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Tuesday
August 11, 1987

Briefings on How To Use the Federal Register—
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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 2 1/2 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.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202–523–5239

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Presidential Documents

Title 3—

The President

Proclamation 5690 of August 7, 1987

Amending the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 502 (a) and (c) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2462 (a) and (c)), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Greenland as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP).

2. Previously, under the terms of section 504 (a) and (c) of the Trade Act, as amended (19 U.S.C. 2464 (a) and (c)), I determined that it was appropriate to provide for the termination of GSP benefits for imports from Mexico under Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) item 470.85, effective July 1, 1985. In light of revised statistics made available to me by the Bureau of Census, I have determined that such benefits for such tariff item should not have been terminated. Accordingly, I have determined that imports from Mexico under TSUS item 470.85 during the period from July 1, 1985, through June 30, 1986, inclusive, should have been afforded the preferential tariff treatment provided under the GSP.

3. Section 604 of the Trade Act (19 U.S.C. 2483) directs the President to embody in the TSUS the substance of relevant provisions of statutes affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States of America, including but not limited to sections 502, 504, and 604 of the Trade Act, do proclaim that:

(1) General headnote 3(e)(v)(A) to the TSUS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting in alphabetical order in the list of non-independent countries and territories "Greenland".

(2) In order to afford benefits of the GSP to certain products of Mexico during the period from July 1, 1985, through June 30, 1986—

(a) TSUS item 470.85 is modified by deleting "A*" and by inserting in lieu thereof "A"; and

(b) General headnote 3(c)(iii) to the TSUS (later redesignated as general headnote 3(e)(v)(D)), listing those articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those listed opposite those articles, is modified by deleting "470.85 . . . Mexico".

(3)(a) Annex III to Executive Order 12519 of June 13, 1985, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in general headnote 3(c)(iii) to the TSUS, is amended by striking TSUS item "470.85".

(4) Annex IV to Proclamation 5365 of September 5, 1985, is superseded to the extent inconsistent with this Proclamation.

(5)(a) The amendments made by paragraph (1) of this Proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976,

and (ii) entered, or withdrawn from warehouse for consumption, on or after the date of the signing of this Proclamation.

(b) The remaining amendments made by this Proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1985, and before the close of June 30, 1986.

IN WITNESS WHEREOF, I have hereunto set my hand this 7 day of Aug. in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18440
Filed 8-10-87; 10:19 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 295]

Food Stamp Program, Miscellaneous Quality Control Amendments

AGENCY: Food and Nutrition Service USDA.

ACTION: Interim rule.

SUMMARY: This rule implements amendments to the Food Stamp Act by section 1537(a) of the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. 1354 (1985) (hereinafter, "Pub. L. 99–198"). Section 1537(a) of the Act excuses State agencies from quality control (QC) liability resulting from use of information received from an automatic Federal information exchange system, provided that information is correctly processed by the State agency. It reflects new statutory time limits for the Department to notify State agencies of their error rates and liabilities and to begin collecting QC liability amounts.

DATES: Comments must be received on or before October 13, 1987, to be assured of consideration. This action is effective retroactive to October 1, 1985.

ADDRESSES: Comments should be submitted to Joseph Pinto, Supervisor, Certification Policy and Quality Control Section, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be available for public inspection at the offices of the Food and Nutrition Service (FNS) during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at Room 706, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Pinto, at the above address, or by telephone at (703) 756–3471.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164 (1980). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) 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.

Interim Rule

Pursuant to 5 U.S.C. 553(b)(A), public comment on this rulemaking prior to implementation is not required because it is an interpretative rule. In addition, S. Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on this rulemaking prior to implementation is impracticable and contrary to public interest. This rule is effective retroactively to October 1, 1985 because Pub. L. 99–198 specifically requires this effective date. However, because the Department believes that the rule may be improved by public comment, comments are solicited on this rule for 60 days. All comments received will be analyzed and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule. In addition, this rule will be effective less than 30 days following its publication, again, because it is an imterpretative rule and because of the statutorily mandated effective date. (See 5 U.S.C. 553(d)(2),(3).)

Effective Date Justification

The provisions regarding Federal automated information exchange systems and Federal timeframes for notifying States of error rates and liabilities and initiating collection action are effective retroactively to October 1, 1985, the beginning of the Fiscal Year 1986 review period. The Food Security Act of 1985, section 1537(a), requires that these provisions be effective retroactive to that date.

Background

Automated Federal Information Exchange (FIX) Systems and QC Liability

State agencies often use automated Federal information exchange (FIX) systems such as the social security Beneficiary and Earnings Data Exchange (BENDEX) and the supplemental security income State Data Exchange (SDX) systems for verification purposes and to make mass changes in such benefits. Pub. L. 99–198 amended section 16(d) of the Food Stamp Act to provide that State agencies shall not be liable for errors that result from use by the State agency of information received from an automatic information exchange system made available by any Federal department or agency, provided that the information was correctly processed by the State agency. This provision applies to all FIX systems if the information is correctly processed by the State agency. The FIX systems specifically include the BENDEX and SDX systems. The House Report indicates that this type of error should be reported for program management purposes but it should be excluded from error rate liability determinations. H.R. Rep. No. 271, part I, 99th Cong., 1st Sess., 161 (1985). Pub. L. 99–198 provides that this liability exemption shall be effective beginning

with the fiscal year 1986 reporting period.

This interim rule amends current regulations to indicate that FIX variances are to be excluded by State agencies from QC error determinations and error rates. The Department believes this is administratively more feasible than (1) requiring the calculation of two error rates, one with FIX variances and one without, or (2) requiring States to report one error rate with FIX variances and then request a good cause waiver of the liability amount resulting from the variances. The exclusion would apply only if the State agency correctly processed the information for its intended use. For example, the correct item for the correct household must be used, and the most recent information available to the State agency must be used.

Information regarding FIX variances will still be used for program management purposes; H.R. Rep. No. 271, *supra*, 161. The FIX variances will be recorded during the State QC review, and corrective action will be required by the State agency on an individual case basis. In addition, State agencies will be required to report these variances to FNS.

Error Rate and Error Rate Liability Timeframes

Pub. L. 99-198 also amended section 16(d) of the Food Stamp Act to require State agencies to expeditiously report data on their operations to the Department for purposes of determining their QC error rates and liabilities. It also requires the Department to establish the payment error rates, determine State liability and notify States of such determination within nine months following the end of each fiscal year reporting period. Accordingly, this rule amends the regulations to specify that FNS must notify States of payment error rates and liability for each fiscal year reporting period prior to July 1 of the year following the end of that reporting period.

The same amendment also requires the Department to initiate efforts to collect amounts owned by State agencies for QC liabilities for each fiscal year before the end of the next fiscal year (September 30), subject to the conclusion of any formal or informal appeal procedure. The Department is revising the regulations to specify that FNS must initiate collection action for each QC claim by the end of the fiscal year following the reporting period in which the claim arose, unless an appeal relating to the claim is pending. Such appeals include arbitration cases, requests for good cause waivers, and administrative and judicial appeals pursuant to section 14 of the Food Stamp Act.

The language of the statute and the legislative history indicate that, if a State fails to submit QC data to FNS expeditiously and FNS determines that, as a result, it is unable to meet the statutory timeframes, then FNS is not bound by the timeframes with regard to that State.

The statute provides that States must submit "expeditiously data . . . sufficient for" FNS to determine the State's error rate. It is obvious that, in cases where States fail to meet this obligation, Congress could not have intended FNS to be bound by the timeframes; strict adherence to the timeframes in such instances could compromise the integrity of the State's error rate. The House Committee Report states that under the timeframe provision, "The Secretary would be required, *to the maximum extent feasible*, to establish claims and initiate collections by the srart (sic) of the fourth quarter of the fiscal year following the fiscal year for which State performance is being measured." H.R. Rep. No. 271, *supra*, 316 (emphasis added).

Implementation

Automated Federal Information Exchange Systems, Error Rate Timeframes, and Error Rate Liability Timeframes

The Department is requiring implementation retroactively to the beginning of the Fiscal Year 1986 review period, in accordance with Pub. L. 99-198, Section 1537(a).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Parts 272 and 275 of Chapter II of Title 7, *Code of Federal Regulations* are amended as follows.

1. The authority citation appearing after the table of contents for Parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. Section 272.1 is amended by adding a new paragraph (g)(91) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

(91) *Amendment No. 295—(i) Automated Federal information exchange systems.* States' QC liability exemption for errors resulting from proper use of a Federal automatic information exchange system is effective beginning with the Fiscal Year 1986 reporting period.

(ii) *FNS timeframes.* The timeframes for notifying States of their payment error rates and payment error rate liabilities, if any, and the timeframe by which FNS must initiate collection action on claims for such liabilities are effective beginning with the Fiscal Year 1986 reporting period.

PART 275—PERFORMANCE REPORTING SYSTEM

3. 7 CFR 275.12 is amended by adding a new paragraph (d)(2)(v); and by adding a new paragraph (f)(3) to read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) * * *

(2) * * *

(v) Any variance resulting from use by the State agency of information received from automated Federal information exchange (FIX) systems, provided that such information is correctly processed for its intended uses by the State agency. Automated FIX systems include but are not limited to the Beneficiary and Earnings Data Exchange and State Data Exchange systems.

* * * * *

(f) *Reporting of review findings.* * * *

(3) *Automated Federal Information Exchange System Errors.* Variances resulting from the use by the State agency of information received from automated Federal information exchange systems, which are excluded in accordance with § 275.12(d)(2)(v), shall be coded and reported as variances. They shall not, however, be used in determining a State's error rates.

* * * * *

4. In § 275.23, new paragraph (e)(7) is added to read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) * * *

(7) *FNS Timeframes.* FNS shall notify State agencies of their payment error rates and payment error rate liabilities, if any, within nine months following the end of each fiscal year reporting period to which they pertain. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the end of the fiscal year reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include arbitration cases, requests for good cause waivers, and administrative and judicial appeals pursuant to section 14 of the Food Stamp Act. FNS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate the State's payment error rate and payment error rate liability within the prescribed timeframe.

Date: August 5, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87-18158 Filed 8-10-87; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 270, 271 and 284

[Docket Nos. RM86-3-078 and 079; Order No. 451-C]

Ceiling Prices, Old Gas Pricing Structure; Order Denying Rehearing

Issued August 5, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying rehearing of Order No. 451-B, which amended and clarified Order Nos. 451-A and 451. The final rule adopted in those orders established a new alternative ceiling price for old gas priced under sections 104 and 106 of the Natural Gas Policy Act of 1978. The final rule also established a "good faith negotiation rule" with which producers must comply before collecting a higher price under an existing contract, absent voluntary renegotiation of the contract. In denying rehearing, the Commission reaffirms Order No. 451-B, which amended the regulations implementing the good faith negotiation rule to clarify the effect of assignments on the parties' rights under that rule.

FOR FURTHER INFORMATION CONTACT: Charles Schultz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8141.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Order No. 451-C

Order Denying Rehearing [1]

Issued August 5, 1987.

On June 3, 1987, the Commission issued Order No. 451-B [2] amending the final rule adopted in Order Nos. 451 [3] and 451-A.[4] That rule modified the price structure of old natural gas and established regulations governing implementation of the revised price structure. Order No. 451-B prospectively modified the good faith negotiation procedure established by the rule to prohibit circumvention of purchasers' rights through assignment of contractual rights. The Commission has received two timely applications for rehearing or clarification of Order No. 451-B [5] and one motion to dismiss the requests for rehearing.[6] Because the petitioners raise no issues regarding the Commission's decision to apply the limitation on contract eligibility prospectively, other than those which the Commission has already considered and addressed, the Commission denies rehearing of Order No. 451-B.

The Commission Orders:

(A) The requests for rehearing of Order No. 451-B by Arkla Inc. and ANR Pipeline Company and Colorado Interstate Gas Company are denied.

(B) Mobil Oil Corporation's motion to dismiss the requests for rehearing of Order No. 451-B is denied.

[1] Order Nos. 451 and 451-A are currently on appeal before the United States Court of Appeals for the Fifth Circuit in Mobil Oil Exploration Company and Mobil Oil Producing Southeast v. FERC, No. 86-4940 *et al.* (5th Cir. Dec. 15, 1986). The record in Order No. 451-B has not yet been filed before the court.

[2] 52 FR 21669 (June 9, 1987).

[3] 51 FR 22168 (June 18, 1986).

[4] 51 FR 46762 (December 24, 1986).

[5] Arkla Inc., RM86-3-078, July 6, 1987; ANR Pipeline Company and Colorado Interstate Gas Company, RM86-3-079, July 6, 1987.

[6] Mobil Oil Corporation, July 15, 1987. Mobil's motion to dismiss the petitions will be denied since, as stated in note 1 above, the record in this proceeding and the Commission's jurisdiction to act on the petitions have been retained.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18216 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Wage Coverage

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) is revising five of its regulations on wage coverage under Social Security. These amended regulations are as follows:

(1) We shall exclude from an employee's wages the cash value of the meals and lodging furnished the employee by the employer when these items are furnished for the employer's convenience.

(2) We shall no longer (with certain exceptions) exclude from an employee's wages the employer's payment of the employee's social security tax liability (i.e., Federal Insurance Contributions Act (FICA) tax).

(3) We shall—(a) Exclude from an employee's wages the employer payments paid after the year the employee became entitled to disability insurance benefits if the employee performed no services for such employer *in* the pay period in which payment is made, and (b) no longer exclude from an employee's wages the employer payments paid to an employee after the employee became age 62 if these payments are paid *for* a period in which the employee did not work.

(4) We shall enlarge the scope of entitlement to the deemed wages provided to persons who were interned during the World War II period at a place operated by the United States Government for interning United States citizens of Japanese ancestry.

(5) We shall bar (with certain exceptions) deemed wage credits to members of the uniformed services who fail to complete a minimum service period of either 24 months of active duty or the full period the individual was called to active duty.

EFFECTIVE DATE: These regulations are effective August 11, 1987.

FOR FURTHER INFORMATION CONTACT: C.H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597–3408.

SUPPLEMENTARY INFORMATION: The five rules to be amended and our amendments are as follows:

Amendment That Excludes From an Employee's Wages the Value of the Meals and Lodging Furnished the Employee for the Employer's Convenience

According to current regulations, the value of meals and lodging furnished to an employee by an employer is wages if—

(1) Both employer and employee understand that the meals and lodging are to be furnished on a regular basis; or

(2) The value of these items comprises a large part of total employee pay.

This regulation was based on SSA's interpretation of section 209 of the Act and was consistent with the Internal Revenue Service's (IRS') interpretation of its parallel provision, section 3121(a) of the Internal Revenue Code (the IRC). Under this interpretation, an employee's wages included the value of the meals and lodging furnished the employee on a regular basis. The U.S. Supreme Court, however, in its opinion in *Rowan Companies, Inc.* v. *United States*, 452 U.S. 247 (1981), invalidated this interpretation as not being in accord with congressional intent. According to the Supreme Court decision, Congress intended the same statutory definition of wages with respect to the value of meals and lodging furnished an employee to apply under the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the income tax provisions of the IRC. Consequently, the rule in section 119 of the IRC excluding the value of the meals or lodging furnished for the employer's convenience from the employee's gross income applies also under the Social Security Act. This Supreme Court holding was incorporated into the Social Security Act by section 327 of Pub. L. 98–21—"The Social Security Amendments of 1983" as amended by section 2662(g) of Pub. L. 98–369, "The Deficit Reduction Act of 1984."

We had originally intended that our proposed regulation amendment implementing *Rowan* apply only to meals and lodging furnished on or after June 8, 1981, the date of the Supreme Court's decision. However, we decided to apply the holding retroactively. Thus, our amended regulation, without stating an inception date, will provide that the value of meals and lodging furnished the employee for the convenience of the employer is excluded from an employee's wages when—

(1) In the case of meals, they are provided at the employer's place of business; and

(2) In the case of lodging, the employee is required to accept the lodging on the employer's premises as a condition of employment.

The section of the regulations that we are revising to implement *Rowan* also contains a rule on excluding the value of fringe benefits from an employee's wages. Fringe benefits means the facilities and privileges that an employer may provide to his or her employee. The enactment of section 531 of Pub. L. 98–369 (the Deficit Reduction Act of 1984), which enacted the current section 132 of the IRC, made this rule invalid with respect to fringe benefits provided on or after January 1, 1985. Section 132 of the IRC was further amended by section 1853 of Pub. L. 99–514, the "Tax Reform Act of 1986." Consequently, we are amending this rule to show that it applies only to fringe benefits provided to employees prior to January 1, 1985. After IRS publishes final regulations to implement these fringe benefit provisions of the IRC, we will further amend this rule to cover periods after January 1, 1985.

