehabilitation of a project involving costs of 75 percent or less of the value of the structure before rehabilitation will be considered moderate rehabilitation, and costs in excess of 75 percent of the value of the structure before rehabilitation will be considered substantial.

The definition of operation costs no longer includes as operating costs the provision of supportive services to residents or conducting supportive services needs assessments. This is a technical amendment to separate the supportive services costs from operating costs, since the two types of costs are being funded separately, as discussed below. The cost of providing relocation assistance, under §§ 577.315 or 578.315, to persons displaced as a result of a transitional housing or permanent housing project assisted by HUD has been added to the definition as an operating cost eligible for assistance.

The definition of rehabilitation has been amended to include any costs of structural changes necessary to make a structure accessible for persons with physical handicaps, as required for structures with 15 or more units by

section 504 of the Rehabilitation Act of 1973 and implemented in 24 CFR 8.23(a) or (b).

The definition of supportive services for residents of transitional housing has been expanded to include the purpose of such services as facilitating the movement of residents to independent living. Likewise, the definition of supportive services for residents of permanent housing for handicapped homeless persons has been expanded to include the purpose of maximizing the residents' ability to live as independently as possible within their environment. HUD believes that these new definitions emphasize the role of supportive services in reaching the goal of ending homelessness.

#### *Assistance Provided—Subparts B of Parts 577 and 578*

The sections describing advances for acquisition/substantial rehabilitation (§§ 577.105 and 578.105), grants for moderate rehabilitation (§§ 577.110 and 578.110), and advances for new construction (§§ 577.112 and 578.112) have been amended to allow an advance or grant in an amount not to exceed the lower of \$200,000 or the total cost of the acquisition/substantial rehabilitation, moderate rehabilitation, or new construction minus the applicant's contribution toward the cost. The rule formerly provided that the maximum advance or grant available could not exceed the lower of \$200,000 or 50 percent of the cost of the acquisition/substantial rehabilitation, new construction, or moderate rehabilitation. In some circumstances, applicants were unable to utilize the full value of a matching source. In the sections describing grants for moderate rehabilitation, the "project limit" on grants has also been removed. The project limit was a complicated formula that was difficult for applicants to understand and difficult for HUD to administer. The experience of the past two years shows that it was also unnecessary.

Grants for operating costs (§§ 577.115 and 578.115) now include a separate category for supportive services costs. This change does not allow an applicant to receive more assistance than under the former rule, which included supportive services costs as an operating cost, but provides HUD with a reviewing tool in assessing applications, as well as information on the cost of providing supportive service. With the increased emphasis on the role of supportive services in ending homelessness, HUD believes it is necessary to break out the cost of providing supportive services to

demonstrate the importance of such services. Grants for supportive services costs are subject to the same limitations on amounts and time periods as grants for operating costs.

The rule has also been changed to provide that HUD will obligate funding for operating costs and supportive services costs, as well as for costs associated with EAPs, based on the recipient's estimate of the amount necessary for five years of operation, rather than limiting each year's funding level to the recipient's estimate of costs for the first year of operation. A companion change has been made to §§ 577.400 and 578.400 on deobligation for the sake of consistency.

Although the rule has not been changed with regard to providing technical assistance only in connection with awards of other assistance, HUD staff will, to the extent possible, give technical assistance to potential applicants with questions relating to the application.

#### *Limitations on Use of Assistance (Sections 577.125 and 578.125)*

The paragraphs in the former rule prohibiting the use of acquisition/substantial rehabilitation advances to defray the costs of acquiring a lease have been eliminated as unnecessary. However, the rule still provides that advances for acquisition/substantial rehabilitation and grants for moderate rehabilitation may be used to rehabilitate leased structures. That provision now appears in the section describing the types of assistance available (§§ 577.100 and 578.100).

Paragraphs (c) of §§ 577.125 and 578.125, which describe the limitations on the use of assistance by primarily religious organizations, contain provisions governing the circumstances under which HUD will provide assistance to a recipient that is a primarily religious organization or a wholly secular organization established by a primarily religious organization (or, as in the case of permanent housing, to a recipient that uses such an organization as a project sponsor). With one exception noted below, these provisions are substantially identical to those set out in 24 CFR part 570, which consists of HUD's community development block grant program (CDBG) entitlement rules.

Under these provisions, a primarily religious organization (or wholly secular organization established by a primarily religious organization) must agree to provide housing and supportive services in a manner that is free from religious influence. In this connection, the provider must: (1) Not discriminate



against any employee or applicant for employment on the basis of religion and not limit employment or give employment preference to persons on the basis of religion; (2) not discriminate against, or limit the provision of housing or supportive services, to applicants for such housing or services on the basis of religion; and (3) provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, or otherwise exert no religious influence in the provision of housing or supportive services.

As noted, the foregoing principles depart in one fashion from the CDBG entitlement rule at 24 CFR 570.200(j)(3) (53 FR 34418, 34412, Sept. 6, 1988), which contains an additional restriction that the portion of the facility of the primarily religious organization used to provide funded services "shall contain no religious symbols or decorations, other than those permanently affixed to or part of the structure."

This policy has been followed for several years in connection with CDBG and homeless assistance made available through primarily religious organization providers. The Department has a continuing commitment to optimize participation by religious providers, which have long been in the forefront in assisting the homeless and other most needy, but in a manner consistent with the strictures imposed by the Establishment Clause of the First Amendment of the United States Constitution. After a review of the relevant case law, the Department has not found dispositive case addressing the provision of government assistance to a primarily religious organization providing social services in a setting where the presence of religious symbols or decorations alone constitutes a violation of the Establishment Clause. The provision in question, which was recommended to HUD by counsel representing a nationally prominent primarily religious organization as a protection against impermissibly advancing religion, has been utilized in the spirit in which it was so recommended. However, as noted, HUD's examination of the case law has concluded that the excised language suggests a degree of control on the presence of religious symbols or decorations that is not compelled thereunder, or is not otherwise intrinsic to traditional Constitutional Church/State separation doctrine as pronounced by the United States Supreme Court. Accordingly, this rule does not include the prohibition on religious symbols or decorations. Further, an amendment

removing the quoted text from § 570.200(j)(3)(iv) is included in this document as a final rule.

This change in no way contravenes the purpose of the underlying principles in these rules, namely, that a primarily religious organization, or a wholly secular organization established by a primarily religious organization, can only provide housing and supportive services (or CDBG public services) in a manner that is free from religious influence violative of the Establishment Clause, specifically including the explicit provisions described above.

The limitation on the use of assistance for administrative costs has been expanded to include all grants and advances (paragraphs (e)). The provision also clarifies that administrative costs are those costs associated with administering the assistance provided by HUD.

#### *Assistance Under Other HUD Programs (Sections 577.135 and 578.135)*

The requirement in the rule that applicants wishing to purchase HUD-owned single family homes request a PHA or local government to enter into a lease/option agreement with HUD has been eliminated, since PHAs were sometimes reluctant to be involved in these arrangements. The rule now allows the applicant to enter into the agreement with HUD. The applicant may not occupy the property, however, until after closing the sale. During the lease term, the applicant will be responsible for all maintenance costs and taxes on the property.

#### *Matching Requirements (Sections 577.130 and 578.130)*

The rule has been changed to provide that the requirement that matching funds be from non-Federal sources applies only to advances for acquisition/substantial rehabilitation or new construction and grants for moderate rehabilitation. This change adheres to the statutory provisions in section 452 of the 1988 Amendments Act. Section 452 also allows all sources of matching funds, including "in-kind" contributions, to be included as a match for an applicant's request for advances for acquisition/substantial rehabilitation or new construction and grants for moderate rehabilitation. The rule has been changed to allow all such matching sources for those advances or grants, regardless of whether the contribution relates to that type of assistance. The rule also states that HUD considers funds from Community Development Block Grants and Community Service Block Grants as non-Federal sources.

The requirement that applicants seeking funding for existing programs commit new funds in order to satisfy the matching requirement has been eliminated. While HUD still requires that these programs propose expansions of services in order to be eligible for funding (except where funds are sought to bring housing up to applicable standards), the requirement for new funds for matching purposes has been a burdensome one for some projects and a difficult one for HUD to assess. HUD's goal is to fund projects that are dedicated to serving the homeless with as few hindrances to that end as possible. If an existing facility serves all the purposes of the McKinney Act and meets all the other requirements of the Supportive Housing program except for a match of new money, HUD believes it would be too restrictive a view to refuse to review such an application.

#### *Application and Selection Process (Subparts D of Parts 577 and 578)*

The sections describing the application and selection process have been reorganized in an effort to simplify both the rule and the process. The section on threshold requirements has been removed. The requirements previously described as "threshold" were evaluated as to subject matter, and several were moved to the sections on application requirements, ranking criteria, or program requirements. (Many of the threshold requirements were repeated in those sections in the former rule.) Others have been eliminated from the rule altogether, because HUD would like to remain as flexible as possible when evaluating applications. In keeping with the Secretary's priority goal of ending homelessness, HUD will review each application with a desire to fund as many projects as possible, without imposing stringent threshold requirements that may keep potentially fundable applications from the competition.

Two new ranking criteria have been added to the permanent housing rule (§ 578.215) to emphasize the purpose of maximizing the ability of residents to live independently within the permanent housing environment and to underscore the statutory requirement that permanent housing projects be integrated into the neighborhoods in which they are located. Another statutory ranking criterion—the need for such supportive housing in the area to be served—has been added to both transitional and permanent housing. This was in the former rule as a threshold requirement.



The ranking criterion for employment assistance programs in the transitional housing rule (§ 577.215(b)(7)) has been expanded to include assessment of the quality of the program, as well as whether the program meets the statutory requirements of providing for employment of residents in the housing and payments for transportation costs. The addition of criteria by which HUD will assess the quality of the program emphasizes the importance HUD places on programs that show a commitment to facilitating the movement of homeless people to independent living.

Paragraph (b) was added to §§ 577.225 and 578.225 to describe the procedure HUD will follow in the event of a tie between applicants after the ranking process. HUD will use the quality of the proposal and the need for the project in the area as factors in choosing between the applicants. During the review and selection period, if HUD makes a procedural error that, if corrected, would result in an application being funded that was not funded, HUD may fund the application during the next funding round (§§ 577.225(c) and 578.225(c)).

#### *Program Requirements (Subparts E of Parts 577 and 578)*

The sections on program requirements have been reorganized to eliminate redundancies and simplify the rule. Most of the provisions in the former rule are still in the new final rule, but have been either moved or combined with other requirements.

HUD has removed the provision in the former rule to the effect that restrictions on the use of structures be contained in covenants recorded in land records when acquisition/substantial rehabilitation advances or moderate rehabilitation grants were awarded to private nonprofit organizations. Comments received from providers of housing for the homeless in meetings and workshops have convinced HUD that this provision is difficult to enforce, given the varying laws of jurisdictions. In addition, the provision imposes an unfair use restriction on owners of property leased to recipients, when the owner is not a party to the grant agreement between HUD and the recipient. The removal of this provision, however, is not an indication of a lowered commitment on HUD's part to enforcing the grant agreements in other appropriate ways.

The provisions on eminent domain and prevention of undue benefits that were a part of the former rule have been included in the section on repayment of

advances (§§ 577.310 and 578.310), since, in effect, they provide for HUD to be reimbursed for assistance if, during the 20-year period following the date of initial occupancy, an assisted structure is taken under an eminent domain proceeding or is sold or otherwise disposed of by the recipient. Paragraph (d)(ii) has been added to the final rule to include the statutory exception to this requirement for sales or other dispositions that result in the continued use of the project for the direct benefit of lower income persons or where all proceeds are used to provide supportive housing.

A former requirement, to the effect that the recipient carry casualty insurance, with HUD as the beneficiary, in an amount at least equal to the amount of assistance provided by HUD, has been removed. This is not practical for governmental units since they, for the most part, are self-insured. OMB Circular A-102, which is implemented in 24 CFR part 85 and applicable to recipients of assistance under parts 577 and 578, requires such insurance to be carried by private nonprofit organizations when real property is acquired with Federal assistance.

A new section has been added to each rule (§§ 577.315 and 578.315) regarding relocation assistance to persons who are displaced as a result of acquisition, rehabilitation, or demolition of a structure to be assisted under the Supportive Housing Demonstration program. HUD is currently amending all its regulations to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and new governmentwide implementing regulations at 49 CFR part 24. The rule now requires recipients to provide relocation assistance to displaced persons. Under the former rule, a threshold requirement made ineligible for funding any project that would result in the displacement of persons. When HUD promulgated the former rule in June 1988, the preamble to that rule stated that the provisions on displacement would be reviewed after the governmentwide regulations were promulgated. The change in the rule announced today is a result of that review.

HUD has removed the requirement that transitional housing recipients execute contracts with the residents of transitional housing before admission. Such contracts were for the purpose of limiting the resident's length of stay in the housing and preempting any State or local law to the extent that it prohibited

the recipient from discharging the resident at the end of the term. The rule also described a procedure for a resident-requested review of the discharge date following notice of such date to the resident. This provision has also been removed. The rule, in § 577.325, still contains a preemption of State or local laws to the extent they prohibit recipients from discharging residents at the end of the 24-month residency period, but it does not require recipients to execute contracts with residents. Whether or not a recipient executes a contract setting forth the resident's length of stay (or any other terms or conditions regarding the relationship between the recipient and resident) is discretionary with the recipient. However, the recipient must give the resident written notice at least 30 days prior to the end of the resident's length of stay.

Section 422(12)(B) of the McKinney Act requires that each permanent housing project for handicapped homeless persons be either a home designed solely for housing handicapped persons or dwelling units in a multi-family housing project, condominium project, or cooperative project. Only one home may be located on any one site, and that home may not be on a site contiguous to another site containing another home. This statutory requirement, which was not in the former rule, is included in this final rule in § 578.325(a).

In addition, paragraph (b) of that section contains the statutory requirement that permanent housing projects must be integrated into the neighborhoods in which they are located. The rule describes the factors HUD will consider indicative of neighborhood integration. These include neighborhood acceptance of the project, participation by residents in neighborhood activities and institutions, integration of the project into community plans, compatibility of the project with local zoning determinations, and the provision of supportive services outside the housing facility but within the neighborhood.

#### **IV. Other Matters**

The collection of information requirements for the Supportive Housing Demonstration program have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:



Description	Number of respondents	Responses per respondent	Total annual responses	Hrs per response	Total hours
Permanent Hsq:					
Application.....	102	1	102	42	4,284
Envir. review.....	65	1	65	14	910
Transit Hsq:					
Application.....	400	1	400	42	16,800
Envir. review.....	10	1	10	14	140
Recordkeeping.....	200	1	200	1	200
Total annual burden.....					22,334

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An 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.

The January 9, 1989 notice contained information with respect to the amendments and the National Environmental Policy Act of 1969, Executive Orders 12606 (The Family) and 12612 (Federalism), and the Regulatory Flexibility Act. The reader may refer to that document for HUD's analyses under those provisions. The changes in this rule do not affect those analyses.

This rule was listed as item 1088 in the Department's Semiannual Agenda of Regulations published on October 30, 1989 (54 FR 44702, 44728).

The Catalog of Federal Domestic Assistance program number of 14.178.

#### List of Subjects

#### 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

#### 24 CFR Part 577

Grant programs, Housing and community development, Housing, Homeless.

#### 24 CFR Part 578

Grant programs, Housing and community development, Housing, Handicapped, Homeless.

#### 24 CFR Part 840

Grant programs, Housing and community development, Housing, Homeless.

#### 24 CFR Part 841

Grant programs, Housing and community development, Housing, Handicapped, Homeless.

Under the Secretary's authority in section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), and for the reasons stated in the preamble, title 24, Chapters V and VIII of the Code of Federal Regulations is amended as follows:

### PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-20); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

#### § 570.200 [Amended]

2. In § 570.200, paragraph (j)(3)(iv) is removed.

3. Part 577 is added to read as follows:

### PART 577—TRANSITIONAL HOUSING

#### Subpart A—General

##### Sec.

577.1 Applicability and scope.  
577.5 Definitions.

#### Subpart B—Assistance Provided

577.100 Types of assistance.  
577.105 Acquisition/substantial rehabilitation advances.  
577.110 Moderate rehabilitation grants.  
577.112 New construction advances.  
577.115 Funding for annual operating costs and supportive services costs.  
577.117 Grants for employment assistance programs.  
577.120 Technical assistance.  
577.125 Limitations on use of assistance.  
577.130 Matching requirements.

577.135 Assistance under other HUD programs.

#### Subpart C—Comprehensive Homeless Assistance Plan

577.150 Comprehensive Homeless Assistance Plan.

#### Subpart D—Application and Selection Process

577.200 Notice of fund availability.  
577.205 Selection process.  
577.210 Application requirements.  
577.215 Ranking criteria.  
577.220 Environmental review.  
577.225 Final selection.

#### Subpart E—Program Requirements

577.300 Grant agreement.  
577.305 General operation.  
577.310 Term of commitment and repayment of advance.  
577.315 Relocation and acquisition.  
577.320 Resident rent.  
577.325 Discharge of residents.  
577.330 Flood insurance.  
577.335 Applicability of other Federal requirements.

#### Subpart F—Administration

577.400 Obligation of funds, funding amendments, and deobligation.  
577.405 Site change.

Authority: Sec. 428, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

#### Subpart A—General

##### § 577.1 Applicability and scope.

(a) *General.* The Supportive Housing Demonstration program contained in subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act is designed to develop innovative approaches for providing supportive housing, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. It is designed to determine:

(1) The cost of acquisition, rehabilitation, acquisition and rehabilitation, or leasing of existing structures for the provision of supportive housing;



(2) The cost of operating such housing and providing supportive services to the residents of such housing;

(3) The social, financial, and other advantages of such housing as a means of assisting homeless individuals; and

(4) The lessons that the provision of supportive housing might have for the design and implementation of housing programs that serve homeless individuals and families with special needs, particularly deinstitutionalized homeless individuals, homeless families with children, homeless individuals with mental disabilities, and other handicapped homeless persons.

A central purpose of the program is to provide supportive housing for deinstitutionalized homeless individuals and other homeless individuals with mental disabilities.

(b) The Supportive Housing Demonstration program consists of two components: Permanent housing for handicapped homeless persons and transitional housing. This part implements the transitional housing component of the program. Part 578 provides for a program to assist in providing permanent housing for handicapped homeless persons.

#### § 577.5 Definitions.

As used in this part:

*Applicant* means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits an application for assistance under this part. Governmental entities include those that have general governmental powers (such as a city or county), as well as those that have limited or special powers (such as public housing agencies).

*Comprehensive Homeless Assistance Plan or Comprehensive Plan* means the Comprehensive Assistance Plan established by subtitle A of title IV of the Stewart B. McKinney Homeless Assistance Act and described in § 577.150.

*Date of initial occupancy* means the date that the project is initially occupied by a homeless person for whom assistance is provided under this Part. If the assistance provided under this part is used only for the purposes described under § 577.125(a)(2)(ii), the date of initial occupancy is the date that expanded services are first provided to the residents of the project.

*Deinstitutionalized homeless individual* means a homeless individual with mental disabilities who has been discharged or released from a mental institution or hospital, a halfway house, or similar facility providing housing and supportive services to its residents. This

term includes a homeless family, if the head of the family (or the spouse of the head of the family) is a deinstitutionalized homeless individual.

*ESG formula city or county* means a metropolitan city or urban county that is eligible to receive a formula allocation under the Emergency Shelter Grants program established by subtitle B of title IV of the Stewart B. McKinney Homeless Assistance Act and described at 24 CFR part 578.

*Handicapped or Handicapped person* means any individual having an impairment that is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that the ability to live independently could be improved by a stable residential situation. This term includes:

(a) An individual who is developmentally disabled, i.e., an individual who has a severe chronic disability that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) An individual who is chronically mentally ill, i.e., an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (e.g., by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

(c) A person whose sole impairment is alcoholism or drug addiction will not be considered to be handicapped under this part.

*Homeless* means:

(a) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family that has a primary nighttime residency that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

*Homeless family with children* means a homeless family that includes at least one parent or guardian and one child under the age of 18, a homeless pregnant woman, and a homeless individual in the process of securing legal custody of any person who has not attained the age of 18 years.

*Homeless individual with mental disabilities* means a homeless individual who is a handicapped person and whose handicap is wholly or partially attributable to a mental or emotional impairment. This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is a homeless individual with mental disabilities.

*HUD* means the Department of Housing and Urban Development.

*Metropolitan city* means a city that is classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974. In general, metropolitan cities are those cities that are eligible for an entitlement grant under 25 CFR part 570, subpart D.

*Moderate rehabilitation* means rehabilitation of a project that involves costs of 75 percent or less of the value of the building before rehabilitation. For projects of 15 or more units where rehabilitation costs are less than 75 percent of the replacement cost of the building, that project must meet the requirements of 24 CFR part 8.23(b).

*Operating costs* means expenses that a recipient incurs for:

(a) Administration (including staff salaries), maintenance, minor or routine repair, security and rental of the housing;

(b) Utilities, fuel, furnishings, and equipment for the housing; and

(c) Relocation assistance under § 577.315, including payments and services.



**Private nonprofit organization** means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

- (a) Have a voluntary board;
- (b)(1) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or
- (2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and
- (c) Practice nondiscrimination in the provision of assistance under the transitional housing program in accordance with the authorities described in § 577.335(a).

**Project** means one or more existing structures or incomplete structures, or parts of one or more existing structures or incomplete structures.

**Recipient** means the applicant, approved by HUD as financially responsible, that executes a grant agreement with HUD to provide transitional housing. The recipient must operate transitional housing and provide (or coordinate the provision of) supportive services to the residents of the housing.

**Rehabilitation** means labor, materials, tools, and other costs of improving structures to a level that meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repairs directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, improvement through alterations or additions to, or enhancement of, existing structures, including improvements to increase the efficient use of energy in structures, and structural changes necessary to make the structure accessible for persons with physical handicaps. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements. All buildings of 15 or more units undergoing rehabilitation must meet the accessibility requirements of section 504 of the Rehabilitation Act of 1973, as amended, as set forth in 24 CFR 8.23(a) or (b).

**State** means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

**Substantial rehabilitation** means rehabilitation of a project that involves costs in excess of 75 percent of the value of the building before rehabilitation. For projects of 15 or more units where rehabilitation costs are 75 percent or more of the replacement cost of the building, that project must meet the requirements of 24 CFR 8.23(a).

**Supportive services** means services provided to residents of transitional housing for the purpose of facilitating the movement of the residents to independent living. Supportive services, which must be proposed by the applicant in its application and approved by HUD, must address the special needs of the homeless to be served by the project (such as deinstitutionalized homeless individuals, homeless families with children, homeless individuals with mental disabilities, and other handicapped homeless persons). Supportive services may include:

- (a) Assistance in obtaining permanent housing;
- (b) Medical and psychological counseling and supervision;
- (c) Employment counseling;
- (d) Nutritional counseling;
- (e) Assistance in obtaining other Federal, State, and local assistance available for residents of transitional housing facilities, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and
- (f) Other services, such as child care, transportation, job placement, and job training. All or part of the supportive services may be provided directly by the recipient or by arrangement with public or private service providers.

**Transitional housing** means a project assisted under this part:

- (a) That is designed to provide housing and appropriate supportive services to homeless persons, including (but not limited to) deinstitutionalized homeless individuals with mental disabilities and other homeless individuals with mental disabilities, and homeless families with children; and
- (b) That has as its purpose facilitating the movement of homeless individuals to independent living within 24 months, or within a longer period determined by HUD as necessary to facilitate the transition.