Amendment That Excludes From an Employee's Wages an Employer's Payment of the Employee's Social Security Tax Liability

Our current regulations provide that wages do not include the employer's payment (without deduction from the employee's pay) of—

(1) The tax imposed on employees by the Federal Insurance Contributions Act (FICA); or

(2) Any payment required from an employee under a State unemployment compensation law.

The revised regulation will conform to the provisions of sections 1141(a)(2) and 1141(c) of Pub. L. 96–499 (the Omnibus Reconciliation Act of 1980) which amended section 209(f) of the Act. The amended section 209(f) provides that this wage exclusion applies on or after January 1, 1981 only to:

(1) Payments made on behalf of an employee working in—

(i) Domestic service in the private home of the employer; or

(ii) Agricultural labor.

(2) Payments made beginning January 1, 1981 through December 31, 1983 on behalf of an employee who works for a State or local government, if—

(i) The employer payments are for amounts equivalent to the employee's FICA share or State unemployment compensation contribution; and

(ii) The State or local government had in effect on October 1, 1980 a practice of paying a substantial portion of this amount.

Amendments Concerning Excluding or Not Excluding Employer Payments From an Employee's Wages; Payments for or in Nonwork Periods Paid to Employees Who Attain Age 62 or Are Entitled to Disability Insurance Benefits

The current regulations exclude from wages an employer's payment to an employee for a period in which the employee did not work where the employee—

(1) Has attained age 62, or

(2) Is entitled to disability insurance benefits.

We are amending this regulation, in accordance with Pub. L. 98–21, section 324(c)(3)(B), which repealed section 209(i) of the Act, to provide that the exclusion of payments to employees who have attained age 62 applies only to remuneration paid before January 1, 1984.

We are also amending this regulation as it applies to employer payments that are paid in a period of non-work to an employee who is a disability insurance beneficiary. This amendment is necessary because of SSA's acquiescence in an Internal Revenue Service (IRS) interpretation of section 3121(a)(15) of the Internal Revenue Code (IRC) (which corresponds to section 209(o) of the Act). Under this IRS interpretation, an employer's payments to an employee after the calendar year of disability benefit entitlement are not wages if the employee did not work for such employer in the period the payments were received. Thus, these payments are not wages, even if they were paid for a period that preceded disability benefit entitlement in which the employee did work, provided they were received after the year of disability benefit entitlement in a period in which the employee did not work.

Amendment to Enlarge the Scope of Entitlement to the Deemed Wage Credits Provided to Japanese and Americans Interned During the World War II Period

The current regulations provide for granting wage credits to United States citizens of Japanese ancestry who were interned during any period of time from December 7, 1941 through December 31, 1946 in places operated by the United States Government within the United States. Additionally, the regulations provide that certification of internment

is to be obtained from the Department of Defense.

We are enlarging the scope of the entitlement to these wage credits in accordance with another interpretation of section 231 of the Act (which is the statutory basis for granting these wage credits). Under our amended regulations, the citizenship or ancestry of any internee confined in an internment camp will not be relevant to qualification for these wage credits. Additionally, our amended regulations will provide that the certification of internment is now obtained from the Archivist of the United States or his or her representative.

Amendment to Bar the Deeming of Wage Credits to Members of the Uniformed Services Who Fail to Complete the Minimum Service Requirement

The current regulation that implements section 229(a) of the Social Security Act provides deemed wage credits, up to a maximum of $1,200 per year, as additional Social Security wage credits to members of the uniformed services. We are amending this regulation because of a minimum active duty service requirement that service members in most cases must satisfy to receive these credits. Our amended regulation is based on the following provisions from two statutory enactments affecting section 229(a) of the Act:

(1) Section 408 of Pub. L. 97–306 (Codified in 38 U.S.C. section 3101A)

The proposed rule based on this statutory enactment applies to:

(1) Persons who enlist in the Armed Forces for the first time on or after September 8, 1980; and

(2) Other members of the uniformed services whose active duty begins on or after October 14, 1982; and who—

(a) Had not previously served 24 months of active duty; or

(b) Were not discharged from prior service for the convenience of the government (i.e., under section 1171 of title 10 of the U.S. Code).

Under this enactment, the minimum active duty period for granting wage credits to these persons is 24 months of service or the full period called to active duty if the person served fewer than 24 months of active duty. However, there are the following exceptions to these minimum service requirements:

(a) Discharge or release from active duty for the convenience of the government (i.e., section 1171 of title 10 of the U.S. Code);

(b) Discharge or release from active duty for hardship (i.e., section 1173 of Title 10 of the U.S. Code);

(c) Discharge or release from active duty or release from active duty for disability incurred or aggravated in the line of duty; or

(d) The establishment of entitlement to compensation under Chapter 11 of Title 38 of the U.S. Code for service connected disability or death.

(2) Section 1002 of Pub. L. 96–342 (Formerly Codified at 10 U.S.C. Section 977)

This statutory enactment, although repealed, can apply concurrently with the provisions of section 408 of Pub. L. 97–306 to an individual who enlisted in a regular component of the Armed Forces for the first time on or after September 8, 1980 *and whose military service ended prior to October 14, 1982.* Based on section 1002 of Pub. L. 96–342, such an individual can receive wage credits for each month of service and is exempted from the minimum service requirement if he or she:

(a) Was discharged because of disability (i.e., under Chapter 61 of Title 10 of the U.S. Code); or

(b) Was later found to have a disability which resulted from injury or disease incurred or aggravated during enlistment which was not caused by misconduct or during unauthorized absence.

The proposed regulation also provides for granting wage credits regardless of the duration of the period of active duty if the person dies while on active duty.

Response to Public Comments on the Notice of Proposed Rulemaking (NPRM)

A 60-day comment period was provided by the October 28, 1986 NPRM (51 FR 39397). We received the following comments:

Comment: It is unfair to include as wages an employer's payment of (1) the employee's share of the FICA tax and (2) the employee's payment under a State unemployment compensation law. This is an attempt to add a tax on a tax.

Response: This regulation change was mandated by section 1141 (a)(2) and (c) of Pub. L. 96–499 (Omnibus Reconciliation Act of 1980). We are implementing a statutory provision. Congress intended to eliminate the wage exclusion in the situation where the employer paid the employee's share of the Social Security tax or the State unemployment compensation tax because such payment constitutes remuneration to the employee.

Comment: The certification of a person's internment during the World War II era is made by the Archivist of the United States or his or her representative.

Response: This comment is correct and § 404.1060(e) is accordingly revised.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation.

The regulations having a cost impact of over $100 million a year are the following: (1) Including an employer's payment of the employee's FICA tax as part of the employee's wages; and (2) Excluding the value of food and lodging provided by an employer from an employee's wages. The first regulation would result in increased contributions to the Social Security trust funds; the second regulation would result in decreased contributions to the trust fund. These two regulations represent in one case implementation of a statutory enactment and in the other case implementation of a Supreme Court decision and subsequent statutory enactment. Therefore, neither regulation can be considered a major regulation because they merely implement the law with no regulatory discretion in the manner of implementation. The three other regulations involve negligible costs. In view of the foregoing, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. The proposed regulation based on legislation that limits an employer from using his or her payment of an employee's Social Security tax liability as a wage exclusion does relate to small entities since a few businesses had applied this wage exclusion to their employees' wages. However, the use by small businesses of this wage exclusion provision had never been widespread and the economic impact on such entities should therefore be minimal. The proposed regulation based on the U.S. Supreme Court decision in *Rowan Companies, Inc.* v. *United States*, 452 U.S. 247 (1981), and the subsequent codification, requiring employers to exclude from employees' wages the value of meals and lodging furnished for the employers' convenience, cause

minor administrative costs but result in overall cost savings to such employers. It is anticipated this regulation causes minimal overall economic impact. The remaining proposed regulations would largely affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 13.802 Social Security Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and disability Insurance.

Dated: June 8, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: July 7, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Title 20, Chapter III, Part 404, Subparts K and N of the Code of Federal Regulations are amended as follows:

1. The authority citation for Subpart K continues to read as set forth below and the authority citations following the sections in Subpart K are removed.

Authority: Secs. 205(a), 209, 210, 211, 229(b) 230, 231 and 1102 of the Social Security Act, 42 U.S.C 405(a), 409, 410, 411, 429(a), 430, 431 and 1302 and 5 U.S.C. Appendix.

2. Section 404.1043 is revised as set forth below:

§ 404.1043 Facilities or privileges—meals and lodging.

(a) *Excluding the value of employer provided facilities or privileges from employee gross income prior to January 1, 1985.* (1) Generally, the facilities or privileges that an employer furnished an employee prior to January 1, 1985 are not wages if the facilities or privileges—

(i) Were of relatively small value; and

(ii) Were offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of the employees.

(2) The term "facilities or privileges" for the period prior to January 1, 1985 is intended to include such items as entertainment, medical services, and so-called "courtesy" discounts on purchases.

(b) *Meals and lodging.* The value of the meals and lodging furnished to an employee by an employer for reasons of the employer's convenience is not wages if—

(1) The meals are provided at the employer's place of business; and

(2) The employee, in the case of lodging, is required to accept lodging on the employer's business premises as a condition of employment.

3. Section 404.1055 is revised as set forth below:

§ 404.1055 Payments by an employer of employee's tax or employee's contributions under State law.

(a) *Before January 1, 1981.* Before January 1, 1981, we did not include as wages any payment by an employer that was not deducted from the employee's salary (or for which reimbursement was not made by the employee) of either—

(1) The tax imposed by section 3101 of the Code (employee's share of "social security tax"); or

(2) Any payment required from an employee under a State unemployment compensation law.

(b) *Beginning January 1, 1981.* Beginning January 1, 1981, the employer payments described in paragraph (a) of this section are wages with the following exceptions:

(1) Payments made on behalf of an employee employed in:

(i) Domestic service in the private home of the employer, or

(ii) Agricultural labor.

(2) Payments made beginning January 1, 1981 through December 31, 1983 on behalf of an employee who works for a State or local government, and—

(i) The employer payments are for amounts equivalent to the employee's FICA share or State unemployment compensation contribution; and

(ii) The State or local government had in effect on October 1, 1980 a practice of paying at least a substantial portion of this amount.

4. Section 404.1059 is amended by revising paragraph (g) as follows:

§ 404.1059 Special situations.

* * * * *

(g) *Payments to employees for non-work periods.*—(1) *Payments to an employee after the employee attained age 62.*

(i) *Payments prior to January 1, 1984*—(A) We do not include as wages any payment made by an employer to an employee (including a corporate officer) prior to January 1, 1984 in a calendar month after the employee attains age 62, when the payments are for a period—

(*1*) Throughout which an employment relationship exists; and

(*2*) In which the employee did not work for the employer (even if subject to call for the performance of work).

(B) If the employee does any work for the employer in the period the payments are earned, the payments are not excluded from wages under this provision. Also, vacation or sick pay is not excluded from wages under this paragraph. The term "sick pay" as used in this paragraph includes "sick leave" payments made by a State, a political subdivision, or an interstate instrumentality to an employee for a period during which he or she was absent from work due to illness.

(ii) *Payments on or after January 1, 1984*—We include as wages any payment made by an employer to an employee (including a corporate officer) on or after January 1, 1984 in a calendar month after the employee attains age 62 for a period in which the employee did not work unless excluded under some other provision (e.g., sick payments made after 6 calendar months following the last calendar month the employee worked for the employer).

(2) *Payments to an employee who is entitled to disability insurance benefits.* We do not include as wages any payments made by an employer to an employee if at the time such payment is made—

(i) The employee is entitled to disability insurance benefits under the Act;

(ii) The employee's entitlement began before the calendar year in which the employer's payment is made; and

(iii) The employee performed no work for the employer in the period in which the payments were paid by such employer (regardless of whether the employee worked in the period the payments were earned).

* * * * *

5. Section 404.1060 is amended by revising paragraphs (a) and (e) as set forth below:

§ 404.1060 Deemed wages for certain individuals interned during World War II.

(a) *In general.* Persons who were interned during any period of time from December 7, 1941, through December 31, 1946, by the United States Government at a place operated by the Government within the United States for the internment of United States citizens of Japanese ancestry are deemed to have been paid wages (in addition to wages actually paid) as provided in paragraph (c) of this section during any period after attaining age 18 while interned. This provision is effective for determining entitlement to, and the amount of, any monthly benefit for months after December 1972, for determining entitlement to, and the amount of, any lump-sum death payment in the case of

a death after December 1972, and for establishing a period of disability.

* * * * *

(e) *Certification of internment.* The certification concerning the internment is made by the Archivist of the United States or his or her representative. After the internment has been verified, wages are deemed to have been paid to the internee.

6. The authority citation for Subpart N continues to read as follows:

Authority: Secs. 205 (a) and (p), 210 (l) and (m), 215(b), 217, 229 and 1102 of the Social Security Act; 42 U.S.C. 405 (a) and (p), 410 (l) and (m), 415(h), 417, 429 and 1302.

7. Section 404.1341 is amended by revising paragraphs (a) and (c) and by adding paragraph (d) as set forth:

§ 404.1341 Wage credits for a member of a uniformed service.

(a) *General.* In determining your entitlement to, and the amount of your monthly benefit (or lump sum death payment) based on your wages while on active duty as a member of the uniformed service after 1956, and for establishing a period of disability as discussed in § 404.132, we add wage credits to the wages paid you as a member of that service. The amount of the wage credits, the applicable time periods, the wage credit amount limits, and the requirement of a minimum period of active duty service for granting these wage credits, are discussed in paragraphs (b), (c), and (d) of this section.

* * * * *

(c) *Limits on wage credits.* The amount of these wage credits cannot exceed—

(1) $1200 for any calendar year, or

(2) An amount which when added to other earnings causes the total earnings for the year to exceed the annual earnings limitation explained in §§ 404.1047 and 404.1096(b).

(d) *Minimum active-duty service requirement.* (1) If you enlisted for the first time in a regular component of the Armed Forces on or after September 8, 1980, you must complete the shorter of 24 months of continuous active duty or the full period that you were called to active duty to receive these wage credits, unless:

(i) You are discharged or released from active duty for the convenience of the government in accordance with section 1171 of Title 10 of the U.S. Code or because of hardship as specified in section 1173 of Title 10 of the U.S. Code;

(ii) You are discharged or released from active duty for a disability incurred or aggravated in line of duty;

(iii) You are entitled to compensation for service-connected disability or death under Chapter 11 of Title 38 of the U.S. Code;

(iv) You die during your period of enlistment; or

(v) *You were discharged prior to October 14, 1982,* and your discharge was—

(A) Under Chapter 61 of Title 10 of the U.S. Code; or

(B) Because of a disability which resulted from an injury or disease incurred in or aggravated during your enlistment which was not the result of your intentional misconduct and did not occur during a period of unauthorized absence.

(2) If you entered on active duty as a member of the uniformed services as defined in § 404.1330 *on or after* October 14, 1982, having neither previously completed a period of 24 months' active duty nor been discharged or released from this period of active duty under section 1171, Title 10 of the U.S. Code (i.e., convenience of the government), you must complete the shorter of 24 months of continuous active duty or the full period you were called or ordered to active duty to receive these wage credits, unless:

(i) You are discharged or released from active duty for the convenience of the government in accordance with section 1171 of Title 10 of the U.S. Code or because of hardship as specified in section 1173 of Title 10 of the U.S. Code;

(ii) You are discharged or released from active duty for a disability incurred or aggravated in line of duty;

(iii) You are entitled to compensation for service-connected disability or death under Chapter 11 of Title 38 of the U.S. Code; or

(iv) You die during your period of active service.

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Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations on exemption of electronic products from performance standards for electronic products and on granting and withdrawing variances from these standards. This amendment delegates authority to make decisions on exemptions and variances to the Director and Deputy Director of the Office of Compliance and to the Director and Deputy Director of the Office of Standards and Regulations in the Center for Devices and Radiological Health (CDRH). This redelegation of authority will expedite the handling of requests for variances and exemptions by decentralizing the approval of actions to the decisionmaking level.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Marjorie J. Shandruk, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.86 *Variances from performance standards for electronic products* (21 CFR 5.86) and § 5.87 *Exemption of electronic products from performance standards and prohibited acts* (21 CFR 5.87) by adding to the list of delegates the Director and Deputy Director, Office of Compliance, and the Director and Deputy Director, Office of Standards and Regulations, Center for Devices and Radiological Health.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61-63, 141 *et seq.*, 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. Part 5 is amended by revising §§ 5.86 and 5.87 to read as follows:

§ 5.86 Variances from performance standards for electronic products.