**Tribe** means an Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, considered an eligible recipient

under the Indian Self Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

**Urban county** means a county that is classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974. In general, urban counties are those counties that are eligible for an entitlement grant under 24 CFR part 570, subpart D.

## Subpart B—Assistance Provided

### § 577.100 Types of assistance.

(a) **Assistance available.** Six types of assistance are available for transitional housing:

- (1) Advances for acquisition, substantial rehabilitation, or acquisition and substantial rehabilitation;
- (2) Advances for new construction (under limited circumstances);
- (3) Grants for moderate rehabilitation;
- (4) Grants for annual operating costs and supportive services costs (up to five years);
- (5) Grants for establishing and operating employment assistance programs; and
- (6) Technical assistance.

(b) **Eligibility for more than one type of assistance.** Applicants may be eligible for one or any combination of the types of assistance, except that HUD will offer technical assistance only in connection with other assistance under this Part.

(c) **Rehabilitation of leased property.** Acquisition/substantial rehabilitation advances and moderate rehabilitation grants are available for the rehabilitation of leased property.

### § 577.105 Acquisition/substantial rehabilitation advances.

(a) **Use.** HUD will advance sums to recipients to:

- (1) Defray the cost of the acquisition, substantial rehabilitation, or acquisition and substantial rehabilitation of existing structures selected by the recipients for use in the provision of transitional housing; or

- (2) Repay any outstanding debt on a loan made to purchase existing structures for use in the provision of transitional housing.

(b) **Amount.** If the applicant meets the matching share requirements at § 577.130, the maximum advance available for acquisition/substantial rehabilitation is the lower of:

- (1) \$200,000; or
- (2) The total cost of the acquisition/substantial rehabilitation minus the applicant's contribution toward the cost



of the acquisition/ substantial rehabilitation.

(c) *Terms of the advance.* Advances are interest-free and, if the conditions described in § 577.310 are met, are not subject to repayment. The sale or disposition of a structure acquired or rehabilitated with an advance is subject to the requirements of § 577.310(d).

(d) *Increased amounts.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than \$200,000 but not more than \$400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 are applicable to increased advances.

(e) *Repayment of outstanding debt.* An applicant for an acquisition/ substantial rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure, as described in paragraph (a)(2) of this section, must provide the following information and documentation as a part of the application for the advance:

- (1) A copy of the contract of sale;
- (2) A copy of the loan agreement, mortgage agreement, or deed of trust;
- (3) Documentation showing the purpose of the loan;
- (4) Documentation of the balance owed on the loan, mortgage, or deed of trust; and
- (5) Certification that the structure has not been assisted under this Part before the date of the application.

(f) *Applicability.* Paragraph (a)(2) of this section is applicable to awards of assistance under this Part on or after November 1, 1987.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361.)

#### § 577.110 Moderate rehabilitation grants.

(a) *Use.* HUD will make grants to recipients to defray the cost of moderate rehabilitation of existing structures selected by the recipients for use in the provision of transitional housing.

(b) *Amount.* If an applicant meets the matching share requirements at § 577.130, the maximum grant available for moderate rehabilitation is the lower of:

- (1) \$200,000; or
- (2) The total cost of the moderate rehabilitation minus the applicant's contribution toward the cost of the moderate rehabilitation.

(c) *Terms of the grant.* The sale or disposition of a structure rehabilitated

with a grant under this section is subject to the requirements of § 577.310(d).

(d) *Increased grants.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, grants of more than \$200,000 but not more than \$400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 are applicable to increased grants.

#### § 577.112 New construction advances.

(a) *Use.* HUD will advance funds to recipients to defray the cost of new construction of facilities for use in the provision of transitional housing where HUD finds the following factors:

- (1) The project involves the cooperation of a city and a State university;
- (2) The land has been donated to the applicant by a State university;
- (3) The applicant proposes a transitional housing structure of at least 10,000 square feet; and
- (4) The applicant proposes a model transitional housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

(b) *Amount.* If the applicant meets the matching share requirements at § 577.130, the maximum advance available for new construction is the lower of:

- (1) \$200,000; or
- (2) The total cost of the construction minus the applicant's contribution toward the cost of the new construction.

(c) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, grants of more than \$200,000 but not more than \$400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 are applicable to increased advances.

#### § 577.115 Funding for annual operating costs and supportive services costs.

(a) *General.* HUD will provide grants for annual operating costs and supportive services costs of transitional housing for a period not to exceed five years. Assistance for operating costs and supportive services costs will be available for up to 75 percent of the total cost for two years and up to 50 percent of the total cost for three years.

(b) *Operating costs.* Grants for the costs associated with the day-to-day operation of the transitional housing are available in accordance with the provisions of paragraph (a) of this section. Such costs include the expenses that a recipient incurs for the administration (including staff salaries), maintenance, minor or routine repair, security and rental of the housing; utilities, fuel, furnishings and equipment for the housing; and relocation assistance under § 577.315, including payments and services.

(c) *Supportive services costs.* Grants for the costs associated with providing supportive services, approved by HUD, to residents of transitional housing are available in accordance with the provisions of paragraph (a) of this section. Such costs include salaries paid to providers of supportive services, the costs of conducting resident supportive services needs assessments, and any other costs directly associated with providing such services. Costs associated with supportive services do not include any percentage of the costs described in paragraph (b) that are attributable to the provision of supportive services.

(d) *Assistance for incomplete structures.* If an applicant seeks assistance under this section for projects with incomplete structures, the applicant must provide reasonable assurance of completion of construction within nine months after notification of an award. Such assistance will begin on the date of initial occupancy. Reasonable assurance may be satisfied by submission with the application for assistance in the following:

- (1) Evidence that construction financing has been obtained; and
- (2) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

(e) *Commitment of amounts for operating costs and supportive services costs.* Upon approval of an application for assistance under paragraphs (a) and (b) of this section, HUD will obligate amounts for a period not to exceed five operating years commencing on the date of initial occupancy. The total amount obligated will be equal to an amount necessary for five years of operation, based on the recipient's estimate of such costs for five years of operation, less the recipient's percentage share of such costs. Each year, for up to five years, HUD will make operating cost payments to the recipient from the amounts obligated. The annual funding level will be subject to reduction under § 577.400.



(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

**§ 577.117 Grants for employment assistance programs.**

(a) *Use.* HUD will provide grants for establishing and operating an employment assistance program for residents of transitional housing for a period not to exceed five years. Assistance will be available for up to 75 percent of program costs for two years and up to 50 percent of program costs for three years.

(b) *Eligibility.* To be eligible for assistance, an employment assistance program must provide for at least the following:

(1) Employment of residents in the operation and maintenance of the transitional housing; and

(2) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the transitional housing.

(c) *Commitment of amounts for assistance.* Upon approval of an application for assistance for an employment assistance program, HUD will obligate amounts for the operating period sought, not to exceed five years. The total amount obligated will be equal to an amount necessary for five years of operating the program, based on the recipient's estimate of such costs for five years of operation, less the recipient's percentage share of such costs. The annual funding level will be subject to reduction under § 577.400.

**§ 577.120 Technical assistance.**

Technical assistance will be offered in connection with an award of funds under §§ 577.105, 577.110, 577.112, 577.115, or 577.117. Technical assistance is offered to recipients through HUD field offices in such matters as the computation of resident rent under § 577.320, compliance with other Federal requirements under § 577.335, the identification of Federal housing assistance resources that may be available to residents upon their departure from transitional housing. HUD will also facilitate the exchange of information among recipients, and help recipients to learn from the experience of other participants in the program.

**§ 577.125 Limitations on use of assistance.**

(a) *Funding of existing housing facilities and programs.* (1) HUD will not provide assistance under this Part for acquisition of existing facilities or programs that currently serve homeless persons.

(2) HUD will provide assistance for rehabilitation, operating costs, or employment assistance programs for existing facilities or programs that currently serve homeless persons only if the applicant proposes:

(i) A substantial increase in the number of homeless persons for whom transitional housing will be provided;

(ii) A substantial increase in the level of supportive services to be provided to homeless persons;

(iii) A substantial change in the use of existing facilities, e.g., if existing facilities for the homeless that are not currently used for transitional housing (such as an emergency shelter for the homeless) will be used to provide transitional housing, or if an applicant currently providing transitional housing for one population of homeless persons proposes to serve an additional or alternative segment of the homeless population; or

(iv) Improvements to existing transitional housing structures necessary to bring the structures to a level that meets applicable State and local government health and safety standards.

(b) *Maintenance of effort.* (1) No assistance received under this Part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided in the area to be served by the applicant under any State or local government assistance program, if the funds provided under the State or local government assistance program were used to assist handicapped persons, homeless individuals, or handicapped homeless persons (as defined in § 578.5 of this title) during the calendar year preceding the date of the application, or were designated for such use through an official action of the applicable State or local government during the calendar year preceding the date of the application.

(2) For purposes of this section, the area to be served by the applicant is:

(i) The State, if the applicant is a State;

(ii) The metropolitan city, if the applicant is a metropolitan city;

(iii) The urban county, if the applicant is an urban county;

(iv) The tribal jurisdiction, if the applicant is a tribe; and

(v) Cities and counties to be served by the project, if the applicant is a private nonprofit organization or a governmental entity.

(c) *Primarily religious organizations—*

(1) *Provision of assistance.* (i) HUD will provide assistance to a recipient that is a primarily religious organization if the organization agrees to provide housing

and supportive services in a manner that is free from religious influences and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(B) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion;

(C) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services.

(ii) HUD will provide assistance to a recipient that is a primarily religious organization if the assistance will not be used by the organization to acquire a structure or to rehabilitate a structure owned by the organization, except as described in paragraph (c)(2) of this section.

(2) *Acquisition/substantial rehabilitation or moderate rehabilitation of transitional housing in structures owned by a primarily religious organization.* An acquisition/substantial rehabilitation advance or a moderate rehabilitation grant may be used to rehabilitate a structure owned by a primarily religious organization, if the following conditions are met:

(i) The structure (or portion of the structure) that is to be rehabilitated with HUD assistance has been leased to an recipient that is an existing or newly established wholly secular organization (which may be established by the primarily religious organization under the provisions of paragraph (c)(3) of this section);

(ii) The HUD assistance is provided to the wholly secular organization (and not the primarily religious organization) to make the improvements;

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(iv) The lease payments paid to the primarily religious organization do not exceed the fair market rent of the structure before the rehabilitation was done;

(v) The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the primarily religious organization;



(vi) The primarily religious organization agrees that, if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the secular organization, and the secular organization will remit the amount to HUD.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. The wholly secular organization may be eligible to receive all forms of assistance available under this Part.

(A) The wholly secular organization must agree to provide housing and supportive services in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(B) The wholly secular organization may enter into a contract with the primarily religious organization to provide supportive services for the project. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(C) The acquisition/substantial rehabilitation advance and the moderate rehabilitation grant are subject to the requirements of paragraph (c)(2) of this section.

(ii) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of its application. In such a case, the primarily religious organization may apply on behalf of the wholly secular organization. The application will be reviewed on the basis of the primarily religious organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the wholly secular organization after formation. The requirement with regard to site control, described in § 577.210(b)(8), may be satisfied if the primarily religious organization demonstrates site control and a commitment to transfer control of the site to the wholly secular organization after its formation. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of private nonprofit organization contained in § 577.5. Is such an

application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

(d) *Structures used for multiple purposes.* Structures used to provide transitional housing may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter as well as transitional housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, the acquisition/substantial rehabilitation advance and the moderate rehabilitation grant will be available only in proportion to the use of the structure for transitional housing, and the funding for annual operating costs will be available only to support the costs that are related to the transitional housing to be provided. If the applicant holds, or is donated, an interest in a structure and the structure will be used for multiple purposes, only that portion of the value of the structure that will be used for transitional housing may be included in the calculation of the applicant's matching sources under § 577.130.

(e) *Administrative costs.* Up to five percent of any advance or grant awarded under this Part may be used for the purpose of paying costs of administering the assistance.

#### § 577.130 Matching requirements.

(a) *General.* (1) The recipient must match the funding provided by HUD for advances for acquisition/substantial rehabilitation and new construction and for grants for moderate rehabilitation with an equal amount of funds from non-Federal sources. Funds from Community Development Block Grants and Community Services Block Grants are considered non-Federal sources.

(2) The recipient must show that it has sources to pay the percentage of operating costs, supportive services costs, and employment assistance program costs not funded by HUD in grants for such costs.

(3) The maximum amount of funds that HUD will provide is based on the percentage of the respective costs of each category of assistance.

(4) No match is required for technical assistance.

(b) *Requirements for "in-kind" contributions as matching share for advances for acquisition/substantial rehabilitation or new construction or for grants for moderate rehabilitation.* HUD will include in the matching calculation for advances for acquisition/substantial rehabilitation or new construction or for

grants for moderate rehabilitation the following "in-kind" contributions:

(1) Time and services contributed by volunteers, at the value of \$5 an hour, to carry out the transitional housing program;

(2) The value of contributions of materials or contributions of existing structures, or parts of structures, in the following manner:

(i) Contributions of materials and supplies;

(ii) A contribution of a fee ownership in a structure, to the extent of the fair market value of the structure; and

(iii) A contribution of a leasehold interest in a structure, to the extent of the fair rental value of the building.

(c) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 577.125(b).

(d) *Rental income.* Rental amounts paid by residents of transitional housing under § 577.320 may be included in the calculation of the recipient's percentage share of annual operating costs.

(e) *Salaries paid to staff or residents.* HUD will include in the matching calculation for advances for acquisition/substantial rehabilitation or new construction or for grants for moderate rehabilitation:

(1) Salaries paid to staff from non-Federal sources to carry out the program of the recipient; and

(2) Salaries paid from non-Federal sources to residents of transitional housing under an employment assistance program as described in § 577.117.

#### § 577.135 Assistance under other HUD programs.

(a) *Supplemental assistance.* HUD will permit recipients to use any assistance that may be awarded under the Supplemental Assistance for Facilities to Assist the Homeless program (24 CFR part 579) in conjunction with assistance awarded under this part.

(b) *Ineligible projects.* HUD will not assist a project under this part, if the project involves a structure that is assisted, or residents of the structure will receive assistance, under the United States Housing Act of 1937; section 202 of the Housing Act of 1959; section 221(d)(3) (BMIR) or section 236 of the National Housing Act; or section 101 of the Housing and Urban Development Act.

(c) *HUD-owned properties.* HUD will make HUD-owned single family properties in its inventory available to potential applicants for purchase for use



as transitional housing for homeless persons. To obtain these properties, potential applicants may request a listing of available properties from the HUD field office, Property Disposition Branch. If a potential applicant wishes to purchase a property or properties, it must enter into a lease/option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the applicant for up to six months for one dollar. The lease/option agreement will state that applicant may purchase the property at a stated price during the lease period. An applicant leasing property under this section may not occupy the property until after closing of the sale. During the lease period of up to six months, applicants will be responsible for all taxes and maintenance, excluding hazard insurance. Applicants demonstrating a lease/option agreement at the time their application is filed will be regarded as having site control of the property under §§ 577.210(b)(8) and 577.215(b)(8). If the option is not exercised, the lease/option agreement will expire at the end of six months, and the property will be returned to HUD's inventory, unless an extension of time is authorized by HUD.

#### Subpart C—Comprehensive Homeless Assistance Plan

##### § 577.150 Comprehensive Homeless Assistance Plan.

(a) *Prohibition of assistance.* Assistance under this part may not be provided to, or within the jurisdiction of, a State or an ESG formula city or county, unless the jurisdiction has a HUD-approved Comprehensive Homeless Assistance Plan and the applicant has obtained a certification of consistency with the Comprehensive Plan.

(b) *Who must have an approved Comprehensive Plan.* If the applicant is:

- (1) A State, the State must have an approved Comprehensive Plan.
- (2) An ESG formula city or county, the city or county must have an approved Comprehensive Plan.

(3) A governmental entity that is not an ESG formula city or county and:

(i) The transitional housing is to be located within the jurisdiction of an ESG formula city or county, the city or county must have an approved Comprehensive Plan;

(ii) The transitional housing is to be located outside the jurisdiction of an ESG formula city or county, the State must have an approved Comprehensive Plan.

(4) A private nonprofit organization and:

(i) The transitional housing is to be located within the jurisdiction of an ESG formula city or county, the city or county must have an approved Comprehensive Plan or, if the city or county does not have an approved Plan, the State must have an approved Plan; or

(ii) The transitional housing is to be located outside the jurisdiction of an ESG formula city or county, the State must have an approved Plan.

(c) *Tribes.* Assistance may be provided to, or within the jurisdiction of, a tribe without a HUD-approved Comprehensive Homeless Assistance Plan.

(d) *Notification of Plan requirements.* HUD will publish the requirements that pertain to the Comprehensive Homeless Assistance Plan in the Federal Register, as necessary. Prospective applicants should familiarize themselves with these requirements.

#### Subpart D—Application and Selection Process

##### § 577.200 Notice of fund availability.

When funds are made available for assistance for transitional housing, HUD will publish a notice of fund availability in the Federal Register. The notice will:

- (a) Give the location for obtaining application packages that provide specific application requirements and guidance;
- (b) Specify the time and the place for submitting completed applications;
- (c) State the amount of funding available under the notice;
- (d) Indicate the weight or relative importance of the ranking criteria contained in § 577.215 as they will be applied to the funding round announced in the notice;
- (e) Announce any separate funding competitions under § 577.205(b), including the categories of transitional housing projects that will be subject to the separate funding competitions and the amount of funding available in each funding category; and
- (f) Provide other appropriate program information and guidance.

##### § 577.205 Selection process.

(a) *Selection process.* The selection process for assistance under this part consists of the following stages:

- (1) Application for assistance (see § 577.210);
  - (2) Ranking applications (see § 577.215);
  - (3) Final selection (see § 577.225).
- (b) *Separate funding competitions.* (1) In accordance with funding set-asides, funding priorities, or other statutory guidance, HUD may establish separate funding competitions for specified

categories of transitional housing projects (e.g., transitional housing that is primarily designed to serve homeless families with children or deinstitutionalized homeless persons and other homeless persons with mental disabilities). If separate funding competitions are established, applicants within each category will compete against other applicants in the same category for a specified amount of funding. Selections within each category will be subject to the selection process described in paragraph (a) of this section.

(2) HUD will announce separate funding competitions, if any, in the notice of funds availability under § 577.200. The notice will designate the categories of transitional housing projects subject to the separate funding competition and the amount of funding available in each funding category.

##### § 577.210 Application requirements.

(a) *Form, time, and adequacy of the application.* To be considered for assistance under this Part, applications for assistance must be filed in the form prescribed by HUD under this section, must meet the requirements of this Part, and must be submitted within the time period established by HUD in the notice of funds availability under § 577.200.

(b) *Minimum requirements.* At a minimum, HUD will require applications to contain:

(1) Applicant data, including identity, description of past experience, and, for private nonprofit organizations, information on eligibility to receive assistance and financial responsibility.

(i) In determining the financial responsibility of private nonprofit organizations, HUD will consider such factors as the past financial history of the organization, its current and anticipated financial outlook, the amount of funding that will be committed under the proposal, and the applicant's other financial responsibilities. (HUD has determined, for purposes of the requirements of this Part, that all States, metropolitan cities, urban counties, governmental entities and tribes are financially responsible.)

(ii) Private nonprofit organizations applying for assistance must include in their applications evidence that they meet the definition of a private nonprofit organization contained in § 577.5.

(2) The type or types of assistance requested and the amount of funds requested for each type.

(3) A description of the proposed project, including information regarding:

(i) The structure to be used, any proposed rehabilitation of the structure



and the estimated costs of the rehabilitation, and the value, as determined by an appraisal, of the structure before rehabilitation if rehabilitation assistance under § 577.105 or § 577.110 is requested or if the fair market or fair rental value of the structure is to be used as a source of matching funds;

(ii) The supportive services to be offered to the residents and the method by which such services will be provided; and

(iii) An estimated annual budget of operating costs, supportive services costs, and employment assistance program costs (if applicable) for a five-year period.

(4) A description of the size and characteristics of the particular homeless population that will occupy the transitional housing.

(5) A description of the public and private resources expected to be made available to meet the matching fund requirements of § 577.130.

(6) An assurance satisfactory to HUD that the project will be operated for not less than 10 years for the purpose specified in the application.

(7) A certification from the public official responsible for submitting the Comprehensive Homeless Assistance Plan for the appropriate jurisdiction, described in § 577.150, stating that the proposed project is consistent with the applicable Plan.

(8) Evidence that the applicant has control of the site involved (e.g., ownership, lease, option to purchase or lease), or reasonable assurance that the applicant will have control of the site not later than six months after notification of an award of assistance. "Reasonable assurances" must be satisfied by identification of a suitable site and a certification that the applicant is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site, or other evidence satisfactory to HUD that the application will gain control of the identified site.

(9) A written statement from the unit of general local government in which the transitional housing is proposed to be located that the proposed use of the structure and site is not inconsistent with any plan of the local government that may have an effect on the use of the structure or site. This requirement is satisfied if the applicant demonstrates that a written request was made to the unit of local government for the statement and the statement has not been received within 30 days from the request.

(10) A written statement from the unit of general local government in which the transitional housing is proposed to be

located that the proposed use of the site is permissible under applicable zoning ordinances and regulations or other evidence that the use of the project site is permissible under applicable zoning ordinances and regulations; or a statement from the applicant describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, with evidence that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within four months following submission of the application.

(11) Other certification, information, or data as prescribed by HUD in the application package.

(c) *Environmental review.* The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR part 50 or part 58. See § 577.220 for a full discussion of the environmental review requirements for applications for assistance.

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#### § 577.215 Ranking criteria.

(a) *In general.* Applications will be assigned a rating score and placed in ranked order, based upon the criteria described in paragraph (b) of this section.

(b) *Criteria.* HUD will award points for the following criteria:

(1) *Applicant capacity.* HUD will consider the applicant's relative ability to carry out activities under the program within a reasonable time, and in a successful manner, after the execution of the grant agreement with HUD. HUD will consider:

- (i) The extent and quality of the applicant's past experience in establishing and operating housing;
- (ii) The extent and quality of the applicant's past experience in providing or coordinating supportive services; and
- (iii) The ability of the applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of transitional housing.

(2) *Innovative quality of proposal.* HUD will consider the innovative quality of the proposal in providing housing and supportive services for homeless persons in a manner that facilitates their transition to independent living. HUD will consider the degree to which the proposal uses a

new or unusual approach to transitional housing that holds promise of successfully facilitating the transition of homeless persons to independent living.

(3) *Need for transitional housing in the area to be served.* HUD will consider the extent to which the applicant demonstrates that an unmet need for the proposed transitional housing, relative to the specific need to be addressed, exists in the area to be served.

(4) *Delivery of supportive services.* HUD will consider:

(i) The extent to which the quality and comprehensiveness of the proposed supportive services are related to the goal of moving people to independent living;

(ii) The extent to which proposed supportive services are appropriate to the unmet needs of the population to be served; and

(iii) The extent to which the applicant will use or coordinate with other public or private entities to provide appropriate supportive services to the residents of the housing.

(5) *Matching.* HUD will consider the extent to which the applicant proposes to match the amount of assistance to be provided by HUD under the program with more than the required amount of non-Federal funds from other sources. Matching requirements are discussed at § 577.130.

(6) *Cost effectiveness.* HUD will consider the extent to which the applicant's proposed costs in acquiring or rehabilitating housing under the program, and in operating the housing and providing supportive services are:

- (i) Reasonable in relation to the rehabilitation performed, the property or properties acquired, and the goods and services to be provided; and
- (ii) Effective in accomplishing the purposes of the project.