The following officials are authorized to grant and withdraw variances and issue notices of availability of any approved variance or any amendment or extension thereof, from the provisions of performance standards for electronic products established in Subchapter J of this chapter:

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

(c) The Director and Deputy Director, Office of Standards and Regulations, CDRH.

§ 5.87 Exemption of electronic products from performance standards and prohibited acts.

The following officials are authorized to exempt from performance standards any electronic product intended for use by departments or agencies of the United States under section 358(a)(5) of the Public Health Service Act (the act) and to exempt an electronic product or class of products from all or part of the provisions of section 360B(a) of the act under section 360B(b) of that act:

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

(c) The Director and Deputy Director, Office of Standards and Regulations, CDRH.

Dated: July 31, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18145 Filed 8-10-87; 8:45 am]

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21 CFR Part 73

[Docket No. 86C-0495]

Mica; Addition of Listing for Use in Dentifrices That are Drugs as Well as Cosmetics; Change in Specification for Fineness

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of mica in dentifrices that are drugs as well as cosmetics and is changing the fineness specification for mica to permit a larger average particle size distribution. This action responds to a petition filed by the Procter & Gamble Co.

DATES: Effective September 11, 1987. Except as to any provisions that may be stayed by the filing of proper objections; objections by September 10, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1987 (52 FR 3349), FDA announced that a color additive petition (CAP 7C0207) had been filed by the Procter & Gamble Co., Cincinnati, OH 45241, proposing that § 73.1496 (21 CFR 73.1496) be amended to provide for the safe use of mica ($K_2Al_4(Al_2S_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$) in dentifrices that are drugs as well as cosmetics. The petitioner also proposed a change in the fineness specification for mica to permit, but not require, a larger average particle size distribution. The purpose of the change in fineness is to increase the versatility of mica as a pearlescent color additive. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

FDA has evaluated the data in the petition and data supporting the previous regulations involving this color additive. In support of its claim that mica is safe for use in dentifrices that are drugs as well as cosmetics, the petitioner submitted references to a number of animal toxicity studies for the color additive. These animal studies were previously used to support the safety of the currently permitted use of mica (21 CFR 73.1496 and 73.2496). The studies include an acute oral toxicity study in rats, an acute eye application study in rabbits, an acute dermal application study in rabbits, a subchronic eye irritation study in rabbits, and a 4-week dermal evaluation in rabbits. These studies did not reveal evidence of local or systemic toxic effects from the administration of mica under these experimental conditions of use. On the basis of these studies, the agency concludes that the use of mica that complies with the new fineness specification in dentifrices that are drugs as well as cosmetics is safe.

The petitioner has also requested a change in fineness specification to allow for the use of a larger average particle size by dropping the requirement that 80 percent pass through a 200-mesh sieve. The agency has determined that this change will have no effect on the safety of the color additive because an increase in particle size would only serve to inhibit the potential absorption of mica from the gastrointestinal tract and therefore reduce the potential for systemic adverse effects. Consequently, this change in particle size will not make the use of this color any less safe than its use in the curently regulated form, and FDA is amending § 73.1496 as set forth below.

Because one of the chemical formulas for mica (potassium aluminum silicate) set forth in § 73.1496(a) was inadvertently represented as $K_2Al_4(Al_2Si_6O_{20})(OH_4)$, the agency is correcting that formula in the regulation to read "$K_2Al_4(Al_2Si_6O_{20})(OH)_4$."

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 10, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for

which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR Part 73 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In § 73.1496 by revising the entry for "Identity" in paragraph (a)(1), "Specifications" in paragraph (b), and "Uses and restrictions" in paragraph (c) to read as follows:

§ 73.1496 Mica.

(a) *Identity.* (1) The color additive mica is a white powder obtained from the naturally occurring mineral, muscovite mica, consisting predominantly of a potassium aluminum silicate, $K_2Al_4(Al_2Si_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$. Mica may be identified and semiquantitatively determined by its characteristic X-ray diffraction pattern and by its optical properties.

* * * * *

(b) *Specifications.* Mica shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Fineness, 100 percent shall pass through a 100-mesh sieve.

Loss on ignition at 600–650 °C, not more than 2 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

(c) *Uses and restrictions.* Mica may be safely used in amounts consistent with good manufacturing practice to color dentifrices and externally applied drugs, including those for use in the area of the eye.

* * * * *

Dated: August 5, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–18206 Filed 8–10–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 176

[Docket No. 79F–0469]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-amino-2-methyl-1-propanol as a dispersing agent in pigment suspensions to be applied as coatings to paper and paperboard products intended for food-contact use. This action responds to a food additive petition filed by International Minerals & Chemical Corp. The petition was subsequently transferred to Angus Chemical Co.

DATES: Effective August 11, 1987; objections by September 10, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 25, 1980 (45 FR 6174), FDA announced that a food additive petition (FAP 0B3486) had been filed by International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808. Responsibility for the petition was subsequently transferred to Angus Chemical Co., 2211 Sanders Rd., Northbrook, IL 60062. The petition proposed that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) and § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of 2-amino-2-methyl-1-propanol as a dispersing agent in pigment suspensions to be applied as coatings to paper and paperboard products intended for food-contact use.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although 2-amino-2-methyl-1-propanol has not been found to cause cancer, it may contain minute amounts of 2-nitropropane as a byproduct of its production. That chemical, 2-nitropropane, has been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as this chemical, are commonly found as contaminants in chemical products, including food additives.

The agency published a proposal in the Federal Register of December 1, 1978 (43 FR 56247), to amend 21 CFR 175.105 by deleting the provision for the food additive use of 2-nitropropane as a component of adhesives intended for use in food packaging and to list the additive as a substance prohibited from addition to human food in 21 CFR Part 189. The agency intends to take further action on this proposal at a future date.

FDA's evaluation of any risks created by the presence of 2-nitropropane as an impurity is based on different considerations than its evaluation of the safety of the use of this chemical as a food additive, however. Therefore, FDA concludes that it can proceed with this rulemaking independently of the latter evaluation.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable

circumstance." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney Clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of 2-amino-2-methyl-1-propanol in paper and paperboard products that contact dry food and fatty food will result in levels of exposure to this additive that are quite small. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. Because 2-amino-2-methyl-1-propanol has not been shown to cause cancer, the anticancer clause does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurity 2-nitropropane has two aspects: (1) Assessment of the worst case exposure to the impurity from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 2-Nitropropane

Based on the fraction of the daily diet that may be in contact with surfaces containing 2-amino-2-methyl-1-propanol and on the levels of 2-nitropropane that may be present in the additive (Ref. 3), FDA estimated the hypothetical worst case exposure to 2-nitropropane from the use of this additive in pigmented coatings contacting dry food and fatty food to be 1.0 nanogram per person per day. The agency used data in three carcinogenic bioassays on 2-nitropropane to estimate the upper bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of 2-amino-2-methyl-1-propanol (Refs. 4 through 7). The results of the bioassays on 2-nitropropane demonstrated that the material was carcinogenic for rats under the conditions of the study. The test material caused significantly increased incidences of hepatocellular tumors in male and female rats by the inhalation route.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed these bioassays and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 2-nitropropane. The committee further concluded that an estimate of the upper bound level of lifetime human risk from potential exposure to 2-nitropropane stemming from the proposed use of 2-amino-2-methyl-1-propanol could be calculated from the bioassays.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst case exposure of 1.0 nanogram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 2-nitropropane from the use of 2-amino-2-methyl-1-propanol is 6×10^{-10} or less than 1 in 1 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 2-nitropropane is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 2-nitropropane that might result from the proposed use of 2-amino-2-methyl-1-propanol.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of the 2-nitropropane impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which 2-nitropropane may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to this impurity, even under worst case assumptions, is very low, less than 1 in 1 billion.

C. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed uses for the additive in paper and paperboard

products in contact with dry food and fatty food are safe, and that § 176.170 should be amended as set forth below.

FDA also concludes that listing of the additive in § 176.180 *Components of paper and paperboard in contact with dry food* is not necessary and would be redundant because this section provides by cross-reference for the use of ingredients listed in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* for dry-food contact. Therefore, this final rule only lists the additive in § 176.170.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs," *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J.K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated September 25, 1985, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "FAP OB3486—International Minerals and Chemical Corporation— Exposure to 2-Nitropropane."

4. Griffin, T.B., K.F. Benitz, R. Coulston, and I. Rosenblum, "Chronic Inhalation Toxicity of 2-Nitropropane in Rats" (Abstract No. 3), *The Pharmacologist*, 20:145, 1978.

5. Griffin, T.B., F. Coulston, and A.A. Stein, "Chronic Inhalation Exposure of Rats to Vapors of 2-Nitropropane at 22 ppm," *Ecotoxicology Environmental Safety*, 4:267–281, 1980.

6. Griffin, T.B., A.A. Stein, and F. Coulston, "Histologic Study of Tissue and Organs From Rats Exposed to Vapors of 2-Nitropropane at 25 ppm," *Ecotoxicology Environmental Safety*, 5:194–201, 1981.

7. Lewis, T.R., C.E. Ulrich, and W.M. Busey, "Subchronic Inhalation Toxicity of Nitromethane and 2-Nitropropane," *Journal of Environmental Pathology and Toxicology*, 2:233–249, 1979.

Objections

Any person who will be adversely affected by this regulation may at any time on or before September 10, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.170(a)(5) by alphabetically inserting a new item in the list of substances to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
2-Amino-2-methyl-1-propanol (CAS Reg. No. 124-68-5).	For use as a dispersant for pigment suspensions at a level not to exceed 0.25 percent by weight of pigment. The suspension is used as a component of coatings for paper and paperboard in contact only with food of the types identified in paragraph (c) of this section, Table 1, under types V, VIII, and IX and under conditions of use described in paragraph (c) of this section, Table 2, conditions of use E through G.
* * * * *	

Dated: August 4, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–18142 Filed 8–10–87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 86F-0412]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the cross-linked polyamide reaction product of 1,3,5-benzenetricarbonyl trichloride and piperazine as a reverse osmosis membrane intended for use in contact with food. This action responds to a petition filed by FilmTec Corp.

DATES: Effective August 11, 1987; objections by September 10, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 31, 1986 (51 FR 47311), FDA announced that a petition (FAP 6B3904) had been filed by FilmTec Corp., 7200 Ohms Lane, Minneapolis, MN 55435, proposing that § 177.2550 *Reverse osmosis membranes* (21 CFR 177.2550) be amended to provide for the safe use of cross-linked polyamide prepared by the polymerization of 1,3,5-benzenetricarbonyl trichloride with piperazine as a reverse osmosis membrane intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 177.2550(a) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 10, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2550 is amended by revising paragraph (a) to read as follows:

§ 177.2550 Reverse osmosis membranes.

* * * * *

(a) *Identity.* For the purpose of this section, the reverse osmosis membrane consists of a cross-linked high molecular weight polyamide reaction product of 1,3,5-benzenetricarbonyl trichloride with 1,3-benzenediamine (CAS Reg. No. 63044–99–9) or piperazine (CAS Reg. No. 110–85–0). The membrane is on the food-contact surface, and its maximum weight is 62 milligrams per square decimeter (4 milligrams per square inch) as a thin film composite on a suitable support.

* * * * *

Dated: August 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–18143 Filed 8–10–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8149]

Income Tax; Taxable Years Beginning After December 31, 1986; OMB Control Numbers Under the Paperwork Reduction Act; Limitation on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to corporate ownership changes and the limitation on corporate net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986 ("Code"). The temporary regulations provide guidance relating to the section 382 limitation on corporate net operating loss carryforwards when there is an ownership change within the meaning of section 382. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATES: The temporary regulations are effective August 11, 1987, and apply generally to any ownership change, within the meaning of section 382, occurring after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone (202) 566–3458 (not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

This document provides temporary regulations to be added to the Income Tax Regulations (26 CFR Part 1) under section 382 of the Internal Revenue Code of 1986. The temporary regulations provide guidance regarding the section 382 limitation on corporate net operating

loss carryforwards and certain unrealized losses that is applicable to a corporation with respect to which an ownership change within the meaning of section 382 has occurred. Section 382 was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2085) (the "Act").

II. Explanation of Provisions

The Act substantially altered the manner in which 382 limits the use of net operating loss ("NOL") carryforwards and certain unrealized losses. Section 382, as amended by the Act, applies in the event of a substantial change in the stock ownership of the loss corporation that occurs during a limited time period (an "ownership change"). These temporary regulations relate principally to issues that arise in connection with determining whether an ownership change has occurred.

After an ownership change occurs with respect to a loss corporation, section 382 limits the amount of taxable income against which NOL carryforwards and certain unrealized built-in losses of the corporation may be applied. The limitation is applied annually and is equal to a prescribed percentage rate, multiplied by the value of the stock of the loss corporation immediately before the ownership change.

A. Overview of Ownership Change

In general, an ownership change occurs if the percentage of stock of a loss corporation owned by one or more "5-percent shareholders" has increased by more than 50 percentage points over the lowest percentage of such stock that was owned by those persons at any time during the testing period. The determination whether an ownership change has occurred is made by adding together the separate increases in percentage ownership of each 5-percent shareholder whose percentage ownership interest in the loss corporation has increased over such shareholder's lowest percentage ownership interest at any time during the testing period. The testing period (described below) generally is the three-year period that precedes any date on which the loss corporation is required to make the determination of whether an ownership has occurred.

Under the temporary regulations, the determination whether an ownership change has occurred is generally made as of the close of any date (a "testing date") on which there is an owner shift (described below), an equity structure shift (described below), or a transaction in which an option (or other similar interest) is acquired by a 5-percent shareholder (or a person who would be a 5-percent shareholder if the option were exercised). The temporary regulations require that a loss corporation file an information statement with its income tax return for each taxable year that it is a loss corporation, primarily to provide information concerning ownership of its stock on certain testing dates.

In general, in determining whether an ownership change has occurred, all transactions (whether related or unrelated) occurring during the testing period that affect the stock ownership of any 5-percent shareholder whose percentage of stock ownership has increased as of the close of the testing date are taken into account. Because an increase in stock ownership is measured by reference to the lowest percentage of stock owned by a 5-percent shareholder at any time during the testing period, if a 5-percent shareholder disposes of loss corporation stock and subsequently reacquires all or a portion of such stock during the testing period, the increase resulting from the subsequent acquisition is taken into account in determining whether an ownership change has occurred (even if the percentage ownership between the first and last day of the testing period is the same or has decreased).

The determination of the percentage ownership interest of any shareholder is made on the basis of the relative fair market value of the loss corporation stock owned by the shareholder to the total fair market value of the outstanding stock of the loss corporation. In general, all stock of the loss corporation, except certain preferred stock described in section 1504(a)(4), is taken into account. (The definition of stock is discussed further below.) The temporary regulations reserve a paragraph under which changes in percentage ownership may be disregarded if they are attributable solely to fluctuations in value. The Internal Revenue Service invites comments on this issue.

The temporary regulations provide that, if more than one transaction occurs on a testing date, all of the transactions are deemed to occur simultaneously at the close of the day. Accordingly, stock ownership by a person who acquires and disposes of stock on the same day is not taken into account under the temporary regulations. Rather, the percentage stock ownership of the 5-percent shareholders immediately after the close of the testing date is compared to the lowest percentage of stock owned by such shareholders at any time during the testing period.

B. Testing Period

As described above, the testing period is generally the three-year period ending on any testing date. Because a new testing period begins on the day following any ownership change, however, a loss corporation is not required to take into account transactions occurring on or before the date of the most recent ownership change in determining whether a subsequent ownership change has occurred. In addition, a testing period does not begin until a corporation is a loss corporation (*e.g.*, a corporation with NOL carryforwards or significant unrealized losses). Shifts in ownership that occur before the date that a corporation becomes a loss corporation thus are disregarded.

C. Owner Shift

An owner shift is defined as any change in the ownership of the stock of the loss corporation that affects the percentage of stock owned (directly and by attribution) by any person who is a 5-percent shareholder. Thus, an owner shift includes (but is not limited to) the following transactions: (1) A purchase or disposition of loss corporation stock by a 5-percent shareholder; (2) a section 351 exchange that affects the percentage of stock owned by a 5-percent shareholder; (3) a decrease in the outstanding stock of a loss corporation (*e.g.*, by virtue of redemption) that affects the percentage of stock owned by a 5-percent shareholder; (4) an issuance of loss corporation stock that affects the percentage of stock owned by a 5-percent shareholder; and (5) an equify structure shift that affects the percentage of stock owned by a 5-percent shareholder.

Under the temporary regulations, transfers of stock between persons who are not 5-percent shareholders generally are not taken into account. Thus, actual transfers of loss corporation stock between shareholders of the loss corporation who, in their individual capacities, are not 5-percent shareholders are disregarded even if the transfers are between shareholders that are segregated into separate groups of shareholders (as described below).

D. Equity Structure Shift

An equity structure shift is any tax-free reorganization within the meaning of section 368, other than certain divisive reorganizations, and mere changes in form (as defined in section 368(a)(1)(F)). Although section 382 and the temporary regulations separately define transactions as equity structure shifts and owner shifts, any equity

structure shift that affects the pecentage of loss corporation stock owned by a 5-percent shareholder also constitutes an owner shift. Under the temporary regulations, therefore, no substantive differences (other than for purposes of the statutory effective date) result from a transaction being defined as an equity structure shift. For this reason, the temporary regulations do not include an exercise of the regulatory authority in section 382(g)(3)(B) to treat some owner shifts, namely taxable reorganization-type transactions and public offerings, as equity structure shifts. Rather, the segregation rules (described below) accomplish the result intended under section 382(g)(3)(B), as explained in the accompanying legislative history (*see* H. Rep. 99–841, 99th Cong., 2d Sess., 176–178 (1986) (Statement of Managers)), even though the transactions are not designated as equity structure shifts. The Internal Revenue Service has taken this into account for purposes of establishing the effective dates (described below) for the portion of the temporary regulations providing segregation rules applicable to transactions with respect to which the regulatory authority contained in section 382(g)(3)(B), as provided in the Statement of Managers, was required to be exercised prospectively (*i.e.*, certain public offerings).

E. 5-Percent Shareholder

The temporary regulations identify four categories of shareholders that are 5-percent shareholders. First, an individual who has either a direct ownership interest or an indirect ownership interest (by virtue of an ownership interest in any one entity) in loss corporation stock of at least five percent is a 5-percent shareholder. Second, the direct shareholders of the loss corporation (both individuals and entities) who own less than five percent of loss corporation stock (referred to in the temporary regulations as "public shareholders"), as described further below, are aggregated together as a group that is a single 5-percent shareholder. Third, the owners (other than individual 5-percent shareholders referred to above) of an entity that has a five percent or more direct or indirect ownership interest in the loss corporation are also generally aggregated together as a group that is a separate 5-percent shareholder. Finally, as discussed further below, the temporary regulations provide a mechanism to segregate the groups of shareholders referred to above into two or more separate groups following certain enumerated transactions, with each such group being a 5-percent shareholder.

In general, through the attribution rules discussed below, section 382 measures ownership changes among persons who are the ultimate beneficial owners of five percent or more of the stock of a loss corporation. Certain rules of administrative convenience are provided under the temporary regulations, however, to lessen a loss corporation's obligation to account for certain small interests and to ascertain the identities of persons who may own several small, indirect interests in the loss corporation. In this regard, the temporary regulations provide a rule for the determination of the percentage stock ownership of a 5-percent shareholder that requires an ownership interest to be taken into account only to the extent that the interest (whether direct or indirect by virtue of the attribution rules described below) constitutes five percent or more of the loss corporation stock. For example, if individual A owns two percent of loss corporation stock through one first tier entity and four percent through another first tier entity, A is not a 5-percent shareholder unless certain other provisions of the temporary regulations that alter the rule of administrative convenience apply. (See the discussion of actual knowledge regarding stock ownership and anti-abuse rules, below.) Similarly, individual A is not a 5-percent shareholder even if he also owns a two percent direct ownership interest in the loss corporation.

Furthermore, under the temporary regulations, the loss corporation has no obligation to take into account the actual identity of the owner of an indirect ownership of less than five percent. As discussed further below, this rule restricts the inquiry that the loss corporation must make to identify its ultimate beneficial shareholders. If, for example, a first tier entity (an entity that owns a direct interest in the loss corporation of five percent or more) owns 100 percent of the loss corporation (*i.e.*, the loss corporation is a wholly owned subsidiary), the loss corporation is required to determine the identity of the owners of the first tier entity, and their respective ownership interest, to the same extent that it would have to determine the identity and ownership interests of the shareholders having a direct ownership interest in loss corporation. If, on the other hand, a first tier entity owns only five percent of the stock of the loss corporation, the loss corporation must take into account the indirect ownership of an owner of the first tier entity only if there is a person who owns 100 percent of the first tier entity.

F. Attribution Rules

In determining stock ownership, the constructive ownership rules of section 318, with significant modifications, apply to attribute loss corporation stock owned by a corporation or other entity. The principal modification to the constructive ownership rules require attribution of stock from a corporation to its shareholders without regard to the 50 percent stock ownership limitation in section 318(a)(2)(c). A second significant modification to the constructive ownership rules is that stock attributed from an entity to its owners is not treated as owned by the entity. Accordingly, loss corporation stock owned, directly or constructively, by an entity is attributed to all of its owners and is not treated as owned by the entity.

As noted above, the temporary regulations modify the statutory attribution rules so that, in effect, a particular shareholder (or owner of another entity) generally is treated as constructively owning loss corporation stock if the application of the attribution rules would cause such shareholder (or other owner) to own constructively five percent or more of loss corporation stock. Any stock owned by a corporation (or other entity) that is not attributed to a particular shareholder (or other owner) under this rule is attributed to the public owners of the corporation (or other entity), and, under the aggregation rules described below, the ownership interests of these owners generally are aggregated and treated as owner by a separate 5-percent shareholder. Moreover, stock owned by an entity that owns less than five percent of loss corporation stock is not attributed to the owners of the entity. Rather, such an entity is treated as an individual who owns the stock.

As noted above, the attribution rules are designed to provide a mechanism for tracking the changes in ownership by the ultimate beneficial owners of the loss corporation. The regulations therefore provide rules to allow a loss corporation to establish the extent, if any, to which there is common ownership among different entities for the purpose of avoiding an ownership change (or any increase in stock ownership). Thus, for example, the mere formation of a holding company to own all of the stock of the loss corporation, unaccompanied by a change in the beneficial ownership of the loss corporation, is not an owner shift, because, under the attribution rules, the

persons who directly owned the loss corporation stock before the transaction continue to own constructively such stock thereafter. Conversely, the attribution rules result in an ownership change where more than 50 percent of loss corporation stock is purchased indirectly through an acquisition of stock in the loss corporation's parent corporation.

G. Option Attribution Rule

Subject to certain exceptions provided in the temporary regulations, the owner of an option is treated as owning the underlying stock if such treatment would cause an ownership change. In applying this option attribution rule to determine whether an ownership change occurs, the analysis is made separately with respect to each option holder (and each combination of such persons), so that, in appropriate cases, certain options will be deemed exercised while others may not. This determination is first made on the date an option is issued and is repeated on any subsequent testing date that occurs (as a result of other transactions) while the option is outstanding.

The option attribution rule ignores any contingency relating to the exercise of the option. An option subject to a contingency, therefore, is treated in the same manner as an option that is not contingent. In addition, a person (including the loss corporation) generally is treated as owning stock that may be acquired pursuant to any warrant, convertible debt, other instruments that are convertible into stock, a put, a risk of forfeiture, a contract to acquire or sell stock or any similar interest, under the same rules that are applicable to an option. The types of rights to acquire stock that are subject to this rule thus may include rights that are not treated as options under section 318(a)(4).

The regulations provide for certain circumstances in which the operation of the option attribution rule is limited. For example, the temporary regulations exclude from the application of the option attribution rule certain long-held options with respect to actively traded stock, options outstanding following an ownership change, certain types of buy-sell agreements and several other options or similar interests. The Internal Revenue Service, in promulgating these exceptions from the option attribution rule, has attempted to include as many rights as possible without compromising the purpose of the rule. Comments are invited, however, with respect to additional options or similar rights that should be added to the list of exceptions.

The regulations also prevent the application of the option rule at a time that a corporation has incurred only *de minimis* amount of losses. This limitation is intended to prevent use of the option attribution rule to commence a new testing period (by causing an ownership change) at a time that the application of section 382 would not have a material adverse impact upon the utilization of a loss corporation's NOL carryforwards and unrealized built-in losses.

If an option that lapses or is forfeited caused an ownership change under the temporary regulations, the loss corporation may file amended tax returns (subject to any applicable statute of limitations) for prior years as if the corporation had not been subject to the special limitations.

The temporary regulations disregard the actual exercise of any option in existence immediately before and after an ownership change if the option is exercised by the person who owned the option immediately before the ownership change. The actual exercise of any other option, however, is not disregarded, and is taken into account under the rules that are generally applicable to transfers of stock.

In addition, if the actual exercise of an option occurs on or before 120 days after the date the option is treated as exercised, the loss corporation may ignore the deemed exercise under the option attribution rule and take into account only the actual exercise of the option to determine the date on which the ownership change occurs. Accordingly, even though an option (or contract) to acquire more than 50 percent of loss corporation stock would ordinarily result in an ownership change on the date of the option (or contract), the loss corporation may treat the ownership change as occurring on a date that the actual acquisition of stock occurs during the ensuing 120-day period. This provision is intended to avoid the necessity of valuing stock (and determining whether any built-in gains or losses exist) at a time prior to the date that actual control is acquired.

H. Stock

The temporary regulations provide that the term "stock" generally means stock other than limited, preferred stock described in section 1504(a)(4), except that such stock is not excluded for purposes of determining the value of the loss corporation under section 382(e). Preferred stock that would be described in section 1504(a)(4), but for the fact that it is entitled to vote solely as a result of dividend arrearages, nevertheless does not constitute stock and is disregarded. Furthermore, certain stock that is not described in section 1504(a)(4) (such as voting preferred stock) is disregarded if (1) as of the time of its issuance or transfer to (or by) a 5-percent shareholder, the likely participation of such interest in future corporate growth is disproportionately small when compared to the value of such stock as a proportion of the total value of the outstanding stock of the corporation, (2) treating the stock as not constituting stock would result in an ownership change, and (3) the amount of the losses of the corporation is not *de minimis*. As is the case of preferred stock described in 1504(a)(4), stock that is otherwise treated as not constituting stock under the temporary regulations is taken into account for purposes of determining the value of the loss corporation under section 382(e).

The temporary regulations also treat certain interests that do not constitute stock as stock if (1) as of the time of its issuance or transfer to (or by) a 5-percent shareholder (or a person that would be a 5-percent shareholder if the interest not constituting stock were treated as stock), such interest offers a potential significant participation in the growth of the corporation, (2) treating the interest as stock would result in an ownership change, and (3) the amount of the losses of the corporation is not *de minimis*. Thus, for example, a financial instrument that generally is treated as debt for Federal income tax purposes nevertheless may be treated as stock under the temporary regulations if such debt offers a potential significant participation in the growth of the loss corporation. An ownership interest that it treated as stock under the temporary regulations is taken into account for purposes of determining the value of the loss corporation under section 382(e).

I. Aggregation Rules

Aggregation rules are applied under the temporary regulations to all stock ownership by (1) public shareholders (persons who directly own less than five percent of loss corporation stock) and (2) owners of any first tier entity (or higher tier entity) who each indirectly own less than five percent of the stock of the loss corporation. Under the temporary regulations, stock owned by any such group of persons generally is treated as being owned by a separate 5-percent shareholder (referred to in the temporary regulations as "public group"). In general, therefore, all of the stock of a widely held loss corporation is treated as owned by a single 5-percent shareholder. Similarly, a loss corporation that is owned, in part, by a

widely held corporate shareholder that owns five percent or more of the loss corporation stock and, in part, by public shareholders will, under the aggregation rules, be treated as owned by two separate public groups that are 5-percent shareholders—one owning the stock owned by public shareholders and the other owning the stock indirectly owned by the owners of the corporate shareholder.

The temporary regulations presume that no person who is a member of a public group identified under the aggregation rules has an ownership interest in another public group. As noted above, this presumption may, however, be rebutted to establish the extent of common ownership among the members of any two public groups.

J. Segregation Rules

As a result of various types of transactions enumerated in the regulations, the public shareholders of a loss corporation may be segregated into two or more separate groups (also referred to in the temporary regulations as "public groups"), each of which is treated as a separate 5-percent shareholder (regardless of whether the group owns as much as five percent of loss coporation stock). For example, public shareholders who receive loss corporation stock as the result of an equity structure shift or any other transaction to which section 1032 applies are segregated and treated separately from the public shareholders that owned stock of the loss corporation prior to the transaction. Thus, for example, public shareholders who receive stock of a widely held corporation in a new stock issuance are segregated from the public shareholders who own stock prior to the transaction, and the group of public shareholders that acquire stock in the offering is treated as a separate 5-percent shareholder whose percentage stock ownership has increased. A similar rule applies in the case of the issuance of a right to acquire stock for purposes of testing whether the option attribution rule will be applicable to treat the persons acquiring the rights to acquire stock as having acquired the underlying stock.

In addition, if the public shareholders surrender stock in exchange for property other than stock (*e.g.*, a cash redemption), those shareholders are segregated immediately before the transaction from all other public shareholders so that the public shareholders who continue to own stock are treated as a separate 5-percent shareholder whose percentage stock ownership has increased as a result of the transaction.

Finally, the segregation rules apply to any transaction in which a first tier entity or an individual 5-percent shareholder of the loss corporation transfers a direct ownership interest in the stock of the loss corporation to public shareholders of the loss corporation. In such a case, the acquiring shareholders are segregated from any continuing public shareholders, and are treated as a separate 5-percent shareholder whose percentage ownership has increased. The application of this portion of the segregation rules, while not affecting the determination of whether an ownership change has occurred with respect to the disposition described in the preceding sentence, may affect such a determination in connection with acquisitions on any subsequent testing date.

In analyzing shifts in ownership on any testing date following application of the segregation rules, if the loss corporation (or an entity with a five percent or more direct or indirect ownership interest in the loss corporation) has two or more groups of shareholders that are treated as separate 5-percent shareholders then, unless a different proportion is otherwise established, acquisitions of stock shall be treated as being made proportionately from each public group immediately before such acquisition.

Similar segregation rules are applicable under the temporary regulations in the case of any transactions described above that involve a first tier entity or a higher tier entity that owns five percent or more of the loss corporation.

K. Presumptions Regarding Stock Ownership

The temporary regulations provide the loss corporation with an ability to establish the identity of its 5-percent shareholders under two different rules that are designed to reduce the burdens of compliance with section 382. With respect to loss corporation stock that is described in Rule 13d–1(d) of Regulation 13D–G, promulgated under the Securities and Exchange Act of 1934 ("registered stock"), a loss corporation may rely on the existence or absence of filings under Schedules 13D and 13G as of a date to identify the corporation's shareholders (both individuals and entities) who have a direct ownership interest of five percent or more. Depending upon the particular securities rule applicable to the shareholders, Schedules 13D and 13G will enable a loss corporation to establish stock ownership as of a date by providing information to the loss corporation either shortly after an acquisition or shortly after the close of the year in which the acquisition occurs. With respect to registered stock of any entity that has a direct or indirect ownership interest in the loss corporation, the loss corporation similarly is permitted to identify those persons who indirectly own five percent or more of the loss corporation stock by virtue of an ownership interest in any such entity. Thus, if all of the stock of the loss corporation and all of the stock of each entity that has a five percent or more direct (or indirect) ownership interest in the loss corporation is registered stock, the loss corporation may, subject only to its actual knowledge to the contrary (described below) and certain anti-abuse rules (described below), conclusively establish the identity of its 5-percent shareholders solely by reference to the filings of Schedules 13D and 13G.

The second part of the rule provides the loss corporation with an ability to determine shifts in the indirect ownership of its stock without regard to the actual identity of the ultimate beneficial owners of the loss corporation. Under this rule, a loss corporation may rely on a statement, signed under penalties of perjury, by any entity with a five percent or more ownership interest in the loss corporation, to establish the extent, if any, to which the ownership interests of any such entity's owners have changed as of the testing date. This rule may not be relied upon by the loss corporation if: (1) It knows that such a statement is false or (2) the statement is offered by an entity that has either a direct or an indirect ownership interest of 50 percent or more of the stock of the loss corporation. As under the safe harbor rule for registered stock (described above), the application of this rule is also subject to the loss corporation's actual knowledge of contrary information (described below) and certain anti-abuse rules (described below).