(7) *Employment assistance program.* HUD will consider the extent to which the applicant has an employment assistance program and the quality of the program. HUD will consider:

- (i) The extent to which the program meets the requirements of § 577.117(b);
- (ii) The nature of the employment and where it will be located;
- (iii) Actions to coordinate employment efforts; and
- (iv) The extent to which employment opportunities will be matched with the needs of the resident population.

(8) *Site control.* HUD will consider the extent to which an applicant has control of the site for the proposed project.

#### § 577.220 Environmental review.

(a) *Generally.* (1) The environmental effects of each application must be



assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4320) (NEPA) and the related environmental laws and authorities listed in HUD's implementing regulations at 24 CFR parts 50 or 58, depending on who is responsible for environmental review.

(2) Environmental regulations provide for certain categorical exclusions under NEPA and set conditions under which excluded activities may be determined exempt from all environmental review requirements. In cases where proposed assistance and matching contributions solely involve operating costs for facilities or the provision of supportive services and the structures and sites involved in the projects meet the program requirements of this part, these activities are categorically excluded by regulation under part 58 and may be determined fully exempt from environmental review.

(b) *Responsibility for review.* (1) HUD will perform the environmental review, in accordance with part 50, for applications received directly from private nonprofit organizations, governmental entities with special or limited purpose powers, and any governmental entities with general purpose powers found not to have the legal capacity to carry out this responsibility. HUD is not permitted to approve such applications prior to its completion of this review.

(2) Applicants that are States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose powers, and that are deemed to have the legal capacity to do so, must assume responsibility for environmental review, decisionmaking, and action for each application for assistance in accordance with part 58. HUD is permitted to approve such applications subject to the completion of reviews by the applicant in accordance with part 58.

(3) The assumption of legal responsibility by an applicant under paragraph (b)(2) of this section does not preclude the applicant's arranging for the conduct of technical reviews by cooperating local governments having an established technical capability, e.g., metropolitan cities in which the project is proposed to be located. The applicant under such arrangements must independently evaluate information submitted and assume responsibility for its accuracy, scope, and content; meet legal requirements attached to the Release of Funds by HUD; determine the completeness of the review; meet any requirements for consultation, as applicable, under 24 CFR 58.5

authorities; and assure the completion of any mitigation measures resulting from technical review or from State consultations. The arrangements described in this paragraph are in addition to the ability of an applicant to adopt relevant and adequate prior reviews conducted by HUD or other governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (e.g., a determination that no environmentally significant changes have occurred since the review was done).

(c) *Environmental review by HUD.* With regard to the environmental effects of applications for which HUD performs the review, HUD will undertake it review in accordance with the provisions of NEPA and the related authorities listed in 24 CFR 50.4. Any application subject to environmental review by HUD that requires an Environmental Impact Statement (EIS) (generally, an application that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR part 50, subpart E) will not be eligible for assistance under this part.

(d) *Environmental review by applicants.* (1) An applicant that is required under paragraph (b)(2) of this section to assume environmental review responsibility must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR 58.5, including acceptance of jurisdiction of the Federal courts.

(2) Applicants required to assume environmental review responsibility need not complete the review until a reasonable time after selection for funding. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from enclosing its environmental certification and Request for Release of Funds with its application.)

(i) Upon completion of the requirements in 24 CFR part 58, applicants must certify the completion and submit a Request for Release of Funds. This submission is not required in cases in which the applicant determines, in accordance with part 58.34(a)(1)-(10) that its program components are totally exempt.

(ii) HUD will not release funds for a transitional housing project if the recipient or any other party commits transitional housing funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits and HUD approves its Request for Release of Funds (when such submission is required).

(3) A general government applicant that believes that it does not have the legal capacity to carry out the responsibilities required by 24 CFR part 58 should contact the appropriate HUD field office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(e) *Location of projects in floodplains.* Applications for projects that are to be acquired, rehabilitated, or assisted with transitional housing funds and that are located in any 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). Executive Order 11988 review, as referenced under parts 50 and 58, is to be performed during the environmental review.

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#### § 577.225 Final selection.

(a) *Selection for funding.* In the final stage of the selection process, the highest-ranked applications will be selected for funding in accordance with their ranked order to the extent funds are available, as determined under § 577.215. After awards are announced, applicants may contact HUD, with regard to applications not chosen for funding, for an explanation.

(b) *Ties between applicants.* In the event of a tie between applicants, HUD will use the quality of the proposal and the need for the project in the area to determine which application should be selected for funding.

(c) *Procedural error.* If HUD makes a procedural error in a funding competition that, when corrected, would result in awarding sufficient points to warrant funding of an otherwise eligible applicant during that competitive year, HUD may fund that applicant in the next funding competition.

#### Subpart E—Program Requirements

##### § 577.300 Grant agreement.

(a) *General.* The duty to provide transitional housing in accordance with the requirements of this part will be



incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate.

#### § 577.305 General operation.

(a) *Housing.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing (except as provided in § 577.325).

(b) *Ongoing assessment of supportive services.* Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the residents of the project and make adjustments as appropriate.

(c) *Residential supervision.* Each recipient of assistance under this part must provide any residential supervision determined by HUD as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate transitional housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(d) *Records and reports.* Each recipient of assistance under this part must keep any records and make any reports that HUD may require. HUD may require recipients to monitor former residents for a reasonable time set by HUD to determine whether former residents made successful transitions to, and continue to reside in, permanent housing.

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#### § 577.310 Term of commitment and repayment of advance.

(a) *General.* All projects assisted under this part must be operated as transitional housing in accordance with this part for a term of at least 10 years from the date of initial occupancy.

(b) *Repayment of advance.* (1) The recipient of an acquisition/substantial rehabilitation advance under § 577.105 or of a new construction advance under § 577.112 must repay the advance in the amount prescribed under paragraph (b)(2) of this section and in accordance with the terms prescribed by HUD.

(2) (i) The recipient must repay the full amount of the acquisition/substantial rehabilitation advance or the new construction advance if the project is used for transitional housing for less than 10 years following the date of initial occupancy. For each full year that the project is used for transitional housing following the expiration of this 10-year period, the amount that the recipient will be required to pay will be reduced by one-tenth of the original advance. If the project is used for transitional housing for 20 years following the date of initial occupancy, the recipient will not be required to repay any portion of the advance under this section.

(ii) The repayment provisions of paragraph (b)(2)(i) will not be enforced if HUD determines that the project is no longer needed for use as supportive housing and approves the use of such project for the direct benefit of lower income persons.

(c) *Eminent domain.* A recipient of assistance under §§ 577.105, 577.110, or § 577.112 whose structure is taken by eminent domain during the 20-year period following the initial date of occupancy must repay the assistance provided under those sections, to the extent that funds are available from the eminent domain proceeding.

(d) *Prevention of undue benefits.* (1) If assistance is provided for a project under §§ 577.105, 577.110, or § 577.112, and the project is sold or otherwise disposed of during the 20-year period following the date of initial occupancy, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient from unduly benefiting from the sale or disposition.

(2) Paragraph (d)(1) of this section does not apply to sales or dispositions that result in the continued use of the project for the direct benefit of lower income persons or where all proceeds from the sale or disposition are used to provide supportive housing.

#### § 577.315 Relocation and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f)(1) of this section) must be provided relocation assistance at the levels described in,

and in accordance with, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Responsibility of recipient.* The recipient must assure that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The cost of assistance required by this section may be paid from local public funds, funds provided in accordance with this part, or funds available from other sources.

(e) *Appeals.* A person who disagrees with the recipient's determination concerning a payment or other assistance required by this section may file a written appeal of that determination with the recipient. The appeal procedures to be followed are described in 49 CFR 24.10.

(f) *Definitions—(1) Displaced person.*

(i) The term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently and involuntarily, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. Permanent, involuntary moves for an assisted project include:

(A) A permanent move from the real property (building or complex) following notice by the recipient, project sponsor or property owner to move permanently from the property, if the move occurs on or after the date that the recipient submits to HUD an application for assistance that is later approved and funded;

(B) A permanent move from the real property that occurs before the submission of the application to HUD, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) A permanent move from the real property by a tenant-occupant of a dwelling unit that occurs after the execution of the agreement between the recipient and HUD if:

(i) The tenant has not been provided a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex following the completion of the project at a rent, including estimated



average utility costs, that does not exceed the greater of

(i) the tenant's rent and estimated average utility costs before the initiation of negotiations, or

(ii) 30 percent of gross household income; or

(2) The tenant has been required to relocate temporarily but

(i) the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable, and

(ii) the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) A person does not qualify as a "displaced person" if:

(A) The person has been evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application and, before commencing occupancy, received written notice of the expected displacement;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The recipient or sponsor may, at any time, request a HUD determination of whether a displacement is or would be covered by this rule.

(2) *Initiation of negotiations.* For purposes of determining the type of replacement housing replacement to be made to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and HUD.

#### § 577.320 Resident rent.

Each resident of a transitional housing project assisted under this part must pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. Under section 3(a), each resident must pay as rent the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors

include the number of people in the family, age of family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly income; or

(c) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

As part of its technical assistance under § 577.120, HUD will provide recipients with information and assistance concerning the calculation of resident rent.

#### § 577.325 Discharge of residents.

(a) *Preemption.* No State or local law, ordinance, or regulation shall have any force or effect to the extent that it prohibits, or has the effect of prohibiting, recipients from discharging residents from transitional housing at the end of the 24-month or other HUD-approved limit on the stay of residents in the housing.

(b) *Notice to residents.* A recipient must personally serve written notice to a resident, not less than 30 calendar days before the end of the residency period for the resident, that he or she will be discharged from the transitional housing at the end of the stated period.

(c) *Resident contract.* A recipient of assistance under this Part may execute a contract with each resident individual or family before admission to transitional housing providing for the length of the residency period (not to exceed 24 months or a longer time period approved by HUD) and such other terms and conditions governing the relationship between the recipient and the resident.

#### § 577.330 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Recipients with projects/sites located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood

insurance under the National Flood Insurance Program is obtained and maintained.

#### § 577.335 Applicability of other Federal requirements.

Each recipient of assistance under this part must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the transitional housing program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons, recipients serving a designated population of homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and handicap.

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063 [Equal Opportunity in Housing] and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(6) If the procedures that the recipient intends to use to make known the availability of the transitional housing are unlikely to reach persons of any



particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to handicapped persons.

(b) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR parts 50 and 58, and the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this program.

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A-87 and A-102 (as set forth in 24 CFR part 85) apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A-110 and A-122 apply to the acceptance and use of assistance by private nonprofit organizations, except the requirements of 24 CFR 85.24 are modified by § 577.130, and the requirements of 24 CFR 85.31 are modified by § 577.310.

(d) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraph (d)(2) of this section) apply to transitional housing assisted under this part.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this part. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in subpart C of 24 CFR part 35. The requirements of this paragraph apply to structures that will be occupied by children under seven years of age.

(ii) The following definitions apply to this paragraph (d):

*Applicable surface* means all intact and non-intact painted interior and exterior surfaces of a residential structure.

*Chewable surface* means all chewable, protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age: e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

*Defective paint surfaces* means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level or EBL* means excessive absorption of lead: That is, a confirmed concentration of lead in whole blood of 25 µg/dl (micrograms of lead per deciliter of whole blood) or greater.

*Lead-based paint surface* means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm<sup>2</sup>.

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the applicant must inspect the structure for defective paint surfaces before it submits an application. Recipients must inspect assisted structures at least annually during the term of their operating commitment to HUD. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial detail occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the recipient is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vi) The recipient must take appropriate action to protect tenants from hazards associated with abatement procedures.

(vii) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must keep the test results and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(e) *Conflicts of interest.* In addition to the conflict of interest requirements in OMB Circulars A-102 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* The financial management systems used by States, metropolitan cities, urban counties, governmental entities and tribes that are recipients under this program must provide for audits in accordance with 24 CFR part 44. Private nonprofit organization recipients are subject to the audit requirements of OMB Circular A-110. HUD may perform or require additional audits as it finds necessary or appropriate.

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to the program.

(i) *Drug-and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act



of 1988 requires recipients assisted under this Part to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its residents. Recipients are also subject to the requirements of sections 5151-5160 of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24.

#### Subpart F—Administration

##### § 577.400 Obligation of funds, funding amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved assistance under Subpart B of this Part.

(b) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for any approved assistance.

(c) *Deobligation.* (1) HUD may deobligate amounts for the acquisition/substantial rehabilitation advance, the moderate rehabilitation grant, or the new construction advance:

(i) If the actual total costs of acquisition/substantial rehabilitation, moderate rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun or completed within a reasonable time after selection.

(2)(i) HUD may deobligate the amounts for annual operating costs, supportive services costs, or annual operating costs of an employment assistance program in any year following the first year of operation, based on the any revisions to the recipient's budget as originally approved. Additionally, if a recipient's operations generate a substantial amount of resident rent (see § 577.320), HUD may adjust the operating costs allowed under the grant agreement downward, to the extent of the rent received in excess of that anticipated and budgeted in the application.

(ii) HUD may deobligate the amounts for annual operating costs, supportive services costs, or costs of establishing and operating an employment assistance program if the proposed transitional housing operations are not begun within a reasonable time following selection or carried out expeditiously.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed.

#### (4) HUD may:

(i) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability under § 557.200, or

(ii) Reconsider applications that were submitted in response to the most recently published notice of fund availability and select applications for funding with the deobligated funds. Such selections will be made in accordance with subpart D of this part.

(d) *Site control.* HUD will deobligate any award for assistance under this Part if the recipient does not have control of a suitable site within one year after notification of an award.

##### § 577.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this Part for suitable sites.

(b) *Increased costs.* If the acquisition/substantial rehabilitation or moderate rehabilitation costs for the substitute site are greater than the amount of the advance or grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

(c) *Applicability.* This section is applicable to awards of assistance made under this Part on or after November 1, 1987.

4. Part 578 is added to read as follows:

### PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

#### Subpart A—General

##### Sec.

578.1 Applicability and scope.

578.5 Definitions.

#### Subpart B—Assistance Provided

578.100 Types of assistance.

578.105 Acquisition/substantial rehabilitation advances.

578.110 Moderate rehabilitation grants.

578.112 New construction advances.

578.115 Funding for annual operating costs and supportive services costs.

578.120 Technical assistance.

578.125 Limitations on use of assistance.

578.130 Matching requirements.

578.135 Assistance under other HUD programs.

#### Subpart C—Comprehensive Homeless Assistance Plan

578.150 Comprehensive Homeless Assistance Plan.

#### Subpart D—Application and Selection Process

578.200 Notice of fund availability.

578.205 Selection process.

578.210 Application requirements.

578.215 Ranking criteria.

578.220 Environmental review.

578.225 Final selection.

#### Subpart E—Program Requirements

578.300 Grant agreement.

578.305 General operation.

578.310 Term of commitment and repayment of advance.

578.315 Relocation and acquisition.

578.320 Resident rent.

578.325 Project sites and number of residents.

578.330 Flood insurance.

578.335 Applicability of other Federal requirements.

#### Subpart F—Administration

578.400 Obligation of funds, funding amendments, and deobligation.

578.405 Site change.

Authority: Sec. 428, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Housing and Urban Development Act (42 U.S.C. 3535(d)).

#### Subpart A—General

##### § 578.1 Applicability and scope.

(a) *General.* The Supportive Housing Demonstration program contained in Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act is designed to develop innovative approaches for providing supportive housing, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. It is designed to determine:

(1) The cost of acquisition, rehabilitation, acquisition and rehabilitation, or leasing of existing structures for the provision of supportive housing;

(2) The cost of operating such housing and providing supportive services to the residents of such housing;

(3) The social, financial, and other advantages of such housing as a means of assisting homeless individuals; and

(4) The lessons that the provision of supportive housing might have for the design and implementation of housing programs that serve homeless individuals and families with special needs, particularly deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. A central purpose of the Supportive Housing Demonstration program is to provide supportive housing for deinstitutionalized homeless individuals



and other homeless individuals with mental disabilities.

(b) The Supportive Housing Demonstration program consists of two components: Permanent housing for handicapped homeless persons and transitional housing. This part implements the program for permanent housing for handicapped homeless persons. Part 577 implements the transitional housing program.

#### § 578.5 Definitions.

As used in this part:

**Applicant** means the State in which permanent housing for handicapped homeless persons is to be located. An applicant may be the state housing finance agency (or other State agency) that customarily implements housing programs for the State and that is identified by statute to participate in housing programs in the State.

**Comprehensive Homeless Assistance Plan or Comprehensive Plan** means the Comprehensive Homeless Assistance Plan established by subtitle A of title IV of the Stewart B. McKinney Homeless Assistance Act and described in § 578.150.

**Date of initial occupancy** means the date that the project is initially occupied by a homeless person for whom assistance is provided under this Part.

**Handicapped homeless person** means a handicapped person who

- (a) Is a homeless individual;
- (b) Is currently not a homeless individual but who is at risk of becoming a homeless individual; or
- (c) Has been a resident of transitional housing assisted under the Transitional Housing program, described in 24 CFR part 577.

This term may include a homeless family, if the head of the family (or the spouse of the head of the family) is a handicapped homeless person.

**Handicapped or handicapped person** means any individual having an impairment that is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that the ability to live independently could be improved by a stable residential situation. This term includes:

- (a) An individual who is developmentally disabled, i.e., an individual who has a severe chronic disability that:
  - (1) is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (2) is manifested before the person attains age 22;
  - (3) is likely to continue indefinitely;

(4) Results in substantial function limitations in three or more of the following areas of major life activity:

- (i) Self-care,
- (ii) Receptive and expressive language,
- (iii) Learning,
- (iv) Mobility,
- (v) Self-direction,
- (vi) Capacity for independent living, and
- (vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) An individual who is chronically mentally ill, i.e., an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (e.g., by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

(c) A person whose sole impairment is alcoholism or drug addiction will not be considered to be handicapped under this Part.

**Homeless means:**

- (a) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or
- (b) An individual or family that has a primary nighttime residence that is:
  - (1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
  - (2) An institution that provides a temporary residence for individuals intended to be institutionalized; or
  - (3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

**Homeless family with children** means a homeless family that includes at least one parent or guardian and one child under the age of 18, a homeless pregnant woman, and a homeless individual in the process of securing legal custody of any person who has not attained the age of 18 years.

**HUD** means the Department of Housing and Urban Development.

**Moderate rehabilitation** means rehabilitation of a project that involves

costs of 75 percent or less of the value of the building before rehabilitation. For projects of 15 or more units where rehabilitation costs are less than 75 percent of the replacement cost of the building, that project must meet the requirements of 24 CFR part 8.23(b).

**Operating costs** means expenses that a recipient incurs for:

(a) Administration (including staff salaries), maintenance, minor or routine repair, security and rental of the housing;

(b) Utilities, fuel, furnishings, and equipment for the housing; and

(c) Relocation assistance under § 578.315, including payments and services.

**Permanent housing for handicapped homeless persons or permanent housing** means a project assisted under this part:

(a) That provides community-based, long-term housing and appropriate supportive services for not more than eight handicapped homeless persons (unless waived by HUD) and that is carried out by a project sponsor; and

(b) That has as its purpose, through providing housing and supportive services, maximizing each resident's ability to live independently within a permanent housing environment.

All or part of the supportive services may be provided directly by the recipient or the project sponsor, or by arrangement with public or private service providers.

**Private nonprofit organization** means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

- (a) Have a voluntary board;
- (b)(1) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or
- (2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(c) Practice nondiscrimination in the provision of assistance under the permanent housing program in accordance with the authorities described in § 578.335(a).

**Project** means one or more existing structures or incomplete structures, or parts of one or more existing structures or incomplete structures, owned or leased by the project sponsor (or by the recipient) for use in connection with permanent housing for handicapped homeless persons. The project must be:

(a) Homes designed solely for housing handicapped homeless persons, or



(b) Dwelling units in a rental apartment building, a condominium project, or a cooperative project.

*Project sponsor* means a private nonprofit organization that an authorized official of the applicant approves as financially responsible, or a public housing agency (PHA). The project sponsor must operate the permanent housing for handicapped homeless persons, and must provide (or coordinate the provision of) supportive services to the residents of such housing.

*Recipient* means the applicant that executes a grant agreement with HUD. The recipient provides assistance to the project sponsor for the operation of permanent housing for handicapped homeless persons and facilitates the provision of necessary supportive services to the residents of the permanent housing.

*Rehabilitation* means labor, materials, tools, and other costs of improving structures to a level that meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repairs directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, improvement through alterations or additions to or enhancement of existing structures, including improvements to increase the efficient use of energy in structures, and structural changes necessary to make the structure accessible for persons with physical handicaps. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements. All buildings of 15 or more units undergoing rehabilitation must meet the accessibility requirements of section 504 of the Rehabilitation Act of 1973, as amended, as set forth in 24 CFR 8.23 (a) or (b).

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

*Substantial rehabilitation* means rehabilitation of a project that involves costs in excess of 75 percent of the value of the building before rehabilitation. For projects of 15 or more units where rehabilitation costs are 75 percent or more of the replacement cost of the building, that project must meet the requirements of 24 CFR 8.23(a).

*Supportive services* means services provided to residents of permanent housing for the purpose of maximizing

each resident's ability to live independently within a permanent housing environment. Supportive services must be proposed by the applicant in its application and approved by HUD; must address the special needs of the handicapped homeless persons to be served by the project; and must assist in accomplishing the purpose of permanent housing. Supportive services may include:

- (a) Medical and psychological counseling and supervision;
- (b) Employment counseling;
- (c) Nutritional counseling;
- (d) Assistance in obtaining other Federal, State, and local assistance available for residents of permanent housing facilities, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and
- (e) Other services, such as child care, transportation, job placement, and job training.

#### **§ 578.100 Types of assistance.**

(a) *Types of assistance available.* Five types of assistance are available for permanent housing for handicapped homeless persons:

- (1) Advances for acquisition or substantial rehabilitation;
- (2) Advances for new construction (under limited circumstances);
- (3) Grants for moderate rehabilitation;
- (4) Grants for annual operating costs and supportive services costs (up to two years); and
- (5) Technical assistance.

(b) *Eligibility for more than one type of assistance.* Applicants may be eligible for one or any combination of the types of assistance, except that HUD will offer technical assistance only in connection with other assistance under this Part.

(c) *Rehabilitation of leased property.* Acquisition/substantial rehabilitation advances and moderate rehabilitation grants are available for the rehabilitation of leased property.

#### **§ 578.105 Acquisition/substantial rehabilitation advances.**

(a) *Use.* HUD will advance sums to recipients to:

- (1) Defray the cost of the acquisition, substantial rehabilitation, or acquisition and substantial rehabilitation of existing structures selected by the recipients for use in the provision of permanent housing for handicapped homeless persons; or

(2) Repay any outstanding debt on a loan made to purchase existing structures for use in the provision of permanent housing for handicapped homeless persons.

(b) *Amount.* If an applicant meets the matching requirements of § 578.130, the maximum advance for acquisition/substantial rehabilitation available is the lower of:

- (1) \$200,000; or
- (2) The total cost of the acquisition/substantial rehabilitation minus the applicant's contribution toward the cost of the acquisition/substantial rehabilitation.

(c) *Terms of advance.* Advances are interest-free and, if the conditions described in § 578.310 are met, are not subject to repayment. The sale or disposition of a structure acquired or rehabilitated with an advance is subject to the requirements of § 578.310(e).