L. Actual Knowledge Regarding Stock Ownership

Under a special rule, the presumptions regarding stock ownership otherwise supplied by the temporary regulations are unnecessary to the extent the loss corporation has actual knowledge of such ownership and therefore are made inapplicable in such a case. In general, to the extent that the loss corporation has actual knowledge of stock ownership that is inconsistent with the regulatory presumptions regarding stock

ownership (and shifts in ownership) with respect to the loss corporation on any testing date (or acquires such knowledge before the date that the income tax return of the loss corporation is filed for the taxable year in which the testing date occurs), the loss corporation must take such stock ownership into account for purposes of determining whether an ownership change occurs on that testing date. If the actual knowledge is acquired after such income tax return is filed, the loss corporation is permitted to, but need not, take such information into account for purposes of redetermining whether an ownership change occurred on that testing date. Thus, subject to any applicable statute of limitations, the loss corporation may file an amended income tax return.

M. Duty to Inquire Regarding Stock Ownership

On each testing date, the loss corporation is required to determine both the stock ownership and the changes in the stock ownership during the testing period for only the following four categories of persons: (1) Any individual shareholder who has a direct ownership interest of five percent or more in the loss corporation, (2) any entity with a direct ownership interest of five percent or more in the loss corporation, (3) any entity with an indirect ownership interest of five percent or more in the loss corporation, and (4) any individual who has an indirect ownership interest of five percent or more in the loss corporation, through any one of the entities described above. The regulations relieve the loss corporation of any obligation to make any other inquiries regarding the owners of the stock of the loss corporation.

N. Anti-Abuse Rule

If the ownership interests in a loss corporation are structured to take advantage of the presumptions and rules of administrative convenience contained in the temporary regulations and thereby to avoid treating a person as a 5-percent shareholder (or to permit the loss corporation to presume that a 5-percent shareholder's ownership interest remains unchanged) for a principal purpose of circumventing the section 382 limitation, then, with respect to the interests so structured, (1) any regulatory limitation upon the application of the attribution rules is made inapplicable, (2) the determination of whether a person is a 5-percent shareholder and the percentage stock ownership interest of such person in the loss corporation shall take into account each direct and indirect ownership interests and (3) the loss corporation must determine the actual ownership interest of any such 5-percent shareholder. This anti-abuse rule applies even if the loss corporation does not have actual knowledge regarding the ownership interests involved.

Thus, although the temporary regulations ordinarily would not take into account each of the less than five percent ownership interests in the loss corporation that a person (who, unknown to the loss corporation, actually owns five percent or more of the loss corporation) may own through his ownership interests in entities other than the loss corporation, those interests each would be taken into account if they were structured with a principal purpose of avoiding the application of the section 382 limitation. For example, if individual A acquires a loss corporation by making equal capital contributions to each of eleven newly formed corporations, and the contributions, in turn, are used by each such corporation for the acquisition of a 4.64 percent ownership interest in the loss corporation, individual A would be treated as a 5-percent shareholder that acquires 51 percent of the loss corporation, and the loss corporation is thus subject to the section 382 limitation, without regard to the loss corporation's actual knowledge of A's ownership interests.

III. Effective Dates

In general, section 382 applies to any ownership change that occurs immediately after an owner shift or an equity structure shift that occurs after December 31, 1986, or any other event occurring after such date that requires the determination of whether an ownership change has occurred (*e.g.*, the issuance of a warrant by the loss corporation). A special rule is provided for reorganizations (constituting both equity structure shifts and owners shifts) completed pursuant to plans adopted before January 1, 1987, so that the transaction will be treated as occurring at the time such the plan was adopted. For purposes of determining whether an ownership change occurs at any time after May 5, 1986, the testing period may commence no earlier than May 6, 1986.

For purposes of determining whether an ownership change has occurred for any testing before September 4, 1987, the regulations make inapplicable (1) the aggregation rules to stock acquired by a first tier entity or higher tier entity before May 6, 1986, (2) the segregation rules governing transactions (other than dispositions of stock) involving loss corporations, except in the case of an equity structure shift in which more than one corporation is a party to the reorganization, (3) the segregation rules governing transactions (other than dispositions of stock involving first tier entities or higher tier entities, except in the case of an equity structure shift in which more than one corporation is a party to the reorganization and (4) the segregation rules governing dispositions of stock, except in the case of a dispositions of stock acquired after May 5, 1986, by an entity with a five percent or more direct or indirect ownership interest in the loss corporation or an individual 5-percent shareholder. Under the temporary regulations, however, the loss corporation may elect to apply the aggregation and segregation rules to transactions occurring before September 4, 1987, but only if all such rules are applied on any testing date occurring after May 5, 1986.

In addition, the portions of the temporary regulations regarding the treatment of stock as not constituting stock and the treatment of interests other than stock as stock do not apply to stock or interests issued (or transferred) before September 4, 1987. Finally, several special effective date rules apply to options (and other similar interests), certain bankruptcy transactions, and public offerings by domestic building and loan associations.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule subject to review under Executive Order 12291 and that a regulatory impact analysis, therefore, is not required.

Regulatory Flexibility Analysis

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collections of information contained in these regulations have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The requirements have been approved by OMB under control number 1545-0123.

Drafting Information

The principal author of this temporary regulation is Keith E. Stanley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel

from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both in matters of substance and style.

List of Subjects

26 CFR 1.301–1—1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR Part 602

OMB control number under the Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for 26 CFR Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.382–2T also issued under 26 U.S.C. 382(g)(4)(C), 26 U.S.C. 382(i), 26 U.S.C. 382(k)(1), 26 U.S.C. 382(k)(6), 26 U.S.C. 382(l)(3), and 26 U.S.C. 382(m).

Par. 2. There is inserted in the appropriate place a new § 1.382–1T. The new section reads as follows:

§ 1.382–1T Limitation on net operating loss carryforwards and certain built-in losses following ownership change (temporary).

In order to facilitate use of § 1.382–2T, this section lists the paragraphs, subparagraphs, and subdivisions contained in § 1.382–2T.

(a) *Ownership change.*
(1) In general.
(2) Events requiring a determination of whether an ownership change has occurred.
(i) Testing date.
(ii) Information statement required.
(iii) Records to be maintained by loss corporation.
(b) *Nomenclature and assumptions.*
(c) *Computing the amount of increases in percentage ownership.*
(1) In general.
(2) Example.
(3) Related and unrelated increases in percentage stock ownership.
(4) Example.
(d) *Testing period.*
(1) In general.
(2) Effect of a prior ownership change.
(3) Commencement of the testing period.
(i) In general.
(ii) Exception for corporations with net unrealized built-in loss.
(4) Disregarding testing dates.
(5) Example.
(e) *Owner shift and equity structure shift.*
(1) Owner shift.
(i) Defined.
(ii) Transactions between persons who are not 5-percent shareholders disregarded.
(iii) Examples.
(2) Equity structure shift.
(i) Tax-free reorganizations.
(ii) Transactions designated under section 382(g)(3)(B) treated as equity structure shifts.
(iii) Overlap of owner shift and equity structure shift.
(iv) Examples.
(f) *Definitions.*
(1) Loss corporation.
(i) In general.
(ii) Distributor or transferor loss corporation in a transaction under section 381.
(iii) Separate accounting required for losses of an acquiring corporation and a distributor or transferor loss corporation.
(2) Old loss corporation.
(3) New loss corporation.
(4) Successor corporation.
(5) Predecessor corporation.
(6) Shift.
(7) Entity.
(8) Director ownership interest.
(9) First tier entity.
(10) 5-percent owner.
(11) Public shareholder.
(12) Public owner.
(13) Public group.
(14) Higher tier entity.
(15) Indirect ownership interest.
(16) Highest tier entity.
(17) Next lower tier entity.
(18) Stock.
(i) In general.
(ii) Treating stock as not stock.
(iii) Treating interests not constituting stock as stock.
(iv) Stock of the loss corporation.
(19) Change date.
(20) Year.
(21) Old section 382.
(22) Pre-change loss.
(23) Unrelated.
(24) Percentage ownership interest.
(g) *5-percent shareholder.*
(1) In general.
(2) Determination of whether a person is a 5-percent shareholder.
(3) Determination of the percentage stock ownership interest of a 5-percent shareholder.
(4) Examples.
(5) Stock ownership presumptions in connection with certain acquisitions and dispositions of loss corporation stock.
(i) In general.
(ii) Example.
(h) *Constructive ownership of stock.*
(1) In general.
(2) Attribution from corporations, partnerships, estates and trusts.
(i) In general.
(ii) Limitation on attribution from entities with respect to certain interests.
(iii) Limitation on attribution from certain entities.
(iv) Examples.
(3) Attribution to corporations, partnerships, estates and trusts
(4) Option attribution.
(i) In general.
(ii) Examples.
(iii) Contingencies.
(iv) Series of options.
(v) Interests that are similar to options.
(vi) Actual exercise of options.
(A) In general.
(B) Actual exercise within 120 days of deemed exercise.
(vii) Effect of deemed exercise of options on the outstanding stock of the loss corporation.
(A) Right of obligation to issue stock.
(B) Right or obligation to acquire outstanding stock by the loss corporation.
(C) Effect on value of old loss corporation.
(viii) Options that lapse or are forfeited.
(ix) Option rule inapplicable if pre-change losses are de minimis.
(x) Options not subject to attribution
(A) Long-held options with respect to actively traded stock.
(B) Right to receive or obligation to issue a fixed dollar amount of value of stock upon maturity of certain debt.
(C) Right or obligation to redeem stock of the loss corporation.
(D) Options exercisable only upon death, disability or mental incompetency.
(E) Right to receive or obligation to issue stock as interest or dividends.
(F) Options outstanding following an ownership change.
(*1*) In general.
(*2*) Example.
(G) Right to acquire loss corporation stock pursuant to a default under loan agreement.
(H) Agreement to acquire or sell stock owned by certain shareholders upon retirement.
(xi) Certain transfers of options disregarded.
(xii) Exercise of an option that has not been treated as stock.
(5) Stock transferred under certain agreements.
(6) Family attribution.
(i) [Reserved]
(j) *Aggregation and segregation rules.*

(1) Aggregation of public shareholders and public owners into public groups.
(i) Public group.
(ii) Treatment of public group that is a 5-percent shareholder.
(iii) Presumption of no cross-ownership.
(iv) Identification of the public groups treated as 5-percent shareholders.
(A) Analysis of highest tier entities.
(B) Analysis of other higher tier entities and first tier entities.
(C) Aggregation of the public shareholders.
(v) Appropriate adjustments.
(vi) Examples.
(2) Segregation rules applicable to transactions involving the loss corporation.
(i) In general.
(ii) Direct public group.
(iii) Transactions to which segregation rules apply.
(A) In general.
(B) Certain equity structure shifts and transactions to which section 1032 applies.
(*1*) In general.
(*2*) Examples.
(C) Redemption-type transactions.
(*1*) In general.
(*2*) Examples.
(D) Acquisition of loss corporation stock as the result of the ownership of a right to acquire stock.
(*1*) In general.
(*2*) Example.
(E) Transactions identified in the Internal Revenue Bulletin.
(F) Issuance of rights to acquire loss corporation stock.
(*1*) In general.
(*2*) Example.
(iv) Combination of de minimis public groups.
(A) In general.
(B) Example.
(v) Multiple transactions.
(A) In general.
(B) Example.
(vi) Acquistions made by either a 5-percent shareholder or the loss corporation following application of the segregation rules.
(3) Segregation rules applicable to transactions involving first tier entities or higher tier entities.
(i) Dispositions.
(ii) Example.
(iii) Other transactions affecting direct public groups of a first tier entity or higher tier entity.
(iv) Examples.
(v) Acquistions made by a 5-percent shareholder, a higher tier entity, or a first tier entity following application of the segregation rules.
(k) *Operating rules.*
(1) Presumptions regarding stock ownership.
(i) Stock subject to regulation by the Securities and Exchange Commission.
(ii) Statements under penalties of perjury.
(2) Actual knowledge regarding stock ownership.
(3) Duty to inquire as to actual stock ownership in the loss corporation.
(4) Ownership interests structured to avoid the section 382 limitation.
(5) Example.
(6) First tier entity or higher tier entity that is a foreign corporation or entity. [Reserved.]
(l) *Changes in percentage ownership which are attributable to fluctuations in value.* [Reserved]
(m) *Effective date.*
(1) In general.
(2) Plan of reorganization.
(3) Earliest commencement of the testing period.
(4) Transitional rules.
(i) Rules provided in paragraph (j) of this section for testing dates before September 4, 1987.
(ii) Example.
(iii) Rules provided in paragraph (j) of this section for testing dates on or after September 4, 1987.
(iv) Rules provided in paragraphs (f)(18) (ii) and (iii) of this section.
(v) Rules provided in paragraph (a)(2)(ii) of this section.
(5) Bankruptcy proceedings.
(i) In general.
(ii) Example.
(6) Transactions of domestic building and loan associations.
(7) Transactions not subject to section 382.
(i) Application of old section 382.
(ii) Effect on testing period.
(iii) Termination of old section 382. [Reserved]
(8) Options issued or transferred before January 1, 1987.
(i) Options issued before May 6, 1986.
(ii) Options issued on or after May 6, 1986 and before September 18, 1986.
(iii) Options issued on or after September 18, 1986 and before January 1, 1987.
(9) Examples.

Par. 3. There is inserted in the appropriate place a new § 1.382–2T. The new section reads as follows:

§ 1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

(a) *Ownership change*—(1) *In general.* A corporation is a new loss corporation and thus subject to limitation under section 382 only if an ownership change has occurred with respect to such corporation. An ownership change occurs with respect to a corporation if it is a loss corporation on a testing date and, immediately after the close of the testing date, the percentage of stock of the corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of such corporation owned by such shareholders at any time during the testing period. See paragraph (a)(2)(i) of this secton for the definition of testing date. See paragraph (d) of this section for the definition of testing period. See paragraphs (f) (1) and (3) of this section for the respective definition of loss corporation and new loss corporation. See paragraph (g) of this section for the definition of 5-percent shareholder.

(2) *Events requiring a determination of whether an ownership change has occurred*—(i) *Testing date.* Except as otherwise provided in this paragraph (a)(2)(i), a loss corporation is required to determine whether an ownership change has occurred immediately after any owner shift, any equity structure shift, or any transaction in which an option with respect to stock of the loss corporation is—

(A) Transferred to (or by) a 5-percent shareholder (or a person who would be 5-percent shareholder if the option were treated as exercised), or

(B) Issued by the loss corporation, a first tier entity, or a higher tier entity that owns five percent or more of the loss corporation (determined without regard to the application of paragraph (h)(2)(i)(A) of this section).

Notwithstanding the preceding sentence, any transfer of stock of the loss corporation (or an option with respect to such stock) in any of the circumstances described in section 382(l)(3)(B), or any equity structure shift that is not also an owner shift, is not an event that requires the loss corporation to make a determination of whether an ownership change has occurred. For purposes of this section, each date on which a loss corporation is required to make a determination of whether an ownership change has occurred is referred to as a testing date, all computations of increases in percentage ownership are to be made as of the close of the testing date, and any transactions described in this paragraph (a)(2)(i) that occur on that date are treated as occurring simultaneously at the close of the testing date. See paragraphs (e) (1) and (2) of this section for the respective definitions of owner shift and equity structure shift. See paragraphs (f) (9) and (14) of this section for the respective definitions of first tier entity and higher tier entity.

(ii) *Information statement required.* A loss corporation must file a statement with its income tax return for each

taxable year that it is a loss corporation. The statement must—

(A) Indicate whether any testing dates occurred during the taxable year;

(B) Identify each testing date, if any, on which an ownership change occurred;

(C) Identify the testing date, if any, that occurred during and closest to the end of each of the three month periods ending on March 31, June 30, September 30 and December 31 during the taxable year, regardless of whether an ownership change occurred on the testing date,

(D) Identify each 5-percent shareholder on each such testing date;

(E) State the percentage ownership of the stock of the loss corporation for each 5-percent shareholder as of each such testing date and the increase, if any, in such ownership during the testing period; and

(F) Disclose the extent to which the loss corporation relied upon the presumptions regarding stock ownership under paragraph (k)(i) of this section to determine whether an ownership change occurred on any identified testing date.

(iii) *Records to be maintained by loss corporation.* A loss corporation shall keep such records as are necessary to determine: (A) The identity of its 5-percent shareholders, (B) the percentage of its stock owned by each such 5-percent shareholder, and (C) whether the section 382 limitation is applicable. Such records shall be retained so long as they may be material in the administration of any internal revenue law.

(b) *Nomenclature and assumptions.* For purposes of the example in this section—

(1) L is a loss corporation, and, if there is more than one loss corporation, they are designated as L_1, L_2, L_3, etc.

(2) P is a corporation that is not a loss corporation, and, if there is more than one such corporation, they are designated as P_1, P_2, P_3, etc.

(3) HC is a corporation whose assets consist solely of the stock of other corporations.

(4) E is an entity other than a corporation (e.g., a partnership), and, if there is more than one such entity, they are designated as E_1, E_2, E_3, etc.

(5) Unless otherwise stated—

(i) A, B, C, D, AA, BB, CC, and DD are unrelated individuals who own interests in corporations or other entities only to the extent expressly stated,

(ii) All corporations have one class of stock outstanding and each share of stock has the same fair maket value as each other share,

(iii) The capital structure of the loss corporation and its business do not change over time, and

(iv) The rules of paragraphs (k) (2) and (4) of this section are not applicable.

(6) Public L represents a group of unrelated individuals and entities that own direct (and not indirect) stock ownership interests in loss corporation L, each of whom owns less than five percent of the stock of the loss corporation, and, if there is more than one loss corporation, such groups are designated as Public L_1, Public L_2, Public L_3, etc.

(7) Public P represents a group of unrelated individuals and entities that own direct (and not indirect) stock ownership interests in corporation P, each of whom owns less than five percent of the stock of the corporation, and, if there is more than one corporation, such groups are designated as Public P_1, P_2, P_3, etc.

(8) Public E represents a group of unrelated individuals and entities that own direct (and not indirect) ownership interests in entity E, each of whom owns less than five percent of the entity, and, if there is more than one entity, such groups are designated as Public E_1, Public E_2, Public E_3, etc.

(c) *Computing the amount of increases in percentage ownership*—(1) *In general.* In order to determine whether an ownership change has occurred on a testing date, the loss corporation must identify each 5-percent shareholder whose percentage of stock ownership in the loss corporation immediately after the close of the testing date has increased, compared to such shareholder's lowest percentage of stock ownership in such corporation at any time during the testing period. The amount of the increase in the percentage of stock ownership in the loss corporation of each 5-percent shareholder must be computed separately by comparing the percentage ownership of each such 5-percent shareholder immediately after the close of the testing date to such shareholder's lowest percentage ownership at any time during the testing period. Each such increase in the percentage ownership of a 5-percent shareholder is then added together with any other such increases of other 5-percent shareholders to determine whether an ownership change has occurred. Because only those 5-percent shareholders whose percentages of stock ownership have increased are taken into account, a 5-percent shareholder is disregarded if his percentage of stock ownership, immediately after the close of the testing date, has decreased (or has remained the same), compared to his lowest percentage ownership interest on any previous date during the testing period.

(2) *Example.*

(i) A and B each own 40 percent of the outstanding L stock. The remaining 20 percent of the L stock is owned by 100 unrelated individuals, none of whom own as much as five percent of L stock ("Public L"). C negotiates with A and B to purchase all their stock in L.

(ii) The acquisitions from both A and B are completed on September 13, 1990. C's acquisition of 80 percent of L stock results in an ownership change because C's percentage ownership has increased by 80 percentage points as of the testing date, compared to his lowest percentage ownership in L at any time during the testing period (0 percent).

(3) *Related and unrelated increases in percentage stock ownership.* The determination whether an ownership change has occurred is made without regard to whether the changes in stock ownership of the loss corporation (by one or more 5-percent shareholders) result from related or unrelated events.

(4) *Example.*

(i) L has outstanding 200 shares of common stock. A, B and C respectively own 100, 50 and 50 shares of the L stock. On January 2, 1988, A sells 60 shares of L stock to B. Thus, B's percentage ownership interest in L increases by 30 percentage points, from 50 shares to 110 shares. On January 1, 1989, A purchases C's entire interest in L. Thus, A's percentage ownership interest in L increases by 25 percentage points, compared to his lowest percentage ownership interest in L, from 40 shares immediately following the January 2, 1988 sale to B to 90 shares. Even though A's ownership interest in L as of January 1, 1989 has decreased, compared to his 50 percent ownership interest at the beginning of the testing period, A is a 5-percent shareholder who must be taken into account for purposes of the computation required under paragraph (c)(1) of this section because his interest in L on that testing date (45 percent) has increased, compared to his lowest percentage ownership interest in L at any time during the testing period (20 percent following the sale to B).

(ii) Accordingly, although A and B jointly have increased their aggregate total ownership interest in L between January 2, 1988 and January 1, 1989 by only 25 percentage points (*i.e.*, the total ownership interest in L held by A and B at all times is not less than a 75 percent interest), the total of their separate increases in the percentage stock ownership of L, compared to their respective lowest percentage ownership interests at any time during the testing period, is 55 percentage points. Thus, an ownership change occurs as a result of A's acquisition of L stock on January 1, 1989.

(d) *Testing period*—(1) *In general.* Except as otherwise provided in paragraphs (d) and (m) of this section, the testing period for any testing date is the three-year period ending on the testing date. See paragraph (a)(2)(i) of

this section for the definition of testing date.

(2) *Effect of a prior ownership change.* Following an ownership change, the testing period for determining whether a subsequent ownership change has occurred shall begin no earlier than the first day following the change date of the most recent ownership change. See paragraph (f)(19) of this section for the definition of change date.

(3) *Commencement of the testing period*—(i) *In general.* Except as otherwise provided in paragraph (d)(3)(ii) of this section, the testing period for any loss corporation shall not begin before the earlier of the first day of either—

(A) The first taxable year from which there is a loss or excess credit carryforward to the first taxable year ending after the testing date, or

(B) The taxable year in which the testing date occurs.

(ii) *Exception for corporations with net unrealized built-in loss.* Paragraph (d)(3)(i) of this section shall not apply if the corporation has a net unrealized built-in loss (determined after application of section 382(h)(3)(B)) on the testing date, unless the loss corporation establishes the taxable year in which the net unrealized built-in loss first accrued.

In that event, the testing period shall not begin before the earlier of—

(A) The first day of the taxable year in which the net unrealized built-in loss first accrued, or

(B) The day described in paragraph (d)(3)(i) of this section. See section 382(h) for the definition of net unrealized built-in loss.

(4) *Disregarding testing dates.* Any testing date that occurs before the beginning of the testing period shall be disregarded for purposes of this section.

(5) *Example.*

(i) A owns all 100 outstanding shares of L stock. A sells 40 shares to B on January 1, 1988. C purchases 20 shares of L stock from A on July 1, 1991. In determining if an ownership change occurs on the July 1, 1991 testing date, B's acquisition of L stock is disregarded because it occurred before the testing period that ends on such testing date. Thus, B's ownership interest in L does not increase during the testing period, and no ownership change results from C's acquisition.

(ii) The facts are the same as in (i), except that throughout the period during which B negotiated his stock purchase transaction with A, B knew that C intended to attempt to acquire a significant stock interest in L. Also, B and C have been partners in a number of significant business ventures. The result is the same as in (i).

(e) *Owner shift and equity structure shift*—(1) *Owner shift.*— (i) *Defined.* For purposes of this section, an owner shift is any change in the ownership of the stock of a loss corporation that affects the percentage of such stock owned by any 5-percent shareholder. See paragraph (g) of this section for the definition of a 5-percent shareholder. An owner shift includes, but is not limited to, the following transactions:

(A) A purchase of disposition of loss corporation stock by a 5-percent shareholder,

(B) A section 351 exchange that affects the percentage of stock owned by a 5-percent shareholder,

(C) A redemption or a recapitalization that affects the percentage of stock owned by a 5-percent shareholder,

(D) An issuance of loss corporation stock that affects the percentage of stock owned by a 5-percent shareholder, and

(E) An equity structure shift that affects the percentage of stock owned by a 5-percent shareholder.

(ii) *Transactions between persons who are not 5-percent shareholders disregarded.* Transfers of loss corporation stock between persons who are not 5-percent shareholders of such corporation (and between members of separate public groups resulting from the application of the segregation rules of paragraphs (j)(2) and (3)(iii) of this section) are not owner shifts and thus are not taken into account. See paragraph (h)(4)(xi) of this section for a similar rule applicable to transfers of options.

(iii) *Examples.*

Example (1). A has owned all 1000 shares of outstanding L stock for more than three years. On June 15, 1988, A sells 300 of his L shares to B. This transaction is an owner shift. No other 5-percent shareholder has increased his percentage ownership of L stock during the testing period. Thus, the owner shift resulting from B's acquisition does not result in an ownership change, because B has increased his stock ownership in L by only 30 percentage points.

Example (2). The facts are the same as in Example (1). In addition, on June 15, 1989, L issues 100 shares to each of C, D and AA. The stock issuance is an owner shift. The transaction, however, does not result in an ownership change, because B, C, D and AA (the 5-percent shareholders whose stock ownership has increased as of the testing date, compared to any other time during the testing period) have increased their percentage of stock ownership in L by a total of only 46.2 percentage points during the testing period (by 23.1 percentage points [300 shares/1300 shares] for B, and 7.7 percentage points [100 shares/1300 shares] for each of C, D and AA].

Example (3). All 1000 shares of L stock are owned by a group of 100 unrelated individuals, none of whom own as much as five percent of L stock ("Public L"). Several of the members of Public L sell their L stock, amounting to a 30 percent ownership interest in L, to B on June 15, 1988. The sale of stock to B is an owner shift. Between June 16, 1988 and June 15, 1989, each of the remaining individuals in Public L sells his stock to another person who is not a 5-percent shareholder. Under paragraph (e)(1)(ii) of this section, trading activity among the members of Public L is disregarded and does not result in an owner shift. On June 15, 1989, L issues 100 shares to each of C, D and AA. The only sale transactions by members of Public L that are taken into account in determining whether an ownership change occurs on June 15, 1989 are the sales to B on June 15, 1988. Because B, C, D and AA together have increased their percentage ownership of L stock as a result of B's purchase and the stock issuance by an amount not in excess of 50 percentage points during the testing period ending on June 15, 1988, an ownership change does not occur on that date.

Example (4). The facts are the same as in Example (2). In addition, on December 15, 1989, L redeems 200 of the L shares from A. The redemption is an owner shift that results in an ownership change, because B, C, D and AA are 5-percent shareholders whose percentage ownership of L increase by a total of 54.6 percentage points during the testing period (by 27.3 percentage points [300 shares/1100 shares] for B and 9.1 percentage points [100 shares/1100 shares] for each of C, D and AA).

Example (5). L is owned entirely by 10,000 unrelated shareholders, none of whom owns as much as five percent of the stock of L ("Public L"). Accordingly, Public L is L's only 5-percent shareholder. See paragraph (j)(1) of this section. There are one million shares of common stock outstanding. On December 1, 1988, L issues two million new shares of its common stock to members of the public, none of whom owned any L stock prior to the issuance. Following the public offering, no shareholder of L owns, directly or indirectly, five percent or more of L stock. Under paragraph (j)(2) of this section, however, all of the newly issued stock is treated as acquired by a 5-percent shareholder ("Public NL") that is unrelated to Public L. Therefore, the public offering constitutes an owner shift that results in an ownership change because Public NL's percentage of stock ownership in L increased by 66⅔ percentage points (two million shares acquired in the public offering/three million shares outstanding following the offering) over its lowest percentage ownership during the testing period (0 percent prior to the offering).

Example (6). The facts are the same as in Example (5), except that L issues only 500,000 new shares of L stock on December 1, 1988, and Public NL's percentage ownership interest in L increases by only 33⅓ percentage points (500,000 shares acquired in the public offering/1.5 million shares outstanding following the offering). During the two years following December 2, 1988, 14 percent of the stock outstanding on that date is sold over a public stock exchange. On December 3, 1990, A purchases five percent of L stock (75,000 shares) over a public stock exchange. The purchase of five percent of L

stock by A is an owner shift and is presumed to have been made proportionately from Public L and Public NL under paragraph (j)(1)(vi) of this section. Under paragraph (e)(1)(ii) of this section, transfers of L stock in transactions not involving A (*i.e.*, in transactions among or between members of separate public groups resulting from the application of paragraphs (j) (2) and (3) of this section) are not taken into account, and do not constitute owner shifts. (Transfers between members of Public NL and Public L, which are treated as separate 5-percent shareholders solely by virtue of paragraph (j)(2) of this section, are disregarded even if L has actual knowledge of any such transfers.) A and Public NL, the only 5-percent shareholders whose interests in L have increased during the testing period, have increased there respective stock ownership by only 36⅔ percentage points—five percentage points for A [75,000 shares/1.5 million shares outstanding] and 31⅔ percentage points for Public NL [((500,000 shares issued in the public offering)—(5 percent × 500,000 shares presumed to have been acquired by A)) /1.5 million shares outstanding]. Accordingly, there is no ownership change with respect to L notwithstanding that, taking into account the public trading, a change of more than 50 percentage points in the ultimate beneficial ownership of L stock occurred during the three-year period ending on the December 3, 1990 testing date.

Example 7. The facts are the same as in Example 6, except that five percent of the L stock has always been owned by P which, in turn, has always been owned by Public P. On December 6, 1990, P sells all of its L stock over a public stock exchange. Although the trading of P stock among persons that are not 5-percent share-holders (without regard to the segregation rules of paragraph (j) of this section) are disregarded under paragraph (e)(1)(ii) of this section, the disposition of the L stock by P is not disregarded because the L stock is transferred in a transaction that is subject to paragraph (j)(3)(i) of this section.

(2) *Equity structure shift*—(i) *Tax-free reorganizations.* An equity structure shift is any reorganization within the meaning of section 368 with respect to which the loss corporation is a party to the reorganization, except that such term does not include a reorganization described in—

(A) Section 368(a)(1) (D) or (G) unless the requirements of section 354(b)(1) are met, or

(B) Section 368(a)(1)(F).

(ii) *Transactions designated under section 382(g)(3)(B) treated as equity structure shifts.* [Reserved]

(iii) *Overlap of owner shift and equity structure shift.* Any equity structure shift that affects the percentage of loss corporation stock owned by a 5-percent shareholder also constitutes an owner shift. See paragraph (e)(i)(E) of this section

(iv) *Examples.*

Example (1). A owns all of the stock of L and B owns all of the stock of P. On October 13, 1988, L merges into P in a reorganization described in section 368a(1)(A). As a result of the merger, A and B own 25 and 75 percent, respectively, of the stock of P. The merger is an equity structure shift (and, because it affects the percentage of L stock owned by 5-percent shareholders, it also constitutes an owner shift). On the October 13, 1988 testing date, B is a 5-percent shareholder whose stock ownership in the loss corporation following the merger has increased by 75 percentage points over his lowest percentage of stock ownership in L at any time during the testing period (0 percent prior to the merger). Accordingly, an ownership change occurs as a result of the merger. P is thus a new loss corporation and L's pre-change losses are subject to limitation under section 382. See paragraph (f)(1)(iii) of this section requiring P to account separately for L's pre-change losses.

Example (2). (i) A owns 100 percent of L_1 stock and B owns 100 percent of L_2 stock. On January 1, 1988, L_1 merges into L_2 in a reorganization described in section 368(a)(1)(A). Immediately after the merger, A and B own 40 percent and 60 percent, respectively, of the L_2 stock. There is an equity structure shift (as well as an owner shift) with respect to both L_1 and L_2 on January 1, 1988.

(ii) Because the percentage of L_2 stock owned by B immediately after the merger (60 percent) increases by more than 50 percentage points over the lowest percentage of the stock of L_1 owned by B during the testing period (0 percent prior to the merger), there is an ownership change with respect to L_1. L_2 is a new loss corporation and thus, under paragraph (f)(1))(iii) of this section, the pre-change losses of L_1 must be accounted for separately by L_2 from the losses of L_2 (immediately before the ownership change) and are subject to limitation under section 382.