(d) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than \$200,000 but not more than \$400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 578.130 are applicable to such increased advances.

(e) *Repayment of outstanding debt.* An applicant for an acquisition/substantial rehabilitation advance to repay an outstanding debt on a loan made to purchase an existing structure, as described in paragraph (a)(2) of this section, must provide the following information and documentation as a part of the application for the advance:

- (1) A copy of the contract of sale;
- (2) A copy of the loan agreement, mortgage agreement, or deed of trust;
- (3) Documentation showing the purpose of the loan;
- (4) Documentation of the balance owed on the loan, mortgage, or deed of trust; and
- (5) Certification that the structure has not been assisted under this Part before the date of the application.

(f) *Retroactive applicability.* The provision regarding advances to repay an outstanding debt on a loan made to purchase an existing structure, contained in paragraph (e) of this section, is applicable to awards of assistance made under this part on or after November 1, 1987.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0381)



**§ 578.110 Moderate rehabilitation grants.**

(a) *Use.* HUD will make grants to recipients to defray the cost of moderate rehabilitation of existing structures selected by the recipients for use in the provision of permanent housing for handicapped homeless persons.

(b) *Amount.* If an applicant meets the matching share requirements at § 578.130, the maximum grant for moderate rehabilitation available is the lower of:

(1) \$200,000; or

(2) The total cost of the moderate rehabilitation minus the applicant's contribution toward the cost of the moderate rehabilitation.

(c) *Terms of the grant.* The sale or disposition of a structure rehabilitated with a grant under this section is subject to the requirements of § 578.310(e).

**§ 578.112 New construction advances.**

(a) *Use.* HUD will advance funds to recipients to defray the cost of construction of facilities for use in the provision of permanent housing for handicapped persons, where HUD finds the following factors:

(1) The project involves the cooperation of a city and a State university;

(2) The land has been donated to the applicant by a State university;

(3) The applicant proposes a permanent housing structure of at least 10,000 square feet; and

(4) The applicant proposes a model permanent housing project with a comprehensive support system, including, health services, job counseling, mental health services, and housing assistance and advocacy.

(b) *Amount.* If an applicant meets the matching share requirements at § 578.130, the maximum advance for new construction available is the lower of:

(1) \$200,000; or

(2) The total cost of the new construction minus the applicants contribution toward the cost of the new construction.

(c) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than \$200,000 but not more than \$400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 578.130 are applicable to such increased advances.

**§ 578.115 Funding for annual operating costs and supportive services costs.**

(a) *General.* HUD will provide grants for annual operating costs and supportive services costs of permanent housing for handicapped homeless persons for a period not to exceed two years. Assistance for operating costs and supportive services costs will be available for up to 50 percent of the total cost for the first year and for up to 25 percent of the total cost for the second year.

(b) *Operating costs.* Grants for the costs associated with the day-to-day operation of the permanent housing are available in accordance with the provisions of paragraph (a) of this section. Such costs include the expenses that a recipient incurs for the administration (including staff salaries), maintenance, minor or routine repair, security and rental of the housing; utilities, fuel, furnishings and equipment for the housing; and relocation assistance under § 578.315, including payments and services.

(c) *Supportive services costs.* Grants for the costs associated with providing supportive services to residents of permanent housing are available in accordance with the provisions of paragraph (a) of this section. Such costs include salaries paid to providers of supportive services, the costs of conducting resident supportive services needs assessments, and any other costs directly associated with providing such services. Costs associated with supportive services do not include any percentage of the costs described in paragraph (b) that are attributable to the provision of supportive services.

(d) *Assistance for incomplete structures.* If an applicant seeks assistance under this section for projects with incomplete structures, the applicant must provide reasonable assurance of completion of construction within nine months after notification of an award. Such assistance will begin on the date of initial occupancy. Reasonable assurance may be satisfied by submission, with the application for assistance, of the following:

(1) Evidence that construction financing has been obtained; and

(2) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

(e) *Commitment of amounts for operating costs and supportive services costs.* Upon approval of an application requesting assistance under paragraphs (a) and (b) of this section, HUD will obligate amounts for a period not to exceed two operating years commencing on the date of initial occupancy. The

total amount obligated will be equal to an amount necessary for two years of operation, based on the recipient's estimate of such costs for two years of operation, less the recipient's percentage share of such costs. In each of the two years, HUD will make assistance payments to the recipient from the amounts obligated. The annual funding level will be subject to reduction under § 578.400.

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**§ 578.120 Technical assistance.**

Technical assistance will be offered in connection with an award of funds under §§ 578.105, 578.110, 578.112, or 578.115. Technical assistance is offered to recipients through HUD field offices in such matters as the computation of resident rent under § 578.320, compliance with other Federal requirements under § 578.335. HUD will also facilitate the exchange of information among recipients and project sponsors to learn from the experience of other participants in the programs.

**§ 578.125 Limitations on use of assistance.**

(a) *Funding of existing housing facilities and programs.* (1) HUD will not provide assistance under this part for the acquisition of existing facilities or programs that currently serve homeless persons.

(2) HUD will provide assistance for rehabilitation, operating costs, or supportive services costs for existing facilities or programs that currently serve homeless persons only if the applicant proposes:

(i) A substantial increase in the number of handicapped homeless persons for whom permanent housing will be provided (subject to the limitation on the number of residents contained in § 578.330);

(ii) A substantial increase in the level of supportive services to be provided to homeless persons;

(iii) A substantial change in the use of existing facilities, e.g., if existing facilities for the homeless that are not currently used for permanent housing (such as an emergency shelter for the homeless) will be used to provide permanent housing, or if an applicant currently providing permanent housing for one population of handicapped homeless persons proposes to serve an additional or alternative segment of the handicapped homeless population; or

(iv) Improvements to structures for permanent housing for handicapped



homeless persons necessary to bring the structures to a level that meets applicable State and local government health and safety standards.

(b) *Maintenance of effort.* No assistance received under this part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided in the State under any State or local government assistance program, if the funds provided under the State or local government assistance program were used to assist handicapped persons, homeless individuals, or handicapped homeless persons during the calendar year preceding the date of the application, or were designated for such use through an official action of the applicable governmental entity during the calendar year preceding the date of the application.

(c) *Primarily religious organizations—*

(1) *Provision of assistance.* (i) HUD will provide assistance to a recipient that will use a primarily religious organization as a project sponsor, if the primarily religious organization agrees to provide housing and supportive services in a manner that is free from religious influence and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(B) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion;

(C) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services.

(ii) HUD will provide assistance to a recipient that will use a primarily religious organization as a project sponsor, only if the assistance will not be used to acquire a structure to be owned by the project sponsor or to rehabilitate a structure owned by the project sponsor, except as described in paragraph (c)(2) of this section.

(2) *Acquisition/substantial rehabilitation or moderate rehabilitation of permanent housing in structures owned by primarily religious organizations.* The acquisition/substantial rehabilitation advance and the moderate rehabilitation grant may be used to rehabilitate a structure that is owned by a primarily religious organization, only if;

(i) The structure (or portion of the structure) that is to be rehabilitated with HUD assistance has been leased to a wholly secular private nonprofit organization that will serve as the project sponsor, or to the recipient;

(ii) The HUD assistance will be provided to the project sponsor or to the recipient to make the improvements, rather than to the primarily religious organization;

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(iv) The lease payments provided to the primarily religious organization do not exceed the fair market rent of the structure without the rehabilitation;

(v) The cost of improvements that benefit any portion of the structure that is not used for the provision of permanent housing assisted under this Part will be allocated to and paid for by the primarily religious organization; and

(vi) The primarily religious organization agrees that if the project sponsor or the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of improvements to the project sponsor or recipient that will remit the amount to HUD.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) If a primarily religious organization is foreclosed from direct participation as a project sponsor under the requirements set forth in paragraph (c)(2) of this section, the primarily religious organization may establish a wholly secular private nonprofit organization to serve as the project sponsor under this part.

(A) The wholly secular organization must agree to provide housing and supportive services in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(B) The wholly secular organization may enter into a contract with the primarily religious organization to provide supportive services for the project. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(C) The acquisition/substantial rehabilitation advance and the moderate rehabilitation grant are subject to the

requirements of paragraph (c)(2) of this section.

(ii) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of the application. In such a case, the applicant must name the wholly secular organization as the project sponsor in the application. In determining whether the wholly secular organization is financially responsible, the applicant may consider the primarily religious organization's financial responsibility and its commitment to provide appropriate resources to the project sponsor upon its formation. The project sponsor's capacity to provide housing and supportive services to handicapped homeless persons may be used on the primarily religious organization's capacity and its commitment to provide appropriate resources to the project sponsor after its formation. The requirement with regard to site control, described in § 578.210(b)(11), may be satisfied if the applicant demonstrates that the primarily religious organization has site control and has a commitment to transfer control of the site to the recipient or the project sponsor following selection. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of a private nonprofit organization, described in § 578.5. If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

(d) *Structures used for multiple purposes.* Structures used to provide permanent housing may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter as well as permanent housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, the acquisition/substantial rehabilitation advance and the moderate rehabilitation grant will be available only in proportion to the use of the structure for permanent housing.

(e) *Administrative costs.* Up to five percent of any advance or grant awarded under this Part may be used for the purpose of paying costs of administering the assistance.

#### § 578.130 Matching requirements.

(a) *General.* (1) The recipient must match the funding provided by HUD for advances for acquisition/substantial rehabilitation and new construction and for grants for moderate rehabilitation



with an equal amount of funds from non-Federal sources. Community Development Block Grants and Community Services Block Grants are considered non-Federal sources.

(2) The recipient must show that it has sources to pay the percentage of operating costs or supportive services costs not funded by HUD in a grant for operating costs or supportive services costs.

(3) The maximum amount of funds that HUD will provide is based on the percentage of the *respective* costs of each category of assistance.

(4) No match is required for technical assistance.

(b) *Requirements for "in-kind" contributions as matching share for advances for acquisition/substantial rehabilitation or new construction or for grants for moderate rehabilitation.* HUD will include in the matching calculation for advances for acquisition/substantial rehabilitation or new construction or for grants for moderate rehabilitation the following "in-kind" contributions:

(1) The time and services contributed by volunteers, at the value of \$5 an hour, to carry out the transitional housing program;

(2) The value of contributions of materials or contributions of existing structures, or parts of structures, in the following manner:

(i) Contributions of materials and supplies;

(ii) A contribution of a fee ownership in a structure, to the extent of the fair market value of the structure; and

(iii) A contribution of a leasehold interest in a structure, to the extent of the fair rental value of the building.

(c) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 578.125(b).

(d) *Rental Income.* Rental amounts paid by residents of permanent housing for the handicapped homeless under § 578.320 may be included in the calculation of the recipient's percentage share of annual operating costs.

(e) *Salaries.* HUD will include in the matching calculation for advances for acquisition/substantial rehabilitation or new construction or for grants for moderate rehabilitation salaries paid to staff from non-Federal sources to carry out the program of the recipient.

#### § 578.135 Assistance under other HUD programs.

(a) *Supplemental assistance.* HUD will permit recipients to use any assistance that may be awarded under the Supplemental Assistance for Facilities to Assist the Homeless

program (24 CFR part 579) in conjunction with assistance awarded under this part.

(b) *Ineligible projects.* HUD will not assist a project under this Part if the project involves a structure that is assisted, or residents of the structure will receive assistance, under the United States Housing Act of 1937; section 202 of the Housing Act of 1959; section 221(d)(3) (BMIR) or section 236 of the National Housing Act; or section 101 of the Housing and Urban Development Act.

(c) *HUD-owned properties.* HUD will make HUD-owned single family properties in its inventory available to potential applicants for purchase for use as permanent housing for handicapped homeless persons. To obtain these properties, potential applicants may request a listing of available properties from the HUD field office, Property Disposition Branch. If a potential applicant wishes to purchase a property or properties, it must enter into a lease/option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the applicant for six months for one dollar. The lease/option agreement will state that applicant may purchase the property at a stated price during the lease period. An applicant leasing property under this section may not occupy the property until after closing of the sale. During the lease period of up to six months, applicants will be responsible for all taxes and maintenance, excluding hazard insurance. Applicants demonstrating a lease/option agreement at the time their application is filed will be regarded as having site control of the property under §§ 578.210(b)(11) and 578.215(b)(8). If the option is not exercised, the lease/option agreement will expire at the end of six months, and the property will be returned to HUD's inventory, unless an extension of time is authorized by HUD.

#### Subpart C—Comprehensive Homeless Assistance Plan

##### § 578.150 Comprehensive Homeless Assistance Plan.

(a) *Prohibition of assistance.* Assistance under this Part may not be provided to an applicant, unless the applicant has a HUD-approved comprehensive Homeless Assistance Plan.

(b) *Notification of Plan requirements.* HUD will publish the requirements that pertain to the Comprehensive Homeless Assistance Plan in the Federal Register, as necessary. Prospective applicants should familiarize themselves with these requirements.

#### Subject D—Application and Selection Process

##### § 578.200 Notice of fund availability.

When funds are made available for assistance for permanent housing for handicapped homeless persons, HUD will publish a notice of fund availability in the Federal Register. The notice will:

(a) Give the location for obtaining application packages that provide specific application requirements and guidance;

(b) Specify the time and the place for submitting completed applications;

(c) State the amount of funding available under the notice;

(d) Indicate the weight or relative importance of the ranking criteria contained in § 578.215 as they will be applied to the funding round announced in the notice; and

(e) Provide other appropriate program information and guidance.

##### § 578.205 Selection process.

The selection process for applications for assistance under this Part consists of the following stages:

(a) Application for assistance (see § 578.210);

(b) Ranking applications (see § 578.215);

(c) Final selection (see § 578.225).

##### § 578.210 Application requirements.

(a) *Form, time, and adequacy of the application.* To be considered for assistance under this Part, applications for assistance must be filed in the form prescribed by HUD under this section, must meet the requirements of this Part, and must be submitted within the time period established by HUD in the notice of funds availability under § 578.200.

(b) *Minimum requirements.* At a minimum, HUD will require applications to contain:

(1) Project sponsor data, including identity, a description of past experience, and information on eligibility to receive assistance and financial responsibility. Where the project sponsor is a private nonprofit organization, the applicant must demonstrate that the project sponsor has been approved by an authorized official of the State as to financial responsibility.

(2) The type or types of assistance requested and the amount of funds requested for each type.

(3) A description of the proposed project, including information regarding:

(i) The structure to be used, any proposed rehabilitation of the structure and the estimated costs of the rehabilitation, and the value, as



determined by an appraisal, of the structure before rehabilitation if rehabilitation assistance under § 578.105 or § 578.110 is requested or if the fair market or fair rental value of the structure is to be used as a source of matching funds;

(ii) The supportive services to be offered to the residents and the method by which such services will be provided;

(iii) An estimated annual budget of operating costs and supportive services costs for a two-year period.

(4) A description of the characteristics of the handicapped homeless population that will occupy the permanent housing, the number of individuals proposed to be served.

(5) An assessment of how the proposed project would meet the needs of handicapped homeless persons in the State.

(6) A description of the public and private resources expected to be made available to meet the matching fund requirements of § 578.125.

(7) A certification from the State official responsible for submitting the Comprehensive Homeless Assistance Plan for the State, as described in § 578.150, that the proposed project is consistent with the Plan.

(8) An assurance satisfactory to HUD that the project will be operated for not less than 10 years in accordance with this part.

(9) A letter of participation from an authorized official of the applicant State containing assurances that the State will promptly transmit assistance to the project sponsor and will facilitate the provision of necessary supportive services to the residents of the project.

(10) A designation of the State agency responsible for the provision of services to handicapped persons that will assist the applicant in fulfilling the State's responsibilities under this part.

(11) Evidence that demonstrates that the applicant or project sponsor has control of the site involved (e.g., ownership, lease, option to purchase or lease), or reasonable assurance that the applicant or project sponsor will have control of the site not later than six months after notification of an award of assistance. "Reasonable assurances" must be satisfied by identification of a suitable site and a certification that the applicant or project sponsor is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site, or other evidence satisfactory to HUD that the applicant or project sponsor will gain control of the identified site.

(12) A written statement from the unit of general local government in which the permanent housing is proposed to be

located that the proposed use of the structure and site is not inconsistent with any plan of the local government that may have an effect on the use of the structure or site. (This requirement is satisfied if the applicant demonstrates that a written request was made to the unit of local government for the statement and the statement has not been received within 30 days from the request.)

(13) A written statement from the unit of general local government in which the permanent housing is proposed to be located that the proposed use of the site is permissible under applicable zoning ordinances and regulations or other evidence that the use of the project site is permissible under applicable zoning ordinances and regulations; or a statement from the applicant describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, with evidence that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within four months following submission of the application.

(14) An assurance that the applicant as the State will assume all the environmental review responsibility that would otherwise be performed by HUD under 24 CFR part 50 as the responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and related authorities (see § 578.220 for a full discussion of the environmental review requirements for applicants under this part).

(15) Other certifications, information, or data as prescribed by HUD in the application package.

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#### § 578.215 Ranking criteria.

(a) *In general.* Applications will be assigned a rating score and placed in ranked order, based upon the criteria described in paragraph (b) of this section.

(b) *Criteria.* HUD will award points and rank applications for assistance based on the following criteria:

(1) *Project sponsor capacity.* HUD will consider the project sponsor's relative ability to carry out activities under the program within a reasonable time, and in a successful manner, after the execution of the grant agreement with HUD. HUD will consider:

(i) The extent and quality of the project sponsor's past experience in establishing and operating housing;

(ii) The extent and quality of the applicant's past experience in providing or coordinating supportive services; and

(iii) The ability of the project sponsor's personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of permanent housing.

(2) *Innovative quality of proposal.* HUD will consider the innovative quality of the proposal in providing permanent housing and supportive services for handicapped homeless persons. HUD will consider the extent to which the proposal uses a new or unusual approach to the provision of housing and supportive services that maximizes each handicapped homeless person's ability to live independently in the permanent housing environment.

(3) *Need for permanent housing in the area to be served.* HUD will consider the extent to which the applicant demonstrates that an unmet need for the proposed permanent housing for handicapped homeless persons, relative to the specific needs to be addressed, exists in the area to be served.

(4) *Delivery of supportive services.* HUD will consider:

(i) The extent to which the quality and comprehensiveness of the proposed supportive services are related to the goal of maximizing the ability of residents to live more independently within a permanent housing environment. Factors that indicate that ability include:

(A) Variety and flexibility of supportive services;

(B) Activities of residents outside the facility; and

(C) If appropriate, an employment assistance program.

(ii) The extent to which proposed supportive services are appropriate to the unmet needs of the population to be served; and

(iii) The extent to which the applicant will use or coordinate with other public or private entities to provide appropriate supportive services to the residents of the housing.

(5) *Matching.* HUD will consider the extent to which the applicant proposes to match the amount of assistance to be provided by HUD with more than the required amount of non-Federal funds from other sources. Matching requirements are discussed at § 578.130.

(6) *Cost effectiveness.* HUD will consider the extent to which the applicant's proposed costs in acquiring or rehabilitating housing under the program, and in operating the housing and providing supportive services are:



(i) Reasonable in relation to the rehabilitation performed, the property or properties acquired, and the goods and services to be provided; and

(ii) Effective in accomplishing the purposes of the project.

(7) *Project quality.* HUD will consider the extent to which the proposed project will meet the needs of handicapped homeless persons in the State, as described in the State's assessment of needs submitted under § 578.210(b)(5).

(8) *Site control.* HUD will consider the extent to which an applicant has control of the site for the proposed project.

(9) *Integration into the neighborhood.* HUD will consider the extent to which the proposed project is integrated into the neighborhood in which it is, or is proposed to be, located.

#### § 578.220 Environmental review.

(a) *Generally.* (1) The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and related environmental laws and authorities listed in HUD's implementing regulations in 24 CFR part 58.

(2) Environmental regulations provide for certain categorical exclusions under NEPA and set conditions under which excluded activities may be determined exempt from all environmental review requirements. In cases where proposed assistance and matching contributions solely involve operating costs for facilities or the provisions of supportive services, and the structures and sites involved in the project meet the program requirements of this Part, these activities are categorically excluded by regulation and may be determined fully exempt from environmental review.

(b) *Responsibility for review.* (1) Applicants must assume responsibility for environmental review, decisionmaking, and action for each application for assistance, in accordance with the procedural provisions of the NEPA and related environmental laws and authorities defined in HUD's implementing regulations in 24 CFR part 58.

(2) An applicant must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR 58.5, including acceptance of jurisdiction of the Federal courts.

(3) The assumption of legal responsibility by applicants does not preclude the applicant's arranging for the conduct of technical reviews by

cooperating local governments having an established technical capability, e.g., metropolitan cities in which the project is proposed to be located. The applicant under such arrangements must independently evaluate information submitted and assume responsibility for its accuracy, scope, and content; meet legal requirements attached to the Release of Funds by HUD; determine the completeness of the review; meet any requirements for consultation; as applicable, under 24 CFR 58.5 authorities; and assure the completion of any mitigation measures resulting from technical review or from State consultations. The arrangements described in this paragraph are in addition to the ability of the applicant to adopt relevant and adequate prior reviews conducted by HUD or other governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (e.g., a determination that no environmentally significant changes have occurred since the review was done).

(c) *Timing of review process and restrictions on release of funds.* (1) An Applicant need not complete the review until a reasonable time after HUD has approved the application. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from enclosing its environmental certification and Request for the Release of Funds with its application.)

(2) Upon completion of the requirements in Part 58, applicants must certify the completion and submit a Request for Release of Funds. This submission is not required in cases in which the applicant determines in accordance with 24 CFR 58.34(a) (1)-(10) that its program components are totally exempt.

(3) HUD will not release funds for a permanent housing project if the recipient, project sponsor, or any other party commits permanent housing funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits and HUD approves its Request for Release of Funds (when such submission is required).

(d) *Location of projects in floodplains.* Applications for projects that are to be acquired, rehabilitated, or assisted with permanent housing funds and that are located in any 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA), are

subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). Executive Order 11988 review, as referenced under part 58, is to be performed during the environmental review.

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#### § 578.225 Final selection.

(a) *Selection for funding.* In the final stage of the selection process, the highest-ranked applications will be selected for funding in accordance with their ranked order to the extent funds are available, as determined under § 578.215. After awards are announced, applicants may contact HUD, with regard to applications not chosen for funding, for an explanation.

(b) *Ties between applicants.* In the event of a tie between applicants, HUD will use the quality of the proposal and the need for the project in the area to determine which application should be selected for funding.

(c) *Procedural errors.* If HUD makes a procedural error in a funding competition that, when corrected, would result in awarding sufficient points to warrant funding of an otherwise eligible applicant during that competitive year, HUD may fund that applicant in the next funding competition.

### Subpart E—Program Requirements

#### § 578.300 Grant agreement.

(a) *General.* The duty to provide permanent housing in accordance with the requirements of this Part will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate.

#### § 578.305 General operation.

Each recipient of assistance for permanent housing for handicapped homeless persons must require the project sponsor to agree:

(a) *General.* To operate a project providing permanent housing for handicapped homeless persons in accordance with this part.

(b) *Housing.* To provide housing that is in compliance with all State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.



(c) *Ongoing assessment of supportive services.* To conduct an ongoing assessment of the supportive services required by the residents of the project and make adjustments as appropriate.

(d) *Residential supervision.* To provide any residential supervision determined by HUD as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate permanent housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide, or to supervise the provision of, supportive services to the residents of permanent housing.