(iii) L_2 is a new loss corporation because it is a successor corporation to L_1. There is no ownership change with respect to L_2, however, because A's stock ownership in L_2 increased by only 40 percentage points (to 40 percent) over the amount owned by A prior to the merger (0 percent). Therefore, the pre-change losses of L_2 are not limited under section 382 as a result of the merger, but must be separately accounted for under paragraph (f)(1)(iii) of this section.

Example (3). The result in Example (2) would be the same if L_1 had survived the merger (*i.e.*, L_2 merged into L_1) with A and B owning 40 and 60 percent, respectively, of L_1 stock. L_1's pre-change losses would be accounted for separately and limited under section 382 and the pre-change losses of [2] would be accounted for separately under paragraph (f)(1)(iii) of this section, but would not be limited under section 382. See paragraph (f)(1)(ii) for the treatment of [2] following the transaction.

Example (4). The facts are the same as Example (2), except, instead of acquiring [1] in a merger, [2] acquires all of the [1] stock from A on January 1, 1988, solely in exchange for stock representing a 40 percent interest in [2], in a reorganization described in section 368(a)(1)(B). The acquisition of stock by [2] is an equity structure shift (as well as an owner shift) with respect to [1] that results in an ownership change with respect to [1] because the percentage of [1] stock owned by B immediately after the reorganization (60 percent, by virtue of B's ownership of [2], through the operation of the constructive ownership rules of paragraph (h) of this section) increases by more than 50 percentage points over the lowest percentage of [1] stock owned by B at any time during the testing period (0 percent prior to the reorganization). The acquisition also results in an equity structure shift and an owner shift with respect to [2], but [2] incurs no ownership change, because A's stock ownership in [2] increased by only 40 percentage points over the percentage of [2] stock owned by A prior to the reorganization (0 percent).

(f) *Definitions.* For purposes of this section—

(1) *Loss corporation*—(i) *In general.* The term "loss corporation" means a corporation entitled to use a net operating loss carryforward or having a net operating loss for the taxable year in which an owner shift, equity structure shift or other transaction described in paragraph (a)(2)(i) of this section occurs (determined for purposes of this paragraph (f)(1) without regard to whether the corporation is a loss corporation). The term loss corporation also includes any corporation with a net unrealized built-in loss (determined for purposes of this paragraph (f)(1) by treating the date on which such determination is made as the change date). See section 382(h)(3) for the definition of net unrealized built-in loss. Any predecessor or successor to a loss corporation described in this paragraph (f)(1) also is a loss corporation.

(ii) *Distributor or transferor loss corporation in a transaction under section 381.* Notwithstanding that a loss corporation ceases to exist under state law, if its net operating loss carryforwards (or other items described in section 381(c)) are succeeded to and taken into account by an acquiring corporation in a transaction described in section 381(a), such loss corporation shall be treated as continuing in existence until—

(A) Any pre-change losses (determined as if the date of such transaction were the change date) are fully absorbed or expire under section 172, and

(B) Any net unrealized built-in losses (determined as if the date of such transaction were the change date) may no longer be treated as pre-change losses.

Following a transaction described in the preceding sentence, the stock of the acquiring corporation shall be treated as the stock of the loss corporation for purposes of determining whether an

ownership change occurs with respect to the pre-change losses and net unrealized built-in losses that may be treated as pre-change losses of the distributor or transferor corporation.

(iii) *Separate accounting required for losses of an acquiring corporation and a distributor or transferor loss corporation.* Pre-change losses (determined as if the testing date were the change date and treating the amount of any net unrealized built-in loss as a pre-change loss) that are succeeded to and taken into account by an acquiring corporation in a transaction to which section 381(a) applies must be accounted for separately from losses of the acquiring corporation for purposes of applying this section. See Example (2) of paragraph (e)(2)(iv) of this section.

(2) *Old loss corporation.* The term "old loss corporation" means any corporation with respect to which there is an ownership change and that was a loss corporation immediately before the ownership change.

(3) *New loss corporation.* The term "new loss corporation" means a corporation with respect to which there is an ownership change if, immediately after such change, it is a loss corporation. A successor corporation to the corporation described in the preceding sentence also is a new loss corporation.

(4) *Successor corporation.* A successor corporation is a distributee or transferee corporation that succeeds to and takes into account items described in section 381(c) from a loss corporation as the result of an acquisition of assets described in section 381(a).

(5) *Predecessor corporation.* A predecessor corporation is a distributor or transferor corporation that distributes or transfers its assets to an acquiring corporation in a transaction described in section 381(a).

(6) *Shift.* As the context may require, a shift means an equity structure shift, an owner shift or both.

(7) *Entity.* An entity is any corporation, estate, trust, association, company, partnership, or similar organization.

(8) *Direct ownership interest.* A direct ownership interest means the interest a person owns in an entity, including a loss corporation, without regard to the constructive ownership rules of paragraph (h) of this section.

(9) *First tier entity.* A first tier entity is an entity that, at any time during the testing period, owns a five percent or more direct ownership interest in the loss corporation.

(10) *5-percent owner.* A 5-percent owner is any individual that, at any time during the testing period, owns a five percent or more direct ownership interest in a first tier entity or a higher tier entity. See paragraph (g) of this section for rules to determine whether, as a result of the constructive ownership rules of paragraph (h) of this section, a 5-percent owner is a 5-percent shareholder.

(11) *Public shareholder.* A public shareholder is any individual, entity, or other person with a direct ownership interest in a loss corporation of less than five percent at all times during the testing period.

(12) *Public owner.* A public owner is any individual, entity, or other person that, at all times during the testing period, owns less than a five percent direct ownership interest in a first tier entity or any higher tier entity.

(13) *Public group.* A public group is a group of individuals, entities, or other persons each of whom owns, directly or constructively, less than five percent of the loss corporation. See paragraphs (g) and (j) of this section for the rules applicable to identify public groups and to determine whether a public group is a 5-percent shareholder.

(14) *Higher tier entity.* A higher tier entity is any entity that, at any time during the testing period, owns a five percent or more direct ownership interest in a first tier entity or in any higher tier entity.

(15) *Indirect ownership interest.* An indirect ownership is an interest a person owns in an entity determined solely as a result of the application of the constructive ownership rules of paragraph (h) of this section and without regard to any direct ownership interest (or other beneficial ownership interest) in the entity.

(16) *Highest tier entity.* A highest tier entity is a first tier entity or a higher tier entity that is not owned, in whole or in part, at any time during the testing period by a higher tier entity.

(17) *Next lower tier entity.* The next lower tier entity with respect to a first tier entity is the loss corporation. The next lower tier entity with respect to a higher tier entity is any first tier entity or other higher tier entity in which the higher tier entity owns, at any time during the testing period, a five percent or more direct ownership interest.

(18) *Stock*—(i) *In general.* Except as provided in this paragraph (f)(18), the term "stock" means stock other than stock described in section 1504(a)(4). Notwithstanding the preceding sentence, stock that is not described in section 1504(a)(4) solely because it is entitled to vote as a result of dividend arrearages shall be treated as so described and thus shall not be considered stock. Stock described in section 1504(a)(4), however, is not excluded for purposes of determining the value of the loss corporation under section 382(e). The determination of the percentage of stock of any corporation owned by any person shall be made on the basis of the relative fair market value of the stock owned by such person to the total fair market value of the outstanding stock of the corporation.

(ii) *Treating stock as not stock.* Any ownership interest that otherwise would be treated as stock under paragraph (f)(18)(i) of this section shall not be treated as stock if—

(A) As of the time of its issuance or transfer to (or by) a 5-percent shareholder, the likely participation of such interest in future corporate growth is disproportionately small when compared to the value of such stock as a proportion of the total value of the outstanding stock of the corporation,

(B) Treating the interest as not constituting stock would result in an ownership change, and

(C) The amount of the pre-change loss (determined as if the testing date were the change and treating the amount of any net unrealized built-in loss as a pre-change loss) is more than twice the amount determined by multiplying (*1*) the value of the loss corporation (as determined under section 382(e)) on the testing date, by (*2*) the long-term tax exempt rate (as defined in section 382(f)) for the calendar month in which the testing date occurs. Stock that is not treated as stock under this paragraph (f)(18)(ii), however, is taken into account for purposes of determining the value of the loss corporation under section 382(e).

(iii) *Treating interests not constituting stock as stock.* Any ownership interest that would not be treated as stock under paragraph (f)(18)(i) of this section (other than an option that is subject to paragraph (h)(4) of this section) shall be treated as constituting stock if—

(A) As of the time of its issuance or transfer to (or by) a 5-percent shareholder (or a person who would be a 5-percent shareholder if the interest not constituting stock were treated as stock), such interest offers a potential significant participation in the growth of the corporation,

(B) Treating the interest as constituting stock would result in an ownership change, and

(C) The amount of the pre-change losses (determined as if the testing date were the change date and treating the amount of any net unrealized built-in loss as a pre-change loss) is more than twice the amount determined by multiplying

(*1*) The value of the loss corporation (as determined under section 382(e)) on the testing date, by

(*2*) The long-term tax exempt rate (as defined in section 382(f)) for the calendar month in which the testing date occurs.

An ownership interest is that treated as stock under this paragraph (f)(18)(iii) is taken into account for purposes of determining the value of the loss corporation under section 382(e).

(iv) *Stock of the loss corporation.* The stock of the loss corporation means stock of such corporation within the meaning of this paragraph (f)(18) and, as the context may require, includes any indirect ownership interest in the loss corporation.

(19) *Change date.* The change date means the date on which a shift (or any other transaction described in paragraph (a)(2)(i) of this section) that is the last component of an ownership change occurs.

(20) *Year.* A year, or any multiple thereof, means a 365-day period (or a 366-day period in the case of a leap year), or any multiple thereof, unless the year is specifically identified as a taxable year.

(21) *Old section 382.* Old section 382 means section 382, as in effect prior to the effective date of section 382 in the Tax Reform Act of 1986 (the "Act"), but taking into account section 621(f)(2) of the Act.

(22) *Pre-change loss.* The term pre-change loss means—

(i) Any net operating loss carryforward of the old loss corporation to the taxable year ending on the change date or in which the change date occurs,

(ii) Any net operating loss of the old loss corporation for the taxable year in which the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date, and

(iii) Any recognized built-in loss for any recognition period taxable year (within the meaning of section 382(h)).

(23) *Unrelated.* Any two persons are unrelated if the constructive ownership rules of paragraph (h) of this section do not apply to treat either person as owning stock that is owned, directly or constructively, by the other person.

(24) *Percentage ownership interest.* A person's percentage ownership interest in—

(i) A corporation shall be determined under the rules of this section that are applicable to the determination of a shareholder's percentage stock ownership interest in a loss corporation (see paragraphs (f)(18) (i) through (iii) of this section),

(ii) A partnership shall be equal to the relative fair market value of such person's partnership interest to the total fair market value of all outstanding partnership interests, determined without regard to any limited and preferred partnership interest that is described in paragraph (h)(2)(ii)(C) of this section,

(iii) A trust shall be determined in accordance with the principles of section 318(a)(2)(B) for determining the constructive ownership of stock,

(iv) An estate shall be determined in accordance with the principles of section 318(a)(2)(A) for determining the constructive ownership of stock, and

(v) All other entities shall be determined by reference to the person's relative economic interest in the entity, taking into account all of the relevant facts and circumstances.

(g) *5-percent shareholder*—(1) *In general.* Subject to the rules of paragraphs (k) (2) and (4) of this section, the term "5-percent shareholder" means—

(i) An individual that owns, at any time during the testing period,

(A) A direct ownership interest in the stock of the loss corporation of five percent or more or

(B) An indirect ownership interest in the stock of the loss corporation of five percent or more by virtue of an ownership interest in any one first tier entity or higher tier entity,

(ii) A public group, of either a first tier entity or a higher tier entity, identified as a 5-percent shareholder under paragraph (j)(1)(iv) (A) or (B) of this section,

(iii) A public group of the loss corporation identified as a 5-percent shareholder under paragraph (j)(1)(iv)(C) of this section, and

(iv) A public group, of the loss corporation, a first tier entity or a higher tier entity, identified as a 5-percent shareholder under paragraph (j) (2) or (3) of this section. An individual owning five percent or more of the stock of the loss corporation at any time during the testing period is a 5-percent shareholder notwithstanding that the individual may own less than five percent of the stock of the loss corporation on the testing date. See paragraph (g)(5)(i)(B) of this section for rules permitting a loss corporation to make an adjustment in cases described in the preceding sentence.

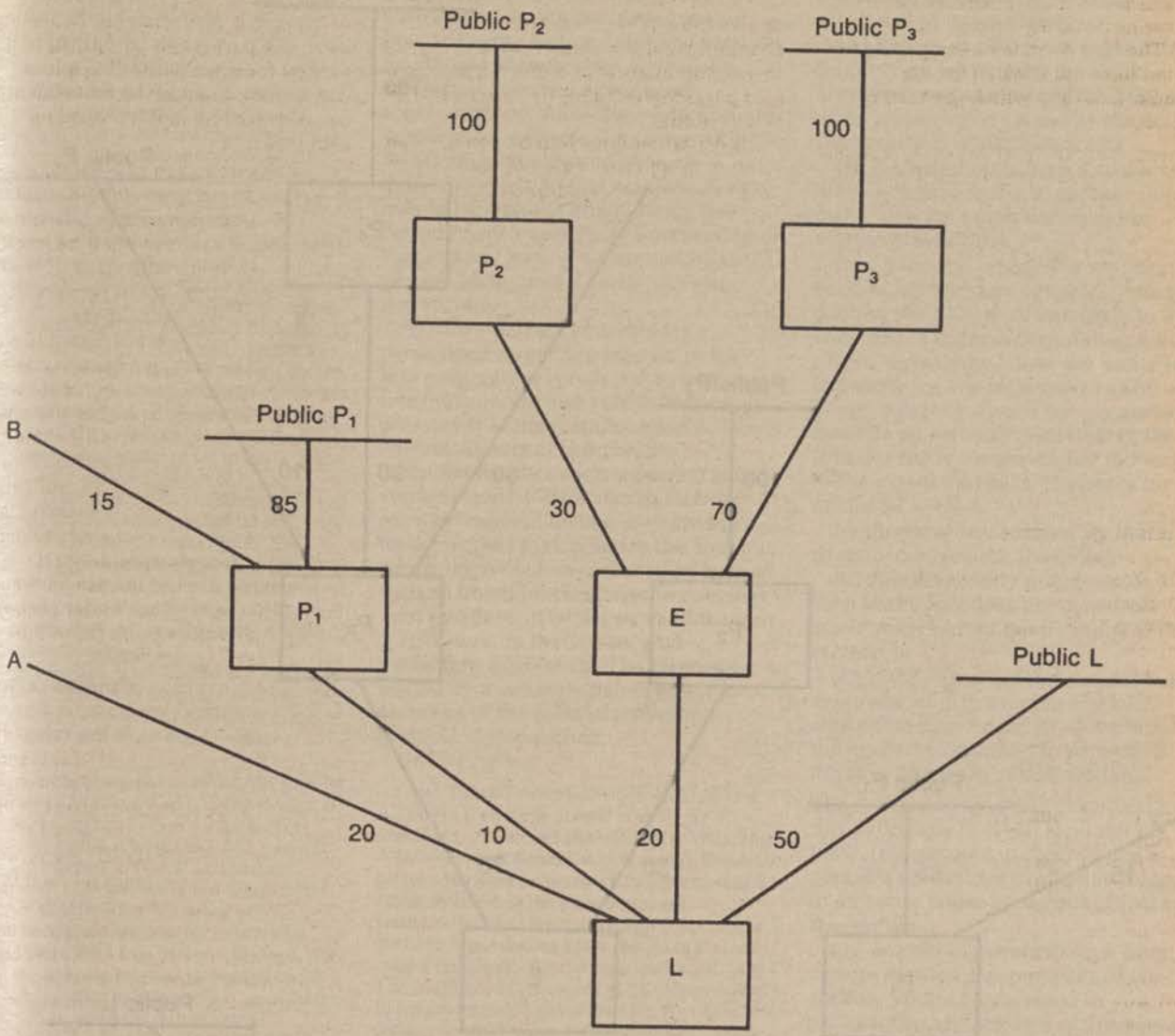
(2) *Determination of whether a person is a 5-percent shareholder.* Except as provided in paragraphs (k) (2) and (4) of this section, a person shall be treated as constructively owning stock of the loss corporation pursuant to paragraph (h)(2) of this section only if the loss corporation stock is attributed to such person in the person's capacity as a higher tier entity or a 5-percent owner of the first tier entity or higher tier entity from which such stock is attributed. See paragraph (k)(3) of this section for rules explaining the extent of the obligation of the loss corporation to determine the identity of its 5-percent shareholders. Nothing in this paragraph (g)(2), however, shall limit the attribution of loss corporation stock under section 318(a)(2) and paragraph (h) of this section to a public owner.