(e) *Records and reports.* To keep any records and make any reports that HUD may require.

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**§ 578.310 Term of commitment and repayment of advance.**

(a) *General.* All projects assigned under this Part must be operated as permanent housing in accordance with this Part for a term of at least 10 years from the date of initial occupancy.

(b) *Repayment of advance.* (1) The recipient of an acquisition/substantial rehabilitation advance under § 578.105 or a new construction advance under § 578.112 must repay the advance in the amount prescribed under paragraph (b)(2) of this section and in accordance with the terms prescribed by HUD.

(2)(i) The recipient must repay the full amount of the acquisition/substantial rehabilitation advance or the new construction advance if the project is used for permanent housing for less than 10 years following the date of initial occupancy. For each full year that the project is used for permanent housing following the expiration of this 10-year period, the amount that the recipient will be required to pay will be reduced by one-tenth of the original advance. If the project is used for permanent housing for 20 years following the date of initial occupancy, the recipient will not be required to repay any portion of the advance under this section.

(ii) The repayment provisions of paragraph (b)(2)(i) will not be enforced if HUD determines that the project is no longer needed for use as supportive housing and approves the use of such project for the direct benefit of lower income persons.

(c) *Successors.* A recipient may select a new project sponsor to operate the housing in accordance with the project sponsor's obligations under this Part.

The successor-project sponsor must be approved by HUD before operations of the project may be transferred.

(d) *Eminent domain.* A recipient of assistance under §§ 578.105, 578.110, or § 578.112 whose structure is taken by eminent domain during the 20-year period following the initial date of occupancy must repay the assistance provided under those sections, to the extent that funds are available from the eminent domain proceeding.

(e) *Prevention of undue benefits.* (1) If assistance is provided for a project under §§ 578.105, 578.110, or § 578.112, and the project is sold or otherwise disposed of during the 20-year period following the date of initial occupancy, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient from unduly benefiting from the sale or disposition.

(2) Paragraph (e)(1) of this section does not apply to sales or dispositions that result in the continued use of the project for the direct benefit of lower income persons or where all proceeds from the sale or disposition are used to provide supportive housing.

**§ 578.315 Relocation and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f)(1) of this section) must be provided relocation assistance at the levels described in, and in accordance with, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Responsibility of recipient.* The recipient must assure that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The cost of assistance required by this section may be paid from local public funds, funds provided in accordance with this Part, or funds available from other sources.

(e) *Appeals.* A person who disagrees with the recipient's determination

concerning a payment or other assistance required by this section may file a written appeal of that determination with the recipient. The appeal procedures to be followed are described in 49 CFR 24.10.

(f) *Definitions.*—(1) *Displaced person.* (i) The term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently and involuntarily, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this Part. Permanent, involuntary moves for an assisted project include:

(A) A permanent move from the real property (building or complex) following notice by the recipient, project sponsor or property owner to move permanently from the property, if the move occurs on or after the date that the recipient submits to HUD an application for assistance that is later approved and funded;

(B) A permanent move from the real property that occurs before the submission of the application to HUD, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) A permanent move from the real property by a tenant-occupant of a dwelling unit that occurs after the execution of the agreement between the recipient and HUD if:

(i) The tenant has not been provided a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex following the completion of the project at a rent, including estimated average utility costs, that does not exceed the greater of:

(i) The tenant's rent and estimated average utility costs before the initiation of negotiations, or

(ii) 30 percent of gross household income; or

(2) The tenant has been required to relocate temporarily but:

(i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable, and

(ii) The tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.



(ii) A person does not qualify as a "displaced person" if:

(A) The person has been evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application and, before commencing occupancy, received written notice of the expected displacement;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The recipient or sponsor may, at any time, request a HUD determination of whether a displacement is or would be covered by this rule.

(2) *Initiation of negotiations.* For purposes of determining the type of replacement housing payment to be made to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and HUD.

#### § 578.320 Resident rent.

Each homeless individual residing in permanent housing assisted under this Part must pay as rent an amount determined in accordance with Section 3(a) of the United States Housing Act of 1937. Under section 3(a), each resident must pay as rent the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly income; or

(c) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated. As part of the technical assistance under § 578.120, HUD will provide recipients and project sponsors with information and assistance concerning the calculation of resident rent.

#### § 578.325 Project sites and number of residents.

(a) *Project site.* Each project must be either a home designed solely for

housing handicapped persons or dwelling units in a multi-family housing project, condominium project, or cooperative project. Not more than one home may be located on any one site, and no such home may be located on a site contiguous to another site containing such a home.

(b) *Neighborhood integration.* All projects must be integrated into the neighborhoods in which they are located. Indicators of neighborhood integration may include:

(1) Indications of neighborhood acceptance;

(2) Plans for resident participation in neighborhood activities and institutions;

(3) Integration of the project with community plans;

(4) Zoning compatibility;

(5) Provision of supportive services outside the project but within the neighborhood.

(c) *Number of residents.* If the permanent housing consists of dwelling units in a rental building, a condominium, or cooperative, the project may not serve more than eight handicapped homeless persons, and the homeless families of the eight homeless persons (if the head of the family or the spouse of the head of the family is a handicapped homeless person). If the permanent housing is a group home, the project may not serve more than eight handicapped homeless persons, and may not serve the families of the handicapped homeless persons.

(d) *Waiver.* HUD may waive, on a case-by-case basis, the limitation on residents contained in paragraph (c) of this section if the applicant demonstrates that local market conditions dictate the development of a larger project, and that a larger project will achieve the neighborhood integration objectives of the program within the community.

#### § 578.330 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Applicants with projects/sites located in an area identified by FEMA

as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

#### § 578.335 Applicability of other Federal requirements.

Use of assistance provided under this Part must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the permanent housing program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of handicapped homeless persons, recipients and project sponsors serving a designated population of handicapped homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familiar status, and handicap.

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients and project sponsors must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(6) If the procedures that the recipient or project sponsor intends to use to



make known the availability of the permanent housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the recipient or project sponsor must establish additional procedures that will ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to handicapped persons.

(b) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR part 58, and the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this program.

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A-87 and A-102 (as set forth in 24 CFR part 85) apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A-110 and A-122 apply to the acceptance and use of assistance by private nonprofit organizations, except the requirements of 24 CFR 85.24 are modified by § 578.130, and the requirements of 24 CFR 85.31 are modified by § 578.310.

(d) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraph (d)(2) of this section) apply to permanent housing assisted under this part.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822), by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this part. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in subpart C of 24 CFR part 35. The requirements of this paragraph apply to structures that will be occupied by children under seven years of age.

(ii) The following definitions apply to this paragraph (d):

*Applicable surface* means all intact and non-intact painted interior and exterior surfaces of a residential structure.

*Chewable surface* means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors

and frames, and other protruding woodwork.

*Defective paint surfaces* means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level or EBL* means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

*Lead-based paint surface* means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm.

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the applicant must inspect the structure for defective paint surfaces before it submits an application. Recipients must inspect assisted structures at least annually during the term of their operating commitment to HUD. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the recipient is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in

accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vi) The recipient must take appropriate action to protect tenants from hazards associated with abatement procedures.

(vii) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must keep the test results and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(3) Applicants and recipients under this part may require project sponsors to comply with some or all of the requirements of this paragraph (d). The applicant or recipient, however, must ensure that the program sponsor carries out all requirements in accordance with the paragraph, and must retain ultimate responsibility for complying with the requirements of this paragraph.

(e) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circulars A-102 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or the project sponsor, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* The financial management systems used by recipients under this program must provide for audits in accordance with 24 CFR part 44. Project sponsors are subject to the audit requirements of OMB Circular A-110.



HUD may perform or require additional audits as it finds necessary or appropriate.

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to projects assisted under this part.

(i) *Drug and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires grantees, recipients, and project sponsors of projects assisted under this part to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. Recipients are also subject to the requirements of sections 5151-5180 of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24.

#### Subpart F—Administration

##### § 578.400 Obligation of funds, funding amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved assistance under subpart B of this part.

(b) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for any approved funding.

(c) *Deobligation.* (1) HUD may deobligate amounts for the acquisition/substantial rehabilitation advance, moderate rehabilitation grant, or new construction advance:

(i) If the actual total costs of acquisition/substantial rehabilitation, moderate rehabilitation, or new construction are less than the total cost anticipated in the application, or

(ii) If proposed activities for which funding was approved are not begun or completed within a reasonable time after selection.

(2) (i) HUD may deobligate the amounts for annual operating costs or supportive services costs for the year following the first year of operation, based on a revision to the recipient's budget as originally approved. Additionally, if a recipient's operations generate a substantial amount of resident rent (see § 578.320), HUD may adjust the operating costs allowed under the grant agreement downward, to the extent of the rent received in excess of that anticipated and budgeted in the application.

(ii) HUD may deobligate the amounts for annual operating costs or supportive services costs if the proposed permanent housing operations are not begun within a reasonable time following selection or carried out expeditiously.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed.

(4) HUD may:

(i) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability under § 578.200, or

(ii) Reconsider applications that were submitted in response to the most recently published notice of fund availability and select applications for

funding with the deobligated funds. Such selections will be made in accordance with subpart D of this part.

(d) *Site control.* HUD will deobligate any award for assistance if the recipient does not have control of a suitable site within one year after notification of an award.

##### § 578.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased costs.* If the acquisition/substantial rehabilitation or moderate rehabilitation costs for the substitute site are greater than the amount of the advance or grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

(c) *Applicability.* This section is applicable to awards of assistance made under this part on or after November 1, 1987.

#### PART 840—[REMOVED]

#### PART 841—[REMOVED]

5. Parts 840 and 841 are removed.

Dated: November 1, 1989.

Alfred A. DelliBovi,  
Under Secretary.

[FR Doc. 89-26179 Filed 11-8-89; 8:45 am]  
BILLING CODE 4210-29-M



# United States Federal Probation

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Wednesday  
November 8, 1989

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## Part III

### United States Sentencing Commission

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Sentencing Guidelines for United States  
Courts; Notice of Proposed Additions to  
Sentencing Guidelines, Policy Statements  
and Commentary; Request for Public  
Comment



## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed additions to sentencing guidelines, policy statements and commentary. Request for public comment.

**SUMMARY:** The Commission is considering amendments to its guidelines, policy statements, and commentary that would govern the sentencing of organizations in Federal courts. Except for one guideline dealing with fine calculations for antitrust violations, the sentencing guidelines currently in effect do not apply to the sentencing of organizations. The Commission's proposed guidelines, policy statements, and accompanying commentary are set forth below. The Commission may report these amendments to Congress on or before May 1, 1990. Public comment is sought on these proposals and any other aspect of the sentencing guidelines, policy statements, and commentary as they apply to the sentencing of organizations.

**DATES:** Public comment should be received by the Commission no later than February 15, 1990.

**ADDRESS:** Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004. Attn: Communications Director.

**FOR FURTHER INFORMATION CONTACT:** Paul K. Martin, Communications Director, telephone: (202) 662-8800.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal courts.

Ordinarily, the Administrative Procedure Act rulemaking requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

### Background of Proposed Amendments

The proposed guidelines, policy statements, and commentary are the culmination of an extended period of analysis, consultation, and public comment. In 1988, the Commission completed a study of the sentencing of

organizations in the Federal courts from 1984 to 1987 and a survey of the literature relating to sanctions for organizations. The Commission prepared a discussion draft of sentencing materials that in July 1988 was distributed for public comment. Public hearings on organizational sanctions were held on October 11, 1988, in New York City and on December 2, 1988, in Pasadena, California. In 1989, the Commission updated its empirical analysis with a study of the sentencing of organizations and associated individuals in the Federal courts in 1988. The Commission also in 1989 received recommendations regarding organizational sanctions from the United States Department of Justice, from a working group of private defense attorneys appointed by the Commission's Chairman to advise the Commission regarding practical principles for sentencing organizations, and from the Commission staff. The proposed guidelines, policy statements, and commentary draw upon, and have benefitted from, staff work, aid from outside experts, and the extensive public comment that has been received to date.

### Availability of Background Materials

Background materials regarding the proposed guidelines, policy statements, and commentary are available for inspection at the Commission's offices. The background materials include empirical studies, draft materials circulated by the Commission, and public comment received by the Commission.

### Format of Proposed Amendments

The proposed amendments are presented as a new chapter to the United States Sentencing Commission Guidelines Manual: Chapter Eight—Sentencing of Organizations. Note that the Commission has set forth two options (Option I and Option II) for the guideline section that would determine the fine guideline range for most organizational defendants (§ 8C2.1). Option I would base the guideline fine range on the greater of loss, gain, or an amount specified based upon the applicable offense level, with percentage adjustments based upon applicable aggravating or mitigating factors. Option II would base the guideline fine range entirely upon the applicable offense level, with offense level adjustments based upon applicable aggravating or mitigating factors. In some instances, the two options may result in substantially different fine levels. Commentators are encouraged to

evaluate and comment upon these two options or to suggest an alternative.

The Commission has listed Specific Issues for Comment as endnotes to the draft Chapter Eight in order to focus special attention on particular issues. Comments on all aspects of these drafts are, however, welcome.

### Scope of Public Comment

Public comment is requested regarding any aspect of current or proposed guidelines, policy statements, and commentary that apply to the sentencing of convicted organizations. In addition, the Commission requests specific comment regarding the two options for § 8C1.2 and the Specific Issues for Comment listed at the end of the draft Chapter Eight.

**Authority:** 28 U.S.C. 994 (a), (x); section 21(a) of the Sentencing Act of 1987 (Pub. L. 100-182).

William W. Wilkins, Jr.,  
Chairman.

### Chapter Eight—Sentencing of Organizations

#### Introductory Commentary

The guidelines and policy statements in this Chapter apply when the convicted defendant in a federal criminal case is an organization rather than an individual. In these cases, individuals may or may not simultaneously have been convicted of offenses growing out of the same scheme or plan of criminal conduct.

The goals and purposes of sentencing for organizations are identical to those for individuals. See 18 U.S.C. 3553(a)(2). Thus, sentencing of a convicted organization can be instrumental in achieving a number of objectives. Restitution, notice to victims, and other corrective measures can be used to remedy harm to victims or otherwise alleviate the consequences of criminal conduct. Imposition of a fine or probation can punish the owners of an organization for its criminal conduct, and induce owners and managers to take necessary steps to prevent criminal conduct by agents of the organization. Probation can also be imposed where necessary to enforce any of the above sanctions or to ensure that an organization institutes a remedial compliance program to prevent further criminal conduct by its agents.

Although the number of organizations convicted and sentenced in the federal courts over the last few years is relatively small (approximately 350 per year) compared to the number of individuals convicted and sentenced, the subject matter of organizational



sanctions is nonetheless important. In writing these guidelines the Commission has been guided by two special features of the subject matter. First, the basic reasons for prosecuting and sentencing an inanimate object—an organization—are important, special, and several. In the occasional case in which an organization was created primarily for the purpose of facilitating the commission of criminal conduct, prosecution and sentencing should lead to its dissolution. In the more frequent case in which an organizational defendant has benefitted from its criminal activity, prosecution and sentencing should punish the organization, deprive it of its unjust advantage, and provide funds for restitution to victims. When an organizational defendant, owned by a small number of individuals, some of whom have committed crimes, has assets available for payment of restitution or a fine, while the culpable individuals do not, conviction of the organization will enable the government to obtain those assets. In other instances, while the prosecution may be able to establish the guilt of an organization as a collective body, it may not be able to establish the guilt of any one individual. These cases often involve complex economic transactions and numerous and changing participants, occurring over extended periods of time; consequently, it may be difficult to ascertain and prove which particular individuals have been responsible. In such instances, the prosecution and sentencing of the organization will help, through determination of guilt and appropriate punishment, to vindicate the criminal law. Finally, in virtually all instances, the appropriate punishment of a convicted organization will provide a strong incentive for owners and managers of organizations to strengthen internal mechanisms for preventing officers and employees from committing crimes and for detecting and punishing any such crimes that are committed.

Second, prior sentencing practice has proved less helpful to the Commission's efforts to create organizational guidelines than in the case of individuals, because of two important legislative developments. In 1984, Congress enacted a law dramatically raising the level of fines that courts might impose. Criminal Fine Enforcement Act of 1984, Pub. L. No. 98-596, 98 Stat. 3134. Prior to 1984, statutes often made it impossible for courts to impose upon convicted organizations fines of meaningfully large amount. In addition, Congress has enacted over the

past few years a number of statutes increasing penalties for a variety of crimes often committed by individuals in organizations, or the organizations themselves. These include, among others, money laundering (Money Laundering Control Act of 1986, Pub. L. No. 99-570, subtitle H, 100 Stat. 3218-35), major fraud (Major Fraud Act of 1988, Pub. L. No. 100-700, 102 Stat. 4631), and insider trading (Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677). Given these legislative changes, it is far more difficult here, than in the case of individual defendants, to view past practice as representing any kind of "norm."

As in the case of the guidelines for individuals, the Commission envisions an evolutionary process in which the guidelines will be subject to modification and refinement in light of experience.

#### Part A—General Application Principles § 8A1.1 Applicability of Chapter Eight

This Chapter applies to the sentencing of all organizations.<sup>[1]</sup>

##### Commentary

##### Application Note:

1. "Organization" means "a person other than an individual." 18 U.S.C. 18. Organizations include corporations, unions, associations, and partnerships.

#### § 8A1.2 Application Instructions—Organizations

(a) Determine the guideline section in Chapter Two most applicable to the offense of conviction. See § 1B1.2 (Applicable Guidelines). The Statutory Index (appendix A) provides a listing to assist in this determination.

(b) Determine the base offense level and apply any appropriate specific offense characteristics contained in the particular guideline in Chapter Two in the order listed.

(c) If there are multiple counts of conviction, repeat steps (a) and (b) for each count. Apply part D of chapter three to group the various counts and adjust the offense level accordingly.<sup>[2]</sup>

(d) Determine from part B of this chapter the sentencing requirements and options relating to restitution, remedial orders, community service, and notice to victims.

(e) Determine from part C of this chapter the sentencing requirements and options relating to fines.

(f) Determine from part D of this chapter the sentencing requirements and options relating to probation.

(g) Determine from part E of this chapter the sentencing requirements

relating to special assessments and forfeitures.

(h) The provisions of chapter One, part B (General Application Principles) apply to determinations under this Chapter, except that subsections (a)–(g) above apply in lieu of § 1B1.1 (a)–(i).

#### Part B—Remediating Harm From Criminal Conduct

##### Introductory Commentary

As a general principle, a convicted organization should, as a first priority, be required to make restitution to identifiable victims of its criminal conduct and to take other remedial actions necessitated by that criminal conduct.

#### § 8B1.1 Restitution—Organizations<sup>[3]</sup>

(a) Except as provided in subsection (b) below, the court shall—

(1) Enter a restitution order pursuant to 18 U.S.C. 3663–3664; or

(2) If a restitution order would be authorized pursuant to 18 U.S.C. 3663–3664 but for the fact that the offense of conviction was not an offense under title 18 or 49 U.S.C. 1472 (h), (i), (j), or (n), sentence the organization to probation with a condition requiring restitution, in which case the amount, recipients, and other terms of the restitution condition are to be determined in accordance with 18 U.S.C. 3663 (b), (c), and (e).

(b) Subsections (a) (1) and (2) above do not apply when full restitution or other equivalent compensation to the victims of the offense has already been made, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide compensation to any victims.

##### Commentary

This guideline provides for restitution either as a sentence under 18 U.S.C. 3663–3664 or as a condition of probation. The provisions of 18 U.S.C. 3663–3664 require a sentence of restitution for convictions under title 18 or under 49 U.S.C. 1472 (h), (i), (j), or (n), except to the extent "the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order under this section outweighs the need to provide restitution to any victims." 18 U.S.C. 3663(d). This guideline, in addition, extends the requirement of restitution to offenses other than title 18 and title 49, section 1472 (h), (i), (j) and (n) offenses. In such cases, restitution, which is to be determined under standards equivalent to those embodied in 18 U.S.C. 3663–3664, shall be provided as a condition of a sentence of probation. Under those standards, restitution in certain cases may be awarded to a third party who already



has provided compensation to the victim. See 18 U.S.C. 3663(e)(1).

Restitution is not required to the extent that the fashioning of an order would unduly complicate and prolong the sentencing process, relative to the need to provide compensation to victims. In determining whether the complication and prolongation of the sentencing process resulting from the fashioning of an order requiring restitution outweigh the need to provide compensation to any victims, the court should consider whether civil or administrative remedies available in an ongoing proceeding are equivalent to restitution and are certain to provide compensation to victims. If the court has any doubt about compensation by means other than court-ordered restitution, the court should order restitution, which under 18 U.S.C. 3663(e)(2) would be set off against a later recovery of compensatory damages in a civil proceeding.

#### **§ 8B1.2 Remedial Orders—Organizations (Policy Statement)**

A remedial order, imposed as a condition of probation, may require the organization to reduce or eliminate the risk that its criminal conduct will cause further harm. Such an order generally will be appropriate unless:

(a) Available civil or administrative remedies are adequate and sufficiently expeditious; or

(b) The cost to reduce or eliminate the threat of future harm is not justified in light of the likelihood and seriousness of injury that may result.

#### **Commentary**

The purpose of a remedial order is to prevent future harm to victims. A remedial order requiring corrective action by the defendant may be necessary to prevent future injury from the instant offense, e.g., product recalls for food and drug violations or "clean-up orders" for environmental violations.

#### **§ 8B1.3 Community Service—Organizations (Policy Statement) \***

An organization may be ordered to perform community service where such community service provides an expeditious way of repairing the harm caused by the offense.

#### **Commentary**

An organization can perform community service only by paying its employees or others to do so. Thus, the effect of community service on an organization is equivalent to an indirect monetary sanction, and therefore is generally less desirable than a direct monetary sanction such as restitution. In some instances, however, the convicted organization may possess knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense. Community service directed at repairing damage may provide an efficient means of remedying the harm caused. See §§ 8B1.1 (Restitution—Organizations) and 8B1.2 (Remedial Orders—Organizations).

In the past some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be authorized by this section unless such community service provided a means for preventive or corrective action directly related to the offense and served one of the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). For example, a condition of probation requiring an organization to make its laboratory facilities available to a university would be authorized if it were subject to the limitation that the facilities be used for research to develop new anti-pollution or clean-up techniques related to the instant offense.

#### **§ 8B1.4 Order of Notice to Victims—Organizations**

Apply § 5F1.4 (Order of Notice to Victims).

#### **Commentary**

The provisions of § 5F1.4 (Order of Notice to Victims) are applicable to organizational defendants.

#### **Part C—Fines**

##### **1. Determining the Fine—Criminal Organizations**

#### **§ 8C1.1 Determining the Fine—Criminal Organizations**

If the court determines that the organization operated primarily for a criminal purpose, the fine shall be set (subject to the statutory maximum) at an amount sufficient to divest the organization of its assets. When this section applies, §§ 8C2.1 (Determining the Fine Guideline Range—Organizations), 8C2.2 (Determination of the Fine Within the Guideline Range), 8C4.1 (Fines Imposed upon Owners of Closely Held Organizations), and 8C4.2 (Prior Punitive Civil or Administrative Sanctions) do not apply.

#### **Commentary**

Section 8C1.1 provides that where the court determines that an organization operated primarily for a criminal purpose, the fine shall be set at an amount sufficient to remove all of the organization's assets. If the extent of the assets of the organization are unknown, this may be achieved by imposing the greatest fine authorized by statute.

##### **2. Determining the Fine—Other Than Criminal Organizations**

#### **§ 8C2.1 Determining the Fine Guideline Range—Organizations**

##### **Option I**

(a) The guideline fine range shall be determined under subsections (b)—(e) below, except where the offense guideline in Chapter Two expressly

provides a different rule for determining the guideline range.

(b) The maximum of the guideline fine range shall be (1) 300% of the amount determined under subsections (d)(1) through (3) below; plus (2) the amount, if any, from subsection (e) below.<sup>8</sup>

(c) The minimum of the guideline fine range shall be (1) 200% of the amount determined under subsections (d)(1) through (3) below; plus (2) the amount, if any, from subsection (e) below.

(d)(1) Determine the greater of:

(A) the gross pecuniary loss caused by the offense;<sup>9</sup> or

(B) the gross pecuniary gain<sup>7</sup> to the defendant from the offense; or

(C) the amount set forth below corresponding to the offense level determined under § 8A1.2 (Application Instructions—Organizations).

Offense level	Amount
1	\$500
2	\$1,000
3	\$1,500
4	\$2,000
5	\$3,000
6	\$4,000
7	\$6,000
8	\$8,000
9	\$10,000
10	\$12,000
11	\$15,000
12	\$20,000
13	\$30,000
14	\$50,000
15	\$75,000
16	\$100,000
17	\$150,000
18	\$200,000
19	\$250,000
20	\$300,000
21	\$400,000
22	\$500,000
23	\$600,000
24	\$700,000
25	\$800,000
26	\$900,000
27	\$1,000,000
28	\$1,500,000
29	\$2,000,000
30	\$2,500,000
31	\$3,000,000
32	\$3,500,000
33	\$4,000,000
34	\$5,000,000
35	\$7,000,000
36	\$10,000,000
37	\$12,500,000
38	\$15,000,000
39	\$20,000,000
40 and above	\$25,000,000

(2) Aggravating Factors.<sup>8</sup> For each applicable aggravating factor set forth below, add the indicated amount to the amount determined pursuant to subdivision (1) above:

(A) If high-level management aided or abetted, knowingly encouraged, or condoned the offense, add 20% of the amount determined pursuant to subdivision (1) above.<sup>9</sup>



(B) If the defendant within 15 years of the commencement of the current offense has one or more prior convictions (other than a conviction for a petty offense) or within 10 years of the commencement of the current offense engaged in similar misconduct, as determined by a prior civil or administrative adjudication, add 20% of the amount determined pursuant to subdivision (1) above.<sup>10</sup>

(C) If the commission of the offense constituted a violation of a judicial order or injunction, or of a condition of probation, add 20% of the amount determined pursuant to subdivision (1) above.

(D) If high-level management aided or abetted, or encouraged obstruction of the investigation or prosecution of the offense or, with knowledge thereof, failed to take reasonable steps to prevent such obstruction, add 20% of the amount determined pursuant to subdivision (1) above.

(E) If the defendant, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, add 20% of the amount determined pursuant to subdivision (1) above, or \$25,000, whichever is greater.

(F) If the offense targeted a vulnerable victim as defined in § 3A1.1, add 20% of the amount determined pursuant to subdivision (1) above involving any such victim.

(G) If the offense presented a substantial risk to the continued existence of a financial or consumer market, add 20% of the amount determined pursuant to subdivision (1) above.

(H) If the offense constituted a risk to national security, add 50% of the amount determined pursuant to subdivision (1) above, or \$250,000, whichever is greater.

(3) Mitigating Factors.<sup>11 12</sup> For each applicable mitigating factor set forth below, subtract the indicated amount from the amount determined pursuant to subdivisions (1) and (2) above:

(A) If the organization, promptly upon discovering the offense, and prior to the commencement of a government investigation, the imminent threat of a government investigation, or the imminent threat of disclosure of the wrongdoing, reported the offense to government authorities, subtract 30% of the amount determined pursuant to subdivisions (1) and (2) above.

(B) If high-level management did not have knowledge of the offense and the lack of knowledge was reasonable, subtract 20% of the amount determined pursuant to subdivisions (1) and (2) above.

(C) If the offense represented an isolated incident of criminal activity that was committed notwithstanding bona fide policies and programs of the organization reflecting a substantial effort to prevent conduct of the type that constituted the offense, subtract 20% of the amount determined pursuant to subdivisions (1) and (2) above.

(D) If the organization has taken substantial steps to prevent a recurrence of similar offenses, such as, implementing appropriate monitoring procedures or disciplining any officer, director, employee, or agent of the organization responsible for the offense, subtract 10% of the amount determined in subdivisions (1) and (2) above.

(e) Loss or Gain not Subject to Restitution or Disgorgement. Determine the greater of—

(1) Any pecuniary loss caused by the offense for which restitution has not been made or ordered, or

(2) Any pecuniary gain to the defendant from the offense that will otherwise not be disgorged by the defendant.

#### Commentary

##### Application Notes:

1. "Gross Pecuniary loss," as used in this guideline is equivalent to the term "loss" as used in Chapter Two (Offense Conduct). In a case of an attempted or partially completed offense, or a conspiracy to commit an offense, "gross pecuniary loss," as used in subsection (d)(1)(A), is to be determined in accordance with the principles of § 2X1.1 (Attempt, Solicitation, or Conspiracy).

2. As used in subsection (d)(1)(B), "gross pecuniary gain" is equal to the additional gross revenue to the defendant attributable to the offense.

3. "Similar misconduct," as used in subsection (d)(2)(B), means conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, a defendant convicted of improperly disposing of waste by burning has committed similar misconduct if the defendant in the past improperly disposed of similar waste by discharge into water. The past misconduct is similar to the present offense despite the fact that two different federal statutes proscribe these wrongful waste-disposal activities.

4. "Prior conviction," as used in subsection (d)(2)(B), means conviction by verdict; a plea of guilty, including an Alford plea; or plea of nolo contendere.

5. "High-level management," as used in subsection (d), means one or more persons who is an officer; a director; a partner; or any other employee or agent having significant managerial or supervisory authority (e.g., those who make policy determinations or have supervisory authority over a large number of employees or agents, such as a state agent for an insurance company).

6. "Aided or abetted," as used in subsection (d), includes all conduct proscribed by 18 U.S.C. 2.

7. Under subsection (d)(2)(E), an enhancement is applicable where the relevant conduct (whether or not charged in the count of conviction) included bribing or unlawfully giving a gratuity to a public official, or conspiring or attempting to do so. This enhancement applies, for example, to conduct proscribed by 18 U.S.C. 201, 205, 212, 213, 292, and 1726.

8. Subsection (e) is designed to ensure that any loss caused by the offense that is not subject to restitution (e.g., where the victims are not identifiable) or gain to the defendant that will not otherwise be disgorged by the defendant is taken into account by the fine guideline range. "Restitution," as used in subsection (e)(1), includes the defendant's expenditures for remedial action under § 8B1.2 (Remedial Orders), § 8B1.3 (Community Service), and § 8B1.4 (Order of Notice to Victims). "Any pecuniary gain to the defendant," as used in subsection (e)(2), means any profit attributable to the offense.

**Background:** This section provides for the determination of the upper and lower limits of the fine guideline range.

Subsection (a) provides that the guideline fine range for organizations is determined under subsections (b)—(e) except where Chapter Two provides a different rule. Currently, Chapter Two, Part R (Antitrust Offenses) has a separate provision for establishing the fine guideline range.

End of Option I

#### Option II

(a) The guideline fine range shall be determined under subsections (b)—(d) below, except where the offense guideline in Chapter Two expressly provides a different rule for determining the guideline range.

(b) Adjust the offense level determined pursuant to § 8A1.2 (Application Instructions—Organizations) for each aggravating and mitigating factor set forth below:

(1) Aggravating Factors:

(A) If high-level management aided or abetted, knowingly encouraged, or condoned the offense, add 1 level.

(B) If the defendant within 15 years of the commencement of the current offense has one or more prior convictions (other than a conviction for a petty offense) or within 10 years of the commencement of the current offense engaged in similar misconduct, as determined by a prior civil or administrative adjudication, add 1 level.

(C) If the commission of the offense constituted a violation of a judicial order or injunction, or of a condition of probation, add 1 level.

(D) If high-level management aided or abetted, or encouraged obstruction of the investigation or prosecution of the offense or, with knowledge thereof,



failed to take reasonable steps to prevent such obstruction, add 1 level.

(E) If the defendant, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, add 1 level.

(F) If the offense targeted a vulnerable victim as defined in § 3A1.1, add 1 level.

(G) If the offense presented a substantial risk to the continued existence of a financial or consumer market, add 1 level.

(H) If the offense constituted a substantial risk to national security, add 2 levels.

### (3) Mitigating Factors:

(A) If the organization, promptly upon discovering the offense, and prior to the commencement of a government investigation, the imminent threat of a government investigation, or the imminent threat of disclosure of the wrongdoing, reported the offense to government authorities, subtract 1 level.

(B) If high-level management did not have knowledge of the offense and the lack of knowledge was reasonable, subtract 1 level.

(C) If the offense represented an isolated incident of criminal activity that was committed notwithstanding bona fide policies and programs of the organization reflecting a substantial effort to prevent conduct of the type that constituted the offense, subtract 1 level.

(D) If the organization has taken substantial steps to prevent a recurrence of similar offenses, such as, implementing appropriate monitoring procedures and disciplining any officer, director, employee, or agent of the organization responsible for the offense, subtract 1 level.

(c) The fine guideline range is (1) the amount set forth in the Fine Table below corresponding to the adjusted offense level determined above; plus (2) the amount, if any, from subsection (d) below.

FINE TABLE

Offense level	Guideline range
1.....	\$250 to \$500
2.....	\$500 to \$1,000
3.....	\$850 to \$2,000
4.....	\$1,500 to \$3,500
5.....	\$2,500 to \$6,000
6.....	\$3,200 to \$8,000
7.....	\$4,000 to \$10,000
8.....	\$7,500 to \$18,000
9.....	\$14,000 to \$34,000
10.....	\$25,000 to \$64,000
11.....	\$45,000 to \$103,000
12.....	\$70,000 to \$160,000
13.....	\$90,000 to \$208,000
14.....	\$108,000 to \$240,000
15.....	\$180,000 to \$400,000

FINE TABLE—Continued

Offense level	Guideline range
16.....	\$300,000 to \$700,000
17.....	\$525,000 to \$1,000,000
18.....	\$700,000 to \$1,520,000
19.....	\$1,100,000 to \$2,850,000
20.....	\$2,100,000 to \$4,750,000
21.....	\$3,250,000 to \$9,000,000
22.....	\$6,500,000 to \$18,000,000
23.....	\$13,000,000 to \$36,000,000
24.....	\$24,000,000 to \$68,000,000
25.....	\$48,000,000 to \$136,000,000
26.....	\$80,000,000 to \$170,000,000
27.....	\$100,000,000 to \$204,000,000
28.....	\$120,000,000 to \$238,000,000
29.....	\$140,000,000 to \$272,000,000
30.....	\$160,000,000 to \$306,000,000
31.....	\$180,000,000 to \$340,000,000
32 & above.....	\$200,000,000 to \$374,000,000

(d) Loss or Gain not Subject to Restitution or Disgorgement. Determine the greater of—

(1) any pecuniary loss caused by the offense for which restitution has not been made or ordered, or

(2) any pecuniary gain to the defendant from the offense that will otherwise not be disgorged by the defendant.

### Commentary

#### Application Notes

1. "Similar misconduct," as used in subsection (b)(1)(B), means conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, a defendant convicted of improperly disposing of waste by burning has committed similar misconduct if the defendant in the past improperly disposed of similar waste by discharge into water. The past misconduct is similar to the present offense despite the fact that two different federal statutes proscribe these wrongful waste-disposal activities.

2. "Prior conviction," as used in subsection (b)(1)(B), means conviction by verdict; a plea of guilty, including an Alford plea; or plea of nolo contendere.

3. "High-level management," as used in subsection (b), means one or more persons who is an officer; a director; a partner; or any other employee or agent having significant managerial or supervisory authority (e.g., those who make policy determinations or have supervisory authority over a large number of employees or agents, such as a state agent for an insurance company).

4. "Aided or abetted," as used in subsection (b), includes all conduct proscribed by 18 U.S.C. 2.

5. Under subsection (b)(1)(E), an enhancement is applicable where the relevant conduct (whether or not charged in the count of conviction) included bribing or unlawfully giving a gratuity to a public official, or conspiring or attempting to do so. This enhancement applies, for example, to conduct proscribed by 18 U.S.C. 201, 205, 212, 213, 292, and 1726.

Subsection (d) is designed to ensure that any loss caused by the offense that is not subject to restitution (e.g., where the victims are not identifiable or gain to the defendant that will not otherwise be disgorged by the defendant is taken into account by the fine guideline range. "Restitution," as used in subsection (d)(1), includes the defendant's expenditures for remedial action under § 8B1.2 (Remedial Orders), § 8B1.3 (Community Service), and § 8B1.4 (Order of Notice to Victims.) "Any pecuniary gain to the defendant," as used in subsection (d)(2), means any profit attributable to the offense.

**Background:** This section provides for the determination of the upper and lower limits of the fine guideline range.

Subsection (a) provides that the guideline fine range for organizations is determined under subsections (b)–(d) except where Chapter Two provides a different rule. Currently, Chapter Two, Part R (Antitrust Offenses) has a separate provision for establishing the fine guideline range.

End of Option II

### § 8C2.2 Determination of the Fine Within the Guideline Range (Policy Statement)

(a) Under 18 U.S.C. 3553(a) and 3572(a), the court, in determining the amount of the fine within the applicable guideline range, is required to consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant;
- (3) The defendant's income, earning capacity, size, and financial resources;
- (4) The burden that the fine will impose upon the defendant or any person who is financially dependent on the defendant;
- (5) Any pecuniary loss inflicted upon others as a result of the offense;
- (6) Whether restitution is ordered or made and the amount of such restitution;
- (7) The need to deprive the defendant of illegally obtained gains from the offense;

(8) Whether the defendant can pass on to consumers or other persons the expense of the fine; and

(9) Any measure taken by the defendant to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) In addition, the court, in determining the amount of the fine within the guideline range, should consider:



(1) The degree of difficulty of detecting the violation;

(2) The reasonable costs of investigating and prosecuting the organization's offense;<sup>13</sup>

(3) Any collateral consequences of conviction, including civil obligations arising from the defendant's conduct; and

(4) Any other pertinent equitable considerations, including the aggravating and mitigating factors set forth in § 8C2.1.

(c) The amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive.

#### Commentary

Subsection (a) reflects factors that the court is required to consider under 18 U.S.C. 3553(a) and 3572(a).

Subsection (b) reflects additional factors set forth by the Commission.

Subsection (b)(1) provides that the court should consider, among other factors, the degree of difficulty of detecting the violation due either to the defendant's efforts to conceal the offense or to the inherent difficulty of detecting that particular type of offense. For purposes of general deterrence, offenses that are particularly difficult to detect should receive greater punishment.

### 3. Implementing the Sentence of a Fine

#### § 8C3.1 Imposing a Fine

(a) Except to the extent restricted by the maximum fine authorized by statute, or any minimum fine required by statute, the fine required by the guidelines shall be that determined under § 8C1.1 or § 8C1.2, as applicable.

(b) Where the minimum guideline fine is greater than the maximum fine authorized by statute for the count of conviction (or aggregate maximum fine authorized for the counts of conviction), the maximum fine authorized by statute shall be the guideline fine.

(c) Where the maximum guideline fine is less than a minimum fine required by statute for the count of conviction (or aggregate minimum fine required for the counts of conviction), the minimum fine required by statute shall be the guideline fine.

#### Commentary

This section sets forth the interaction of the fine guideline range with the maximum fine authorized by statute for the count or counts of conviction and any minimum fine required by statute for the count or counts of conviction.

When the defendant is convicted on multiple counts, the maximum fine authorized by statute may increase. For example, in the case of a defendant convicted of two felony counts related to a \$200,000 fraud, the maximum fine authorized by statute will be \$500,000 on each count (an aggregate maximum authorized fine of \$1,000,000). If,

however, the two counts involved a single fraudulent scheme resulting in a total loss of \$750,000, the maximum authorized fine would be \$1,500,000 (twice the loss) whether the defendant was convicted of one or both counts.

#### § 8C3.2 Payment of the Fine—Organizations

Immediate payment of the fine shall be required unless the court finds that the defendant is financially unable to make such payment or that such payment would pose an undue burden on the defendant. If the court permits other than immediate payment, it shall endeavor to require full payment at the earliest possible date, either by requiring payment on a date certain or by establishing an installment schedule.

#### Commentary

When the court permits other than immediate payment, the period provided for payment shall, in no event, exceed five years. 18 U.S.C. 3572(d).

#### § 8C3.3 Reduction of Fine Based on Inability to Pay

(a) The court may impose a fine below that otherwise required by the applicable guideline if the court finds that:

(1)(A) The primary purpose of the organization was to conduct a lawful activity; and

(B) It is not able and, even with the use of a reasonable installment schedule, is not likely to be able to pay the fine required under § 8C2.1; or

(2) Imposition of the fine required by § 8C1.1 or § 8C1.2, as applicable, would impair its ability to make restitution ordered as a result of conviction.

The court may impose a reduced fine under this section only to the extent necessary to address the issues set forth in subdivisions (1)(B) and (2) above.

(b) If the court imposes a reduced fine under this section, it shall establish a schedule for installment payments and place the defendant on probation in accordance with Part D of this Chapter.

#### Commentary

*Background:* Subsection (a)(2) carries out the requirement in 18 U.S.C. 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution for the offense.

#### 4. Offsets

#### § 8C4.1 Fines Imposed Upon Owners of Closely Held Organizations

The fine imposed upon a closely held organization [shall be] [may be partially or totally]<sup>14</sup> offset by the amount of any fines imposed upon the owners of the organization arising out of the conduct for which the organization was convicted.

#### Commentary

##### *Application Note:*

1. For purposes of this section, an organization is closely held, regardless of its size, when a small number of individuals own a controlling interest in an organization. In order for an organization to be closely held, there need not be complete overlap between ownership and management.

*Background:* Many organizational defendants are closely held corporations. For practical purposes, most closely held organizations are the alter egos of their owner-managers. In the case of criminal conduct by a closely held corporation, it is possible that only the organization will be charged, only the culpable individuals will be charged, or that both will be charged. As a general rule, the allocation of appropriate punishment may be achieved by offsetting the fine imposed upon the organization by the amount of any fines imposed upon the owner-managers in their individual capacities.

#### § 8C4.2 Prior Punitive Civil or Administrative Sanctions

The amount of a fine imposed upon an organization shall be offset by an amount equal to the amount of any punitive civil or administrative sanctions that have been imposed upon the organization to be paid to a government because of the offense conduct.

#### Commentary

##### *Application Notes:*

1. In applying this section, the magnitude of the fine is only offset by punitive amounts that are paid to a government. Punitive damages resulting from civil litigation and paid to other non-governmental persons do not provide a basis for an offset.

2. For purposes of this section, no consideration should be given to potential future fines. The double jeopardy provision of the Fifth Amendment requires courts in subsequent proceedings involving the same offense to take into consideration previous criminal penalties. See *U.S. v. Halper*, \_\_\_ U.S. \_\_\_, 109 S.Ct. 1892 (1989).

3. Only the punitive component of any earlier civil or administrative sanctions provides an offset. Remedial damages designed to make the government whole do not provide a basis for an offset against a fine but would be offset against restitution.

### 5. Departures

#### § 8C5.1 Substantial Assistance to Authorities (Policy Statement)

(a) Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of the individuals responsible for the offense for which the organization is sentenced, the court may depart from the guidelines.

(b) The appropriate reduction shall be determined by the court for reasons it states that may include, but are not



limited to, consideration of the following:

- (1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
- (2) The nature and extent of the defendant's assistance; and
- (3) The timeliness of the defendant's assistance.

#### **§ 8C5.2 Risk of Death or Serious Bodily Injury (Policy Statement)**

If the offense resulted in a foreseeable and substantial risk of death or serious bodily injury and the kind or degree of that risk was not adequately taken into consideration in setting the fine guideline range, an upward departure may be warranted. In making this determination, the court should take into account both the seriousness of the potential injury and the probability of its occurring.

#### **§ 8C5.3 Other Grounds for Departure (Policy Statement)**

To the extent that any policy statement from chapter 5, part K, subpart 2 is relevant to the defendant, a departure from the applicable guideline range may be warranted.

### **Part D—Organizational Probation**

#### **§ 8D1.1 Imposition of Probation**

An organization shall be sentenced to probation:

- (a) If such sentence is necessary as a mechanism to impose restitution (§ 8B1.1), a remedial order (§ 8B1.2), or community service (§ 8B1.3);
- (b) If the organization is sentenced to pay a monetary penalty, whether restitution, fine, or special assessment, and the penalty is not paid in full at the time of sentencing; or
- (c) In the following circumstances:
  - (1) The court finds that the organization or a member of its high-level management had a criminal conviction within the previous five years for conduct similar to that involved in the instant offense and any part of the instant offense occurred after that conviction; or
  - (2) The court finds that the offense indicated a significant problem with the organization's policies or procedures for preventing crimes, as evidenced, for example, by (A) high-level management involvement in, or encouragement or countenance of, the offense; (B) inadequate internal accounting or monitoring controls; or (C) a sustained or pervasive pattern of criminal behavior, unless the court finds that the problem has already been remedied, or that there is clear assurance that the

problem will be remedied (e.g., where the defendant will be under intensive supervision by a regulatory agency); or

- (3) The court finds that the probation will significantly increase the likelihood of future compliance with the law.

#### **Commentary**

##### *Application Notes:*

1. "High-level management," as used in this section, has the same meaning as in Application Note 5 of the Commentary to § 8C2.1.

2. Unlawful activity that has been pervasive throughout the organization or a component of the organization within the meaning of subsection (c)(2) need not be limited to the type of unlawful activity resulting in the offense of conviction.

*Background:* This section sets forth the circumstances under which a sentence of probation is authorized as a substantive sanction or as a means to enforce another sanction, such as a fine or restitution.

#### **§ 8D1.2 Term of Probation**

When a sentence of probation is imposed, the term of probation shall be sufficient to accomplish the purposes for which probation is imposed but in no event more than five years, and in the case of a felony, at least one year.

#### **Commentary**

Within the limits set by the guidelines, the term of probation should not extend beyond the court's immediate objectives in imposing the term of probation.

#### **§ 8D1.3 Conditions of Probation (Policy Statement)**

(a) Any sentence of probation shall include the condition that the organization not commit, or attempt to commit, another Federal, state, or local crime during the term of probation. See 18 U.S.C. 3563(a)(1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing.

(c) If probation is imposed under § 8D1.1(b), it is recommended that the following conditions be imposed to the extent that they appear necessary to secure the defendant's obligation to pay any deferred portion of an order of restitution or fine:

(1) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations and accounting for the disposition of all funds received.

(2) The organization shall submit: (A) to a reasonable number of regular or unannounced examinations of its books and records by the probation officer or auditors engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

(3) The organization shall be prohibited from engaging in any of the following transactions or activities without prior notice to and approval by the court: (A) Paying dividends or making any other distribution to its equity holders; (B) issuing new debt or equity securities or commercial paper, or otherwise obtaining substantial new financing outside the ordinary course of business; or (C) entering into any merger, consolidation, sale of substantially all assets, reorganization, refinancing, dissolution, liquidation, bankruptcy, or other major transaction. In addition, all employment

compensation or other payments or property transfers by the organization to any equity holder, director, officer, or managing agent shall be subject to prior review and approval by the court.

(4) The organization shall be required to notify the court or probation officer immediately upon learning of any (A) material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by government authorities regarding the organization.

(5) The organization shall be required to make periodic payments, as specified by the court, in the following priority: (1) The unpaid amount of the organization's restitution; (2) any fine; or (3) any other monetary sanction.

(d) If probation is ordered under § 8D1.1(c), it is recommended that the following conditions be imposed:

(1) The organization shall be required to develop and submit for approval by the court a compliance plan for avoiding a recurrence of the criminal behavior for which it was convicted. The court may employ appropriate experts to assess the efficacy of a submitted plan, if necessary, and shall approve any plan that appears reasonably calculated to avoid recurrence of the criminal behavior. The organization shall not be required to adopt any compliance measure unless such measure is reasonably necessary to avoid a recurrence of the type of criminal behavior involved in the offense.

(2) Upon approval of a compliance plan by the court, the organization shall notify its employees and shareholders of



the criminal behavior and the compliance plan. Such notice shall be in a form to be prescribed by the court.

(3) The organization shall be required to make periodic reports to the court or probation officer, at intervals specified by the court, regarding the organization's progress in (A) implementing any compliance plan required and approved by the court under subsection (d) and (B) avoiding the commission of future criminal offenses. Such report shall be in a form to be prescribed by the court, and (A) shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigations or formal inquiries by government authorities of which the organization learned since its last report, and (B) shall not require disclosure of any trade secrets or other confidential business information, including future business plans.

#### Commentary

Subsection (a) sets forth the statutory requirement that each sentence of probation contain a condition that the defendant not commit another Federal, state, or local crime.

Subsection (b) authorizes the court to impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing. In meeting these requirements, the court should tailor such conditions of probation to the circumstances of the case. For example, the court may determine that a condition of probation is necessary to assure that a defendant not avoid the impact of a fine by inappropriately passing the costs of such on to consumers or other persons.

In addition, 18 U.S.C. 3563(a) provides that if a sentence of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: a fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. § 3563(b).

#### Part E—Special Assessments and Forfeitures<sup>15</sup>

##### § 8E1.1 Special Assessments—Organizations

Apply § 5E1.3 (Special Assessments).

#### Commentary

The provisions of § 5E1.3 (Special Assessments) are applicable to organizational defendants.

##### § 8E1.2 Forfeiture—Organizations Apply § 5E1.4 (Forfeitures).

#### Commentary

The provisions of § 5E1.4 (Forfeitures) are applicable to organizational defendants.

#### Specific Issues for Comment

[1] Most federal prosecutions of organizations involve for-profit organizations or organizations actually operated for profit notwithstanding their designation. Should Chapter Eight apply to all organizations, as now specified, or be limited to organizations operated for profit?

[2] Section 8A1.2(c) would apply the same rules for multiple counts than are now applied for individuals. An alternative approach would be to establish groups of closely-related counts under § 3D1.2 but to treat each count group separately for purposes of subsections (d)—(h) and add the fines for each such group. Comment is requested as to which of these approaches is more desirable.

[3] Section 8B1.1 would expand the requirement for restitution to offenses not covered by 18 U.S.C. 3663–3664 by requiring restitution as a condition of probation. Is this approach appropriate? Should the guidelines for individual defendants be amended to conform?

[4] Is the recommended limitation of community service in § 8B1.4 for the reasons stated in the commentary appropriate, or should imposition of community service on organizations be recommended in other circumstances?

[5] Comment is requested with regard to the multipliers used to determine the maximum and minimum of the guideline fine range.

[6] Comment is requested as to whether loss should be apportioned among organizational defendants when an offense is committed by more than one organization.

[7] Gross pecuniary gain is defined in Application Note 2 of § 8C2.1 as the additional gross revenue to the defendant attributable to the offense. Comment is requested regarding whether a single definition should apply or whether the definition of gain should vary for different types of offenses.

[8] Comment is requested regarding the appropriate magnitudes of increases for the various aggravating factors and reductions for the various mitigating factors listed in § 8C2.1.

[9] Should the aggravating factor (2)(A) and the mitigating factor in subdivision (3)(B) be applicable only to large publicly held corporations and not to other organizations, such as closely held corporations or partnerships?

[10] Comment is requested regarding the content of the aggravating factor (2)(B). Should an increase in fine range result from any prior conviction? Or, should an increase in the fine range result from (1) any felony conviction and (2) any other conviction that is similar to the instant offense? Or, is some other formulation more desirable? Should the

applicable time period be 15 years, or a longer or shorter period, and should it be the same or different for felonies and misdemeanors?

[11] Should, in addition to the other mitigating factors listed in § 8C2.1, affirmative acceptance of responsibility, as defined in § 3E1.1, be considered a mitigating factor for organizations, and, if so, what should the magnitude of the reduction be?

[12] As now drafted, these proposed guidelines allow for departure because of substantial assistance provided to law enforcement officials to aid them in identifying the individuals responsible for the commission of the crime for which the organization is prosecuted. See § 8C5.3. Should such assistance be addressed as a guideline factor, rather than as a basis for departure? If such assistance is a guideline factor, what conduct should be required of an organization to qualify for a reduction and what should be the extent of the reduction? One possible formulation follows:

"(E)(i) If the organization provided substantial cooperation to law enforcement officials and provided substantial assistance in helping them to identify and prosecute the individuals responsible for the offense, subtract [15%] [20%] of the amount determined in subdivisions (1) and (2) above; or

(ii) if the organization cooperated fully with law enforcement officials in helping them to identify and prosecute the individuals responsible for the offense, subtract [20%] [25%] [30%] of the amount determined in subdivisions (1) and (2) above."

[13] Comment is requested as to the relationship between the costs of investigation and prosecution and the guideline fine. Several possibilities are being considered. Should the costs of investigation or prosecution be used only as a factor in determining the sentence within the guideline range, as now specified? Should the reasonable costs of investigation and prosecution be added to the maximum of the guideline fine range, or to both the minimum and the maximum of the guideline fine range? Should the reasonable costs of investigation and prosecution be added to the guideline fine only upon motion of the prosecution; and if so, should the court then have discretion whether or not to increase the fine? Or should the court *sua sponte* have discretion whether or not to increase the guideline fine by the reasonable costs of investigation and prosecution?

[14] Should there be a full or partial offset for fines imposed upon owners of closely held organizations?

[15] At a public hearing on organizational sanctions, one witness suggested that in certain cases corporate directors should be removed as an organizational sanction. Are there cases in which the removal of directors is an appropriate sanction? If so, how should those cases be identified?

[FR Doc. 89-26180 Filed 11-7-89; 8:45 am]

BILLING CODE 2210-01-M







# Registered Federal Trademark

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Wednesday  
November 8, 1989

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## Part IV

### Department of Agriculture

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Cooperative State Research Service

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Competitive Research Grants Program  
for Fiscal Year 1990; Solicitation of  
Applications for the Competitive  
Research Grants Program



**DEPARTMENT OF AGRICULTURE****Cooperative State Research Service****Competitive Research Grants Program for Fiscal Year 1990 Solicitation of Applications for the Competitive Research Grants Program**

Applications are invited for competitive grant awards under the Competitive Research Grants Program administered by the Office of Grants and Program Systems, Cooperative State Research Service, for fiscal year 1990.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

**Applicable Regulations**

Regulations applicable to this program include the following: (a) the regulations governing the Competitive Research Grants Program, 7 CFR part 3200 (49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015.

**Specific Research Areas to be Supported in Fiscal Year 1990**

Standard project grants and a small number of continuation grants will be awarded to support research in selected areas of the biological sciences related to agriculture and human nutrition.

The Competitive Research Grants Program covers the following scientific disciplines:

Plant Science  
Human Nutrition  
Animal Science  
Biotechnology  
Pest Science  
Depletion of Stratospheric Ozone  
Forest Biology

The research categories of plant and animal science and human nutrition

have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing to the advancement of agriculture. The major initiative in biotechnology research that began in fiscal year 1985 will continue for fiscal year 1990. It is designed to provide opportunities to address research problems in all categories of agricultural science including plants, animals, trees, insect pests, and microorganisms associated with these biota. It is anticipated that this research will advance broadly the Nation's competitive advantage in the food, feed, fiber, and natural resources processes. In addition, the research area of plant responses to the stratospheric ozone depletion which was initiated in fiscal year 1989 will continue to be emphasized; however, the scope will be expanded to include studies of plant responses to all environmental factors. This is based on the recognition that stratospheric ozone depletion is but one of several global changes that will directly affect the growing environment for crop and forest species and that the potential increase in UV-B radiation cannot be studied as an isolated phenomenon. Proposals addressing how plants perceive and respond to various environmental signals including UV-B should be submitted to the new Plant Responses to the Environment program area (6.0). It is anticipated that an additional area to be supported in fiscal year 1990 is forest biology. This area in the past was part of the Competitive Research Grants Program for Forest and Rangeland Renewable Resources that was funded by the USDA Forest Service and administered by CRGO from fiscal years 1985 through 1988. Consistent with the other program areas, the forest biology component will emphasize basic biological research related to forest species and forest ecosystems.

While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential applicants. USDA encourages the submission of innovative projects in the so-called "high-risk" category as well as those that may have a more certain payoff potential. In all instances, innovative research will be given high priority.

Agriculturally important organism(s) should be used to accomplish the research objectives. The use of other organisms as experimental model systems must be justified relative to the

goals of the appropriate research program area and to the long-term objectives of USDA.

Workshops or symposia that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this Competitive Research Grants solicitation will be considered for partial or, if modest, total support. Proposals for workshops and symposia should be submitted to appropriate program areas listed below. Applicants considering submission under this category are strongly advised to consult the appropriate CRGO staff prior to the preparation of a proposal.

**Individual Postdoctoral Research Awards:** USDA encourages individuals, who (1) have earned the doctoral degree in a biological science or related areas after January 1, 1987 or will have earned the degree no later than June 5, 1990; (2) are United States citizens; (3) have obtained commitments from a State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization or corporation for the conduct of research; (4) have made prior arrangements for research with a scientific advisor at the institution where the research will be conducted; and (5) have interests in research that fall within the program areas described in this solicitation, to apply for a Competitive Research Grant. We encourage recently graduated scientists specifically to develop independent research programs of their own, not to merely supplement on-going research of a senior investigator. While such individuals specifically are encouraged to submit proposals for competitive grants, it must be noted that no preference is given to such individuals in determining the grant awards. All individuals and eligible entities, whether or not they meet the above criteria, are welcome to submit proposals and their proposals will be evaluated objectively under the applicable award criteria. Interested potential applicants should contact the appropriate program staff for further information.

The following specific research areas (program areas) and guidelines are provided as a base from which proposals may be developed:

**1.0 Plant Pathology/Weed Science.** This program area will support research on biotic stress encountered by plants during interaction with other plants, including weeds and pathogens such as viruses, bacteria, mycoplasma-like



organisms, and fungi. The programmatic goal is to develop fundamental information leading to new strategies to reduce losses in or costs of plant production caused by biotic stress. Proposals should emphasize studies that will enhance basic knowledge of the biological mechanisms regulating plant stress at the molecular, cellular, organismal, or populational level. Disciplinary approaches to investigate the basis of biological stresses may include biochemical, genetic, molecular, or quantitative techniques.

Multidisciplinary team studies are encouraged. The host plant, weed, or pathogen systems may be studied separately or as an interactive unit. Proposals should indicate how the anticipated results will further our understanding of cause, consequence, or mechanism of stress avoidance in plants. The research supported in this program area will focus on the identification of novel strategies that are both effective and compatible with social and environmental concerns.

**2.0 Plant Genetic Mechanisms and Plant Molecular Biology.** The goal of this program area is to encourage new approaches for the development of genetically superior varieties of agricultural crops. One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. Studies addressing the basic cellular, molecular, and genetic processes which contribute new information required for the development of novel approaches to crop improvement will be given high priority. This program area will emphasize the following but will not exclude other new or unusual approaches to crop improvement: (a) identification, isolation, and characterization of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transportation; (f) molecular basis of chromosomal replication; (g) cell and tissue culture studies designed to increase our knowledge of the basic molecular, biochemical, and cellular processes involved in regenerating whole plants from single cells; (h) development of cellular and molecular methods for identifying plant characteristics or genes which are important targets for genetic manipulation; (i) development of molecular and cellular methods for crop improvement that involve gene transfer

or genetic engineering technology; (j) development of new methods for producing, selecting, and transferring agronomically important qualitative and quantitative traits; and (k) basic genetic studies on the alteration and utilization of unadapted and wild germplasm.

**3.0 Biological Nitrogen Fixation and Metabolism.** The most common limiting nutrient for plant growth is nitrogen. The objective of this program is to support research which will elucidate basic mechanisms of the many processes affecting the nitrogen status of crop plants, including biological nitrogen fixation, uptake, transport and metabolism of nitrogenous compounds. Innovative answers to problems in these areas are sought from disciplines of biochemistry, molecular biology and biotechnology, cellular and developmental biology, microbiology, genetics, physiology and ecology. These areas include, but are not necessarily limited to, studies on (a) the properties, mechanisms, and contributions to nitrogen fixation in both free-living and symbiotic nitrogen-fixing organisms; (b) molecular and developmental mechanisms and regulation of infection and nodulation of the root by symbiotic nitrogen-fixing organisms; (c) factors controlling symbiont specificity; (d) competitive interactions of nitrogen fixing organisms with other soil organisms; (e) structural mechanisms and regulatory enzymes involved in nitrogen metabolism, including nitrogen fixation and its utilization; (f) nitrification and denitrification; (g) factors influencing uptake and mechanisms of uptake of nitrogenous compounds; and (h) metabolic studies on processes affecting the nitrogen status of the plant.

**4.0 Photosynthesis.** Photosynthetic efficiency is an important factor in crop productivity. Basic research that provides information on limiting processes of photosynthesis and associated carbon metabolism will lead to a greater understanding of those factors that affect the ability of the plant to produce a usable product. Research is needed on (a) genetic and cellular manipulation to improve photosynthetic efficiency in plants, including studies of the chloroplast and nuclear genomes, analyses of regulatory steps controlling both nuclear and extranuclear photosynthetic gene expression and their interactions; (b) aspects of photosynthetic energy conversion, including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and

membrane constituents, and the associated chemical and physical reactions; (c) photosynthetic carbon assimilation including mechanisms of  $CO_2$  fixation, biochemistry and molecular biology of photosynthetic and related biosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reactions; (d) control of photosynthate partitioning, translocation, and utilization; (e) development senescence of the photosynthetic apparatus; and (f) photosynthetic process in leaves, whole plants, and canopies including, but not limited to, involvement of the stomatal apparatus.

Other research designed to generate new information leading to a basic understanding of photosynthesis and its accompanying processes also may be considered a part of this program area.

**5.0 Plant Growth and Development.** Suboptimal growth and development are limiting factors in plant productivity. A basic understanding of developmental processes in agriculturally important plants is largely lacking, but new experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is to fill the gap in our knowledge concerning the fundamental mechanisms that underlie plant growth and development, emphasizing, but not being limited to, (a) mechanisms controlling plant growth and development including flowering, fertilization, embryogenesis, germinations, differentiation, organogenesis, and senescence; (b) developmental regulation of gene expression; (c) photomorphogenesis; (d) cell biology including membrane biology; and (e) biochemistry of cellular metabolism related to plant growth and development. Proposals emphasizing the use of emerging experimental techniques for the investigation of these developmental processes are encouraged.

**6.0 Plant Responses to the Environment.** This program area combines (and expands upon) two fiscal year 1989 areas, i.e., plant responses to environmental stresses and stratospheric ozone depletion. It has become clear that the depletion of stratospheric ozone is only one of several serious environmental problems this Nation's agriculture will be facing for the near future. It also has become clear that we lack a basic understanding of how the plant perceives and responds to both normal and adverse environmental signals. The goal of this area is to understand the fundamental mechanisms of plant responses to all



environmental factors including, water, temperature, light (including UV-B), atmospheric ozone and other greenhouse gases, and soil nutrients. Studies at the whole plant, cellular, biochemical, and molecular levels will be considered as long as they address basic mechanisms (rather than simply describing the phenomenon). Interactions between plants and their environment under normal as well as stressed conditions will be considered as part of this expanded program area. Examples of research that will be emphasized include: (a) Mechanisms of plant perception and responses to environmental signals, (b) The interactions of multiple environmental factors and how they affect the physiological and ecological status of plants, (c) identification, isolation, and expression of genes regulated by or involved in plant responses to environmental signals, (d) identification of biochemical and cellular changes that take place in plants in response to changing environmental signals, and (e) plant nutrition and water relations as reflected in the physiology and biochemistry of root systems.

**7.0 Human Nutrition.** Proposals are invited in the area of human requirements for nutrients. This research is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic, creative research that will help to fill gaps in our knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutrient condition of healthy individuals, as all of these relate to human nutrient requirements. Studies of the biochemical and molecular basis for nutrient requirements are encouraged, answering questions as to why a particular nutrient is required and what its function is in the cell. Also, studies of the molecular biology of factors interacting with nutrients, such as receptors, carrier proteins and binding proteins, are encouraged.

Support will not be provided for clinical research, demonstration or action projects, nor for surveys of the nutritional status of population groups. In addition, the use of animals as model systems must be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determining human nutrient requirements. Proposals that concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient

requirements. It is especially important that proposals emphasize innovative, fundamental research.

**8.0 Animal Science (Reproductive Physiology).** Suboptimal reproductive performance in domestic farm animals is the major factor limiting more efficient production of animal food products. This failure to achieve maximal reproductive efficiency is due to problems related to puberty, ovulation, corpus luteum formation and function, insemination, fertilization, prenatal death, and poor survival of offspring.

Economic loss to the producer and increased costs of animal food products to the consumer due to inefficient reproductive performance make the requirement for new knowledge in this area a high priority. Although the exact needs may vary from species to species and region to region, there are areas where additional fundamental research is crucial.

This program area will support innovative basic research on: (a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryo-maternal interactions, and embryo implantation; (b) factors controlling ovarian function including follicular development, corpus luteum formation and function, and ovulation; (c) gamete physiology, including oogenesis and spermatogenesis, gamete maturation, mechanisms regulating gamete survival *in vivo* and *in vitro*, the fundamental processes of fertilization and basic questions regarding gamete transport; (d) parturition, postpartum interval to conception, and neonatal survival.

This program area also encourages basic research on the mechanisms controlling animal responses to physical and biological stresses that impinge upon reproductive efficiency. Research should address the cellular and molecular basis for the organism's interaction with these stresses and should contribute to an understanding of the causes, consequences, and avoidance of stress, rather than merely describing the physiological effects of stress on reproductive efficiency.

Emphasis should be given to innovative approaches that may contribute to a thorough understanding of the reproductive processes in animals primarily raised for food and fiber production or that otherwise contribute to the agricultural enterprise of the country. The use of experimental model systems should be justified relative to the objectives of this research area.

**9.0 Animal Molecular Biology and Brucellosis.** A major limiting factor in the use of biotechnology in agriculture is

the lack of basic information about genes and gene products. The primary objective of this program area is to increase our understanding of the structure, organization, function, regulation, and expression of genes in agriculturally important animals and in their associated infectious agents.

The following categories of research should be emphasized: (a) Identification, isolation, characterization of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and mitochondrial genes and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transposition; (f) molecular basis of chromosomal replication; and (g) mechanisms of interaction of animals with deleterious microorganisms or infectious agents. The use of experimental model systems should be suitably justified relative to the program objectives. Proposals involving vaccine and reagent development *per se* will not be considered for support. In addition, proposals involving free-living insects that are not intermediate hosts and vectors of animal diseases will not be considered.

This program area will also support research on the molecular, cellular, and genetic levels that will (a) define the mechanisms by which *Brucella abortus* induces disease in cattle and persists as an infectious agent and (b) define the basis of the bovine immune response with *B. abortus* that results in protective immunity. Proposals also are encouraged which, through molecular biological techniques, identify and produce (c) antigens to differentiate among non-infected, vaccinated, and the *B. abortus*-infected cattle and (d) immunogens that stimulate long-lived protective immunity in cattle.

**10.0 Animal Growth and Development.** Suboptimal growth and development are limiting factors in animal productivity, yet a basic understanding of the developmental processes in agriculturally important animals is largely lacking. New experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is a basic understanding of the development processes in agriculturally important animals as well as to increase fundamental knowledge that will provide a basis for biotechnological manipulation of animal growth and development. This research area will place emphasis on, but not be limited to,



studies of: (a) Cellular and molecular mechanisms controlling growth and development processes, including growth factors and differentiation; (b)—molecular and cellular biological studies of metabolic processes related to growth and development including muscling and rumen development; and (c) identification of molecular and cellular targets for genome manipulation, including transgenics. The use of experimental model systems should be suitably justified relative to the program objectives.

Proposals dealing essentially with aspects of reproduction should be submitted to the Animal Science (Reproductive Physiology) program area (8.0). Proposals addressing research on infectious agents (bacteria, fungi, parasites, and viruses) of animals should be sent to the Animal Molecular Biology and Brucellosis area (9.0).

**11.0 Plant Pest Science—Insects and Nematodes.** Uncontrolled invertebrate pests are a major factor in reducing crop and forest productivity. Before successful strategies for managing these pests can be developed, a strong basic biology research effort is needed particularly to divulge the intricate interactions between the pest and its plant hosts. It is clear that an understanding of plant/insect or plant/nematode interactions also will be dependent on an in depth understanding of how these pests function on the most basic levels.

Within this context, the goal of this research area is to understand basic concepts of plant/insect or plant/nematode interactions including: (a) How interactions are established; (b) biochemical, physiological, and molecular plant responses to attack; (c) pest responses to plant defenses; and (d) the genetics of these interactions. Studies which emphasize how damage from insects and nematodes can be reduced, including basic studies on biological control organisms, also will be supported. Basic studies on insect or nematode pests away from the host plant may be proposed in the following areas: (a) behavioral physiology, (b) chemical ecology, (c) endocrinology, (d) population dynamics, (e) genetics, (f) behavioral ecology, (g) pathogens, parasites and predators, and (h) toxicology including basic pesticide resistance studies. In all cases, however, proposals should indicate how the anticipated information will be relevant to our understanding of plant/insect interactions and a reduction of plant stresses caused by these organisms. Research on the molecular, cellular, or organismal level will be considered.

Proposals are invited in either of the following sub areas:

**Pest Science:** Proposals dealing with bollworm, bollweevil, gypsy moth or pine bark beetle.

**Entomology/Nematology:** Proposals dealing with insect or nematode pests not listed above (includes mites).

Availability of funds will determine whether proposals in each sub area are to be evaluated by separate peer review panels.

#### 12.0 Alcohol Fuels Research.

Proposals will be considered for research relating to the physiological, microbiological, biochemical, and genetic processes controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. The scope of this program area includes studies on factors that limit efficiency of biological production of alcohol fuels and the means for overcoming these limitations.

**14.0 Forest Biology.** The major aim of this area of research is to examine fundamental aspects of plant science that are unique to forest trees. Important objectives include: (a) Research on physiology and biochemistry of forest tree species that are designed to elucidate the target process for future biotechnological manipulations of trees, (b) the identification and utilization of genes that control mechanisms for resistance to pests and pathogens of our major tree species, (c) fundamental genetics of forest tree species, and (d) cell and developmental biology, and (e) responses to environmental factors such as nutrients, water, temperatures and UV-B. In addition this area will focus on ecological aspects of forest tree communities, particularly on the interactions of trees with herbaceous plants that are highly competitive and thus affect production and normal forest succession. Basic research on wood chemistry, the biochemistry of lignification and cellulosic materials, and the process of lignin degradation by wood-rotting and other organisms will also be considered in this program. The submission deadline for this category is listed below. To provide adequate scientific evaluation of proposals that are expected to be diverse, proposals submitted under this category will be reviewed by the peer review panel whose collective expertise is most appropriate to the scientific content of each proposal. Upon receipt of a proposal, the staff of the Competitive Research Grants office will assign it to one of nine plant science peer review panels for scientific review.

**Soybean Research.** Proposals dealing with fundamental research on soybeans should emphasize research objectives that fit the scientific disciplines of the appropriate program areas noted above. Soybean proposals will be reviewed and evaluated by the peer panel whose collective expertise is most appropriate to the scientific content of the proposal under consideration. A separate peer review panel will not be assembled for the purpose of reviewing soybean proposals.

#### How to Obtain Application Materials.

Please note that potential applicants who are on the Competitive Research Grants mailing list, who sent applications in fiscal year 1989, or who recently requested placement on the list for fiscal year 1990, will automatically receive copies of this solicitation, the Grant Application Kit, and the regulations governing the Competitive Research Grants Program, 7 CFR part 3200 (49 FR 5570, February 13, 1984, as amended). All others may request copies from: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20251-2200; telephone: (202) 475-5049.

#### What to Submit

An original and 14 copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Renewal proposals should include a clearly identified progress report and any reprints or preprints of publications resulting from the funded research. Resubmissions of unsuccessful proposals should clearly indicate what changes have been made in the proposal.

Each copy of each proposal must include a Form CSRS-661, "Grant Application," which is included in the Grant Application Kit. Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Each project description is expected to be complete in itself. It should be noted that reviewers are not required to read beyond 15 pages of the project description to evaluate the proposals. Proposals beyond this limit may not be reviewed or may be returned. Appendices should be limited to



materials that are pertinent to the proposal and should not be used as a way to circumventing the page limit. The vitae of key project personnel should be limited to three (3) pages, including a list of publications for last five (5) years.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please see that each copy of each proposal is stapled securely in the upper lefthand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the "Application Requirements" checklist contained in the Grant Application Kit and instructions contained in the regulations governing the Competitive Research Grants Program, 7 CFR part 3200.

Due to the limited budget, the same investigator is not likely to receive more than one award from CRGO within the same fiscal year. Therefore, in order to minimize the time spent for preparation and review of proposals, submission of more than one proposal from the same principal investigator to CRGO in the same fiscal year is strongly discouraged. Applicants may not submit the same research proposal to more than one research program area within the Competitive Research Grants Program in the same fiscal year. Duplicate proposals, essentially duplicate proposals, or predominantly overlapping proposals will be returned without review.

#### Where and When to Submit Grant Applications

Proposals submitted to the research program areas in this notice (e.g., 2.0 Plant Genetic Mechanisms and Plant Molecular Biology) will be assigned by the staff of the Competitive Research Grants office to the most appropriate peer review panel. If necessary, further information may be obtained from the

responsible Association Program Manager at the telephone numbers given below. Each research grant application must be submitted to: Competitive Research Grants Program, c/o Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, 901 D Street, SW., Washington, DC 20251-2200. To be considered for funding during fiscal year 1990, proposals must be postmarked by the following dates and received in time to permit adequate peer panel review: (Please note that it is not certain, at this time, that all of the program areas will be funded. Please call CRGO contacts before you prepare a proposal.)

Postmark Dates	Peer Review Panels/Program Areas	Contacts
January 29, 1990.....	11.0 Plant Pest Science.	475-5114
January 8, 1990.....	10.0 Animal Growth and Development.	475-3399
January 16, 1990.....	2.0 Plant Genetic Mechanisms and Plant Molecular Biology.	475-4871
January 8, 1990.....	7.0 Human Nutrition.	475-5034
January 8, 1990.....	4.0 Photosynthesis..	475-5030
January 8, 1990.....	1.0 Plant Pathology/Weed Science.	475-3310
February 20, 1990...	5.0 Plant Growth and Development.	475-4871
February 20, 1990...	8.0 Animal Science (Reproductive Physiology).	475-5034
February 20, 1990...	9.0 Animal Molecular Biology and Brucellosis.	475-3399
February 26, 1990...	3.0 Biological Nitrogen Fixation and Metabolism.	475-5030
March 5, 1990.....	6.0 Plant Responses to the Environment.	475-5022
March 19, 1990.....	12.0 Alcohol Fuels Research.	475-4871

Postmark Dates	Peer Review Panels/Program Areas	Contacts
February 5, 1990.....	14.0 Forest Biology.	475-5114

#### Special Instructions

The Competitive Research Grants Program should be indicated in Block 7 and the applicable program area should be indicated in Block 8 of Form CSRS-661 provided in the Grant Application Kit. Select one program area only. The number assigned to the applicable program area also must be cited in Block 8 of Form CSRS-661. A final determination of the program area will be made by the program staff and/or appropriate peer panel.

#### Supplementary Information

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document Nos. 0524-0022.

The award of any grants under the Competitive Research Grants Program during FY 1990 is subject to the availability of funds. One copy of each proposal that is not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Done at Washington, DC, this 3rd day of November 1989.

Clare I. Harris,  
Associate Administrator, Cooperative State Research Service.

[FR Doc. 89-26321 Filed 11-7-89; 8:45 am]

BILLING CODE 3410-22-M



# Registered Patent

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Wednesday  
November 8, 1989

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## Part V

### Department of Transportation

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Urban Mass Transportation  
Administration

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UMTA Section 3 and 9 Grant Obligations;  
Notice



## DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation  
AdministrationUMTA Section 3 and 9 Grant  
Obligations

**AGENCY:** Urban Mass Transportation  
Administration (UMTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of  
Transportation and Related Agencies  
Appropriations Act, 1989, Public Law  
100-457, signed into law on September  
30, 1988, contained a provision requiring  
the Urban Mass Transportation

Administration to publish an  
announcement in the **Federal Register**  
each time a grant is 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:**  
Edward R. Fleischman, Chief, Resource  
Management Division, Department of  
Transportation, Urban Mass  
Transportation Administration, Office of  
Grants Management, 400 Seventh Street,

SW., room 9305, 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 No	Grant amount	Obligation date
Los Angeles County Transportation Commission, Los Angeles, CA	CA-03-0338-00	\$2,362,500	08/10/89
San Francisco Bay Area Rapid Transit District, San Francisco-Oakland, CA	CA-03-0343-00	9,661,500	08/10/89
Orange County Transit District, Los Angeles, CA	CA-03-0349-00	1,341,045	09/29/89
Metropolitan Transit Development Board, San Diego, CA	CA-03-0351-00	199,950	09/29/89
Denver Regional Transportation District, Denver, CO	CO-03-0044-00	408,750	09/29/89
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA-03-0032-01	40,649,997	09/27/89
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA-03-0033-02	29,000,001	09/27/89
Chicago Transit Authority, Chicago, IL	IL-03-0135-01	49,500,000	09/29/89
Chicago Transit Authority, Chicago, IL	IL-03-0145-00	5,400,000	09/29/89
Suburban Bus Division Regional Transportation Authority, Chicago, IL	IL-03-0146-00	2,025,000	09/29/89
Northwestern Indiana Regional Planning Commission, Northwestern, IN	IN-03-0059-00	32,033	08/30/89
Mass Transit Administration, Baltimore, MD	MD-03-0048-00	2,587,500	09/29/89
Maine Department of Transportation, Lincolnville/Islesboro, ME	ME-03-0013-01	399,939	08/17/89
Minnesota Department of Transportation, Gilbert, MN	MN-03-0039-00	845,283	09/15/89
New Jersey Transit Corporation, Northeastern, NJ	NJ-03-0076-00	29,700,000	08/21/89
New Jersey Transit Corporation, Northeastern, NJ	NJ-03-0079-00	7,399,950	08/29/89
New Jersey Transit Corporation, Northeastern, NJ	NJ-03-0081-00	2,857,500	09/29/89
New Mexico State Highway & Transportation Department, Albuquerque-Santa Fe, NM	NM-03-0008-00	961,920	09/05/89
Niagara Frontier Transportation Authority, Buffalo, NY	NY-03-0236-00	7,999,998	09/29/89
Central New York Regional Transportation Authority, Syracuse, NY	NY-03-0241-00	1,744,875	09/29/89
Niagara Frontier Transportation Authority, Buffalo, NY	NY-03-0243-00	1,137,501	09/29/89
Rochester-Genesee Regional Transportation Authority, Rochester, NY	NY-03-0244-00	4,740,630	09/29/89
Nassau County, New York, NY	NY-03-0249-00	2,401,875	09/29/89
Pennsylvania Department of Transportation, Statewide, PA	PA-03-0197-00	4,207,290	09/29/89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0202-01	6,999,999	09/29/89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0209-00	47,257,500	09/29/89
City of El Paso, El Paso, TX	TX-03-0130-00	1,452,936	09/29/89
Fort Worth Transportation Authority, Fort Worth, TX	TX-03-0132-00	292,500	09/29/89
Municipality of Metropolitan Seattle, Seattle, WA	WA-03-0059-04	16,834,803	08/11/89
Municipality of Metropolitan Seattle, Seattle, WA	WA-03-0066-00	1,000,000	08/11/89

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Mobile Transit Authority, Mobile, AL	AL-90-X041-00	\$1,239,084	09/28/89
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X042-00	300,492	09/28/89
Alabama Highway Department, Anniston/Auburn-Opelika/Decatur/Dothan/Florence, AL	AL-90-X043-00	995,237	09/28/89
City of Laguna Beach, Los Angeles-Long Beach, CA	CA-90-X353-00	206,000	09/27/89
County of Los Angeles, Department of Public Works, Lancaster, CA	CA-90-X354-00	606,800	09/28/89
South Coast Area Transit, Oxnard-Ventura, CA	CA-90-X356-00	1,490,974	09/28/89
City of Culver City, Los Angeles-Long Beach, CA	CA-90-X357-00	640,000	09/27/89
City of Merced, Merced, CA	CA-90-X359-00	555,282	09/28/89
City of Greeley, Greeley, CO	CO-90-X049-00	642,377	09/29/89
Greater Waterbury Transit District, Waterbury, CT	CT-90-X144-00	183,500	09/29/89
South Central Regional Council of Governments, New Haven, CT	CT-90-X145-00	19,100	09/29/89
Milford Transit District, Bridgeport, CT	CT-90-X149-00	75,000	09/29/89
Greater New Haven Transit District, New Haven, CT	CT-90-X150-00	240,000	09/29/89
Housatonic Area Regional Transit District, Danbury, CT-NY	CT-90-X151-00	200,000	09/29/89
Capitol Region Council of Governments, Hartford, CT	CT-90-X152-00	47,200	09/29/89
Central Connecticut Regional Planning Agency, Bristol, CT	CT-90-X153-00	8,000	09/29/89
Valley Regional Planning Agency, Bridgeport, CT	CT-90-X154-00	34,000	09/19/89
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL-90-X028-02	85,780	09/26/89



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East Volusia Transportation Authority, Daytona Beach, FL	FL-90-X088-02	1,552,000	09/28/89
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL-90-X099-01	42,800	09/26/89
Lakeland Area Mass Transit District, Lakeland, FL	FL-90-X103-01	152,520	09/28/89
Pasco County Board of County Commissioners, St. Petersburg, FL	FL-90-X110-01	40,000	09/28/89
Palm Beach County Transit Authority, West Palm Beach, FL	FL-90-X131-00	3,001,440	09/29/89
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL-90-X132-00	2,448,000	09/26/89
Pasco County Board of County Commissioners, St. Petersburg, FL	FL-90-X134-00	464,010	09/28/89
City of Panama City, Panama City, FL	FL-90-X135-00	96,000	09/28/89
Okaloosa County Board of County Commissioners, Fort Walton Beach, FL	FL-90-X136-00	123,900	09/28/89
Pinellas Suncoast Transit Authority, St. Petersburg, FL	FL-90-X137-00	4,489,393	09/28/89
Georgia Department of Transportation, Albany/Athens/Rome/Savannah, GA	GA-90-X052-00	6,037,085	09/26/89
Waterloo Metro Transit Authority, Waterloo, IA	IA-90-X107-00	76,600	09/29/89
Springfield Mass Transit District, Dubuque, IA-IL	IL-90-X121-01	40,886	09/29/89
City of Danville, Danville, IL	IL-90-X146-00	230,600	09/29/89
Greater Peoria Mass Transit District, Peoria, IL	IL-90-X147-00	594,168	09/29/89
Bloomington-Normal Public Transit System, Bloomington-Normal, IL	IL-90-X148-00	2,123,732	09/29/89
Northern Indiana Commuter Transportation District, Chicago, IL-Northwestern IN	IN-90-X122-00	2,476,007	09/29/89
East Chicago Board of Public Works, Chicago, IL-Northwestern IN	IN-90-X124-00	274,618	09/29/89
Northwestern Indiana Regional Commission, Chicago, IL-Northwestern IN	IN-90-X125-00	1,089,033	09/29/89
Gary Public Transportation Corporation, Chicago, IL-Northwestern IN	IN-90-X126-00	1,916,824	09/29/89
Michiana Area Council of Governments, South Bend, IN-MI	IN-90-X127-00	481,557	09/29/89
Evansville, Urban Transit Study, Evansville, IN-KY	IN-90-X128-00	1,365,254	09/29/89
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X039-00	2,250,550	09/29/89
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X040-00	129,300	09/29/89
Topeka Metropolitan Transit Authority, Topeka, KS	KS-90-X041-00	167,699	09/29/89
Transit Authority of Northern Kentucky, Fort Wright, KY	KY-90-X046-00	1,360,190	1
Regional Transit Authority, New Orleans, LA	LA-90-X019-03	356,000	09/29/89
Regional Transit Authority, New Orleans, LA	LA-90-X081-01	67,000	09/28/89
St. Bernard Parish, New Orleans, LA	LA-90-X100-01	27,200	09/27/89
City of Shreveport, Shreveport, LA	LA-90-X102-00	3,405,155	09/29/89
Southeastern Regional Transit Authority, New Bedford, MA	MA-90-X088-01	161,595	09/29/89
Pioneer Valley Transit Authority, Springfield-Chic-Holy, MA-CT	MA-90-X091-362	1,181,362	09/29/89
Berkshire Regional Transit Authority, Pittsfield, MA	MA-90-X098-00	40,000	09/29/89
Mass Transit Administration, Baltimore, MD	MD-90-X040-00	365,000	09/27/89
Lewiston-Auburn Transit Committee, Lewiston, Auburn, ME	ME-90-X045-00	10,000	09/29/89
Maine Department of Transportation, Statewide Maine	ME-90-X047-00	337,979	09/29/89
Suburban Mobility Authority for Regional Transportation, Detroit, MI	MI-90-X115-00	2,702,564	1
City of Rochester, Rochester, MN	MN-90-X041-00	706,000	09/29/89
Duluth Transit Authority, Duluth-Superior, MN-WI	MN-90-X042-00	143,624	09/29/89
City of St. Joseph, St. Joseph, MO-KS	MO-90-X057-00	284,340	09/29/89
City of St. Joseph, St. Joseph, MO-KS	MO-90-X058-00	605,405	09/29/89
BI-State Development Agency, St. Louis, MO-IL	MO-90-X059-00	3,815,080	09/29/89
City of Springfield, Springfield, MO	MO-90-X060-00	817,780	09/29/89
City of Jackson, Jackson, MS	MS-90-X025-01	1,262,000	09/28/89
Central Mississippi Planning and Development District, Jackson, MS	MS-90-X029-00	131,200	09/26/89
Missoula Urban Transportation District, Missoula, MT	MT-90-X024-00	670,720	09/29/89
City of Billings, Billings, MT	MT-90-X025-00	661,130	09/29/89
City of Fayetteville, Fayetteville, NC	NC-90-X079-01	12,000	09/25/89
City of High Point, High Point, NC	NC-90-X092-01	411,120	09/25/89
Guilford County, Greensboro, NC	NC-90-X098-00	410,000	09/25/89
Town of Chapel Hill, Durham, NC	NC-90-X099-00	3,951,091	09/29/89
City of Wilmington, Wilmington, NC	NC-90-X100-00	415,795	09/25/89
Winston-Salem Transit Authority, Winston-Salem, NC	NC-90-X101-00	1,811,618	09/29/89
City of Asheville, Asheville, NC	NC-90-X102-00	684,212	09/29/89
City of Asheville, Asheville, NC	NC-90-X103-00	138,936	1
Omaha Metro Area Transit, Omaha, NE-IA	NE-90-X019-01	5,200	09/29/89
Omaha Metro Area Transit, Omaha, NE-IA	NE-90-X023-00	613,360	09/29/89
Cooperative Alliance for Seacoast Transportation, Portsmouth-Dover-Roch, NH	NH-90-X020-00	382,784	09/29/89
City of Nashua, Nashua, NH	NH-90-X021-00	506,400	09/29/89
Saratoga County Planning Board, Albany, NY	NY-90-X150-01	304,000	09/29/89
Onondaga County Civil Center, Syracuse, NY	NY-90-X166-00	720,657	09/28/89
Central New York Regional Transportation Authority, Syracuse, NY	NY-90-X167-00	3,466,803	09/28/89
Suffolk Co. Dept. of Trans. Oper., New York, NY-Northeastern NJ	NY-90-X168-00	2,835,945	09/27/89
Oneida County, Utica-Rome, NY	NY-90-X169-00	449,694	09/26/89
Westchester County Department of Transportation, New York, NY-Northeastern NJ	NY-90-X170-00	3,068,877	09/29/89
Toledo Area Regional Transit Authority, Toledo, OH-MI	OH-90-X114-01	379,200	09/29/89
Southwest Ohio Regional Transit Authority, Cincinnati, OH-KY	OH-90-X123-00	1,881,600	09/29/89
Ohio Department of Transportation, Columbus, OH	OH-90-X124-00	5,407,390	09/29/89
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK-90-X030-01	1,600,000	09/29/89
Enid Public Transportation Authority, Enid, OK	OK-90-X031-00	254,080	09/29/89
Metropolitan Tulsa Transit Authority, Tulsa, OK	OK-90-X032-00	400,000	09/29/89
Beaver County Transit Authority, Pittsburgh, PA	PA-90-X176-00	1,262,404	09/27/89
County of Lackawanna Transit System, Scranton-Wilkes Barre, PA	PA-90-X177-00	114,600	09/29/89
Municipality of Mayaguez, Mayaguez, PR	PR-90-X047-00	680,000	09/26/89
Municipality of Aguadilla, Aguadilla, PR	PR-90-X048-00	144,000	09/26/89
Municipality of Loiza, San Juan, PR	PR-90-X049-00	108,000	09/26/89
Municipality of Ponce, Ponce, PR	PR-90-X050-00	441,016	09/28/89
Department of Transportation and Public Works, San Juan, PR	PR-90-X051-00	852,848	09/26/89
Rhode Island Department of Transportation, Providence-Paw-War, MA-RI	RI-90-X011-01	303,580	09/30/89



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City of Charleston, Charleston, SC .....	SC-90-X029-00	1,658,043	09/28/89
Central Midlands Regional Planning Council, Columbia, SC .....	SC-90-X030-00	162,000	09/26/89
City of Bristol, Bristol, TN-VA .....	TN 90-X072-01	320,000	09/29/89
City of Kingsport, Kingsport, TN-VA .....	TN-90-X076-00	96,272	09/25/89
Capital Metropolitan Transportation Authority, Austin, TX .....	TX-90-X151-00	2,826,426	<sup>1</sup>
VIA Metropolitan Transit Authority, San Antonio, TX .....	TX-90-X153-01	4,968,714	<sup>1</sup>
City of Mesquite, Dallas-Ft. Worth, TX .....	TX-90-X154-00	11,000	09/29/89
City of Plano, Dallas-Ft. Worth, TX .....	TX-90-X155-00	42,500	09/29/89
City of Brownsville, Brownsville, TX .....	TX-90-X157-00	735,200	09/29/89
City of Beaumont, Beaumont, TX .....	TX-90-X158-00	625,000	09/29/89
Texoma Council of Governments, Sherman-Denison, TX .....	TX-90-X159-00	206,528	09/29/89
City of Arlington, Dallas-Ft. Worth, TX .....	TX-90-X161-00	260,000	09/29/89
Permian Basin Regional Planning Commission, Midland, TX .....	TX-90-X162-00	40,000	09/29/89
City of Waco, Waco, TX .....	TX-90-X163-00	506,370	09/29/89
City of Abilene, Abilene, TX .....	TX-90-X164-00	604,760	09/29/89
City of Lubbock, Lubbock, TX .....	TX-90-X165-00	1,230,000	09/29/89
City of Port Arthur, Port Arthur, TX .....	TX-90-X166-00	198,265	09/29/89
Sun Metro, El Paso, TX .....	TX-90-X168-00	2,419,284	09/29/89
Brazos Valley Community Action Agency, Bryan-College Station, TX .....	TX-90-X172-00	348,680	09/29/89
Greater Roanoke Transit Company, Roanoke, VA .....	VA-90-X067-00	920,731	09/25/89
Greater Lynchburg Transit Company, Lynchburg, VA .....	VA-90-X068-00	742,591	09/25/89
City of Bristol, Virginia, Bristol, TN-VA .....	VA-90-X069-00	75,361	09/25/89
Greater Richmond Transit Company, Richmond, VA .....	VA-90-X070-00	1,361,768	09/25/89
City of Petersburg, Petersburg-Col Hghts-Hope, VA .....	VA-90-X071-00	265,291	09/25/89
Intercity Transit, Olympia, WA .....	WA-90-X097-00	625,118	09/29/89
City of Everett Transit, Seattle-Everett, WA .....	WA-90-X097-00	625,118	09/29/89
Spokane Transit Authority, Spokane, WA .....	WA-90-X100-00	2,791,135	09/29/89
Milwaukee County Transit System, Milwaukee, WI .....	WI-90-X109-01	600,000	09/29/89
City of Beloit, Beloit, WI-IL .....	WI-90-X113-00	320,982	09/29/89
City of Madison, Madison, WI .....	WI-90-X114-00	3,699,672	09/29/89
Eau Claire, City of, Eau Claire, WI .....	WI-90-X115-00	341,916	09/29/89
Waukesha County, Milwaukee, WI .....	WI-90-X116-00	286,370	09/29/89
Kanawha Valley Regional Transportation Authority, Charleston, WV .....	WV-90-X034-00	118,854	09/25/89
Eastern Ohio/Ohio Valley Regional Transportation Authority, Wheeling, OH-WV .....	WV-90-X035-00	764,000	06/29/89
City of Weirton, Weirton, WV .....	WV-90-X036-00	155,000	09/29/89
City of Casper, Casper, WY .....	WY-90-X006-00	383,247	09/29/89

<sup>1</sup> The Section 9 grants shown without an obligation date are awaiting 13(c) certification from the Department of Labor. After receipt of the certifications the grants will be obligated.

Issued on: November 1, 1989.

**Roland J. Mross,**

*Deputy Administrator.*

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Federal Register

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Wednesday, November 8, 1989

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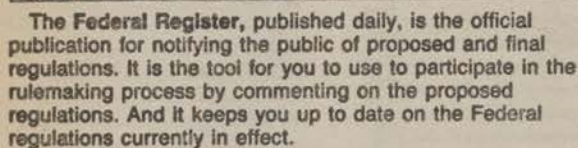
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