(3) *Determination of the percentage stock ownership interest of a 5-percent shareholder.* Subject to the rules of paragraphs (k)(2) and (4) of this section, in determining a 5-percent shareholder's percentage ownership interest in the loss corporation, the shareholder's direct ownership interest, if any, and each indirect ownership interest that he may have in the loss corporation in his capacity as a 5-percent owner of any one first tier entity or higher tier entity, if any, are required to be added together and taken into account with respect to such shareholder only to the extent that each such direct or indirect ownership interest constitutes five percent or more of the stock of the loss corporation.

(4) *Examples.*

Example (1) (i) Twenty percent of L stock is owned by A, 10 percent is owned by P_1, 20 percent is owned by E, a joint venture, and the remaining 50 percent of L stock is owned by Public L. P_1 is owned 15 percent by B and 85 percent by Public P_1. E is owned 30 percent by P_2 and 70 percent by P_3, which, in turn, are owned by Public P_2 and Public P_3, respectively.

(ii) The ownership structure of L is illustrated by the following chart:



(iii) P_1 and E, each of which has a direct ownership interest in L of five percent or more, are first tier entities. The shareholders with direct ownership interests in L who individually own less than five percent of L are public shareholders (Public L). B, who has a direct ownership interest of five percent or more in P_1, is a 5-percent owner of P . P_2 and P_3, and P_3, each of which has a direct ownership interest in a first tier entity (E) of five percent or more, are higher tier entities with respect to L and, because neither entity is owned at any time during the testing period by a higher tier entity, they also are highest tier entities. The shareholders of P_2 and P_3 (Public P_2 and Public P_3, respectively) are public owners of such entities, because none of those shareholders own five percent or more of either entity at any time during the testing period.

(iv) A, who has a 20 percent direct ownership interest in L, is a 5-percent shareholder of L. Because, by application of the constructive ownership rules of paragraph (h) of this section, B owns only 1.5 percent of L stock in his capacity as a 5-percent owner of P_1 (15 percent ownership of $P_1 \times 10$ percent ownership of L), B is not a 5-percent shareholder of L, even though he is a 5-percent owner of P_1. Under the rules of paragraph (j) of this section, therefore, B is treated as a member of Public P_1. See Example (3) of paragraph (j)(1)(vi) of this section for a determination of which public owners and public shareholders constitute public groups that are treated as 5-percent shareholders of L.

Example (2) (i) The facts are the same as in Example (1), except that P_3 is owned 60 percent by C, 30 percent by P_4, and 10 percent by Public P_3. The stock of P_4 is owned by a group of persons (Public P_4), none of whom own five percent or more of the stock of P_4.

(ii) The ownership structure of L is illustrated by the following chart:

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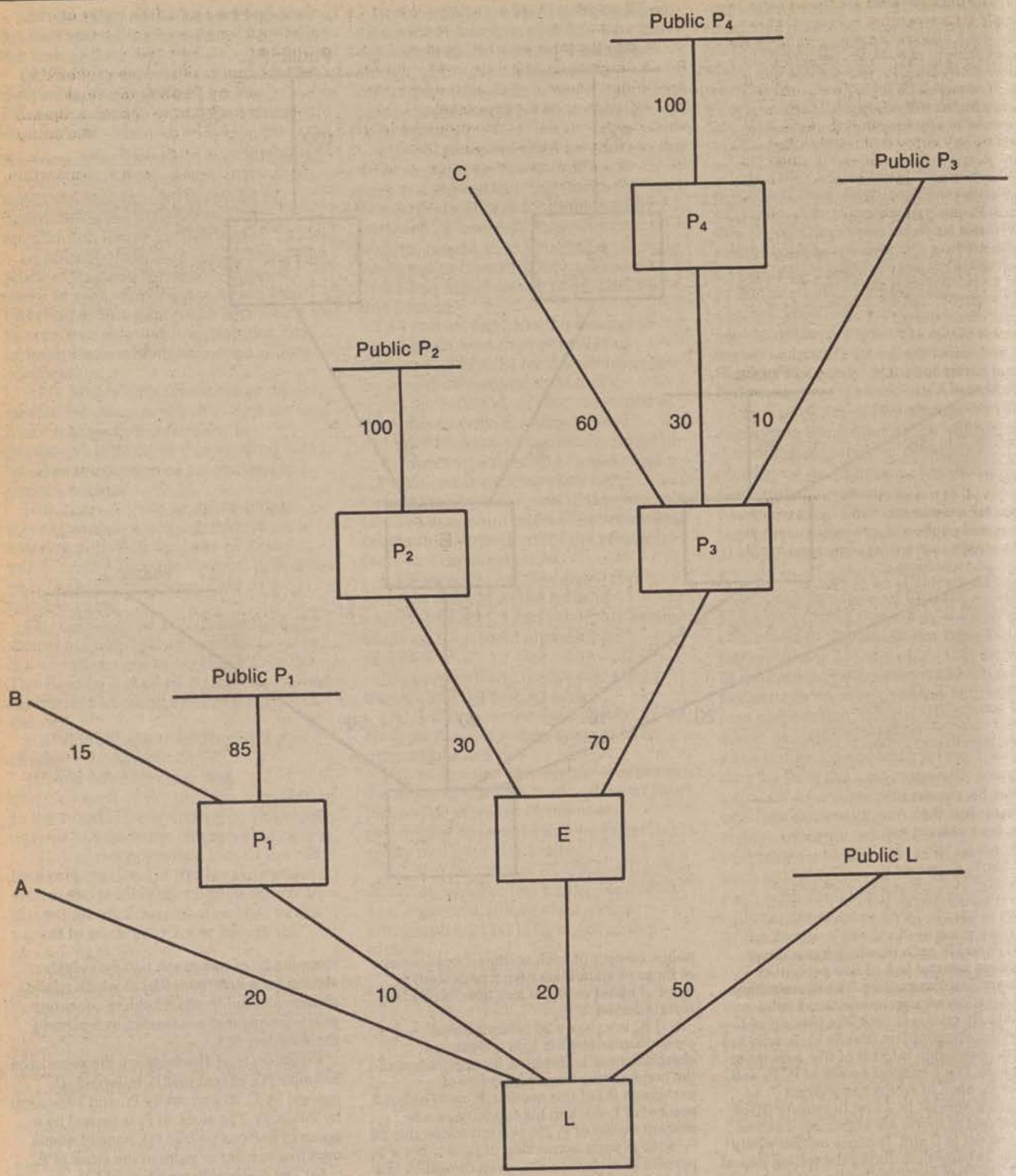

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(iii) The defined terms are the same as in Example (1), except that P_3 is a higher tier entity, not a highest tier entity, because five percent or more of P_3 is, in turn, owned by another entity (P_4). P_4, which owns five percent or more of a higher tier entity (P_3), also is a higher tier entity and, because it is not owned at any time during any testing period by any entity that is also a higher tier entity, P_4 is a highest tier entity. All of the shareholders of P_4, none of which own a direct ownership interest of five percent or more in P_4, are public owners of P_4.

(iv) C is a 5-percent owner of P_3 and, under the constructive ownership rules of paragraph (h) of this section, C indirectly owns 8.4 percent of L ([60 percent ownership of P_3] × [70 percent ownership of E] × [20 percent ownership of L]), in his capacity as a 5-percent owner of P_3. B is a 5-percent owner of P_1 and, under the constructive ownership rules of paragraph (h) of his section, B owns 1.5 percent of L ([15 percent ownership of P_1] × [10 percent ownership of L]) in his capacity as a 5-percent owner of P_1. Therefore, C is a 5-percent shareholder of L, but B is not a 5-percent shareholder of L, even though he is a 5-percent owner of P_1. See Example (4) of paragraph (j)(1)(vi) of this section for a determination of which public owners and public shareholders constitute public groups that are treated as separate 5-percent shareholders of L.

Example (3). (i) L is owned 30 percent by A and 70 percent by P. A owns six percent of P stock and the balance (94 percent) is owned equally by 500 unrelated shareholders ("Public P").

(ii) A is a 5-percent shareholder because he directly owns 30 percent of L. Even though A is a 5-percent owner of P, A's 4.2 percent indirect ownership interest in L (six percent ownership interest in P × P's 70 percent ownership of L) is generally not taken into account in determining A's ownership interest, because such indirect ownership interest is less than five percent. Instead, A's 4.2 percent indirect interest is treated under paragraph (j)(1)(iv) of this section as owned by Public P. If, however, L has actual knowledge of A's less-than-five-percent indirect ownership interest in L and is thus subject to paragraph (k)(2) of this section, or paragraph (k)(4) of this section otherwise applies, L must take A's total 34.2 percent ownership interest into account in determining A's percentage ownership in L.

Example (4). The facts are the same as in Example (3), except that A owns ten percent of P's stock. Because A's indirect ownership interest in L in his capacity as a 5-percent owner of P is five percent or more, both A's 30 percent direct ownership interest in L and his seven percent indirect ownership interest in L (10 percent ownership interest in P × P's 70 percent ownership of L) are taken into account in determining his ownership interest in L, without regard to L's actual knowledge or whether paragraph (k)(4) of this section applies.

(5) *Stock ownership presumptions in connection with certain acquisitions, and dispositions of loss corporation stock*—(i) *In general.* For purposes of this section—

(A) If an individual owns less than five percent of the stock of a loss corporation during the testing period (excluding the testing date) and acquires an amount of such stock so that the individual becomes a 5-percent shareholder on the testing date, the loss corporation may treat any interest in the loss corporation owned by such individual prior to that acquisition as owned by a public group during the period of such individual's ownership of that interest and as not owned by the 5-percent shareholder during the same period, and

(B) If a 5-percent shareholder's percentage ownership interest in the loss corporation is reduced to less than five percent, the loss corporation may presume that the remaining stock owned by such 5-percent shareholder immediately after such reduction is the stock owned by such shareholder for each subsequent testing date having a testing period that includes the date on which the reduction occurred as long as such shareholder continues to own less than five percent of the stock of the loss corporation. In that event, such ownership interest shall be treated as owned by a separate public group for purposes of the rules of paragraph (j)(2)(vi) of this section.

(ii) *Example.*

L has 100,000 shares of stock outstanding. All of the L stock is owned equally by 40 unrelated, individual shareholders, including A (who owns 2.5 percent of L stock). Because no person owns as much as five percent of L stock, Public L is the only 5-percent shareholder of L. See paragraph (j)(1) of this section. A purchases 5,000 shares of L stock over a public stock exchange on June 8, 1989. The purchase is an owner shift. When added to his ownership interest before that date (the testing date), A owns 7,500 shares of L stock (7.5 percent). Under paragraph (g)(5)(i)(A) of this section, L may treat A and Public L as having owned 0 percent and 100 percent, respectively, at all times prior to June 8, 1989 (rather than having owned 2.5 percent by A and 97.5 percent by Public L, even if L has actual knowledge of A's less than five percent ownership interest). The increase in A's stock ownership of L as of June 8, 1989 thus would be 7.5 percentage points, rather than 5.0 percentage points, for purposes of determining whether an ownership change occurs on that testing date and any subsequent testing date.

(h) *Constructive ownership of stock*—(1) *In general.* Subject to certain modifications set forth in this section and section 382(l)(3), the constructive ownership rules of section 318(a) generally apply for purposes of determining ownership of loss corporation stock.

(2) *Attribution from corporations, partnerships, estates and trusts*—(i) *In general.* Stock owned (directly or indirectly) by an entity shall be attributed to its owners—

(A) Except as otherwise provided in this section, by treating the stock attributed pursuant to section 318(a)(2) as no longer being owned by the entity from which it is attributed, and

(B) If attribution is from a corporation, without regard to the 50 percent stock ownership limitation contained in section 318(a)(2)(C).

(ii) *Limitation on attribution from entities with respect to certain interests.* Section 318(a)(2) shall not apply to treat the stock of the loss corporation that is owned directly by a first tier entity (or indirectly by any higher tier entity) as being indirectly owned by any person that has an ownership interest in the first tier entity (or any higher tier entity) to the extent that such interest is (or is attributable to)—

(A) Stock of any such entity that is described in section 1504(a)(4),

(B) Any ownership interest in any such entity that does not constitute stock under paragraph (f)(18)(ii) of this section, or

(C) If the entity is not a corporation, any ownership interest in any such entity that has characteristics similar to the interests described in paragraph (h)(2)(ii) (A) or (B) of this section.

The ownership interests described in this paragraph (h)(2)(ii) shall not be taken into account in determining a person's percentage ownership interest in an entity under paragraph (f)(24) of this section.

(iii) *Limitation on attribution from certain entities.* For purposes of this section, except as provided in paragraphs (k)(2) and (4) of this section, each of the following shall be treated as an individual who is unrelated to any other owner (direct or indirect) of the loss corporation—

(A) Any entity other than a higher tier entity that owns five percent or more of the loss corporation stock (determined without regard to paragraph (h)(2)(i)(A) of this section) on a testing date, a first tier entity or the loss corporation,

(B) A qualified trust described in section 401(a),

(C) Any State, any possession of the United States, the District of Columbia, the United States (or any agency or instrumentality thereof), any foreign government, or any political subdivision of any of the foregoing, and

(D) Any other person designated by the Internal Revenue Service in the Internal Revenue Bulletin.

Stock of a loss corporation that is owned by any such person shall thus not

be attributed to any other person for purposes of this section. See paragraph (g)(2) of this section limiting attribution from a first tier entity or a higher tier entity to any person that is not a 5-percent owner or a higher tier entity.

(iv) *Examples.*

Example (1). All the stock of L is owned by A. B and C respectively own 70 and 30 percent of the outstanding P stock. P acquires 60 percent of the outstanding L stock from A on July 1, 1988 (a testing date). After the acquisition, P is a first tier entity and a higher tier entity of L. B and C are each 5-percent owners of P and also are 5-percent shareholders of L having a 42 percent and 18 percent stock ownership interest in L, respectively, through the operation of the constructive ownership rules of paragraph (h) of this section. Because B and C together have increased their ownership in L by more than 50 percentage points during the testing period ending on the testing date (60 percent on the testing date and 0 percent prior thereto), an ownership change occurs with respect to L on July 1, 1988.

Example (2). The facts are the same as in Example (1), except that B and C are not shareholders in a corporation, but instead are partners in a general partnership, E. B and C respectively own 70 percent and 30 percent of E. E acquires 60 percent of the L stock on July 1, 1988. The results are the same as in Example (1).

Example (3). The facts are the same as in Example (1), except that the acquisition is accomplished in a transaction that qualifies under section 351(a). In that transaction, HC is formed through (i) a contribution of money by P in exchange for 60 shares of HC common stock and (ii) a contribution of all the outstanding shares of L stock plus cash by A in exchange for 40 shares of HC common stock and 30 shares of HC preferred stock that is described in section 1504(a)(4). The respective values of each share of HC stock, common and preferred, are equal. The stock of L is attributed to A through his interest in HC common stock, but not through his interest in HC preferred stock (see paragraph (h)(2)(ii)(A) of this section). Thus, A is treated as owning indirectly only 40 percent of L. B and C are 5-percent shareholders of L having indirect ownership interests in L of 42 percent and 18 percent, respectively, through their ownership of HC common stock. The results are therefore the same as in Example (1).

(3) *Attribution to corporations, partnerships, estates and trusts.* Except as otherwise provided by regulation under section 382 or by the Internal Revenue Service in the Internal Revenue Bulletin, the rules of section 318(a)(3) shall not apply in determining the ownership of stock under this section.

(4) *Option attribution*—(i) *In general.* Solely for the purpose of determining whether there is an ownership change on any testing date, stock of the loss corporation that is subject to an option shall be treated as acquired on any such date, pursuant to an exercise of the option by its owner on that date, if such deemed exercise would result in an ownership change. The preceding sentence shall be applied separately with respect to—

(A) Each class of options (*i.e.*, options with terms that are identical, issued by the same issuer, and issued on the same date) owned by each 5-percent shareholder (or person who would be a 5-percent shareholder if the option were treated as exercised), and

(B) Each 5-percent shareholder, each owner of an option who would be a 5-percent shareholder if the option were treated as exercised, and each combination of such persons.

(ii) *Examples.*

Example (1) (*i*) A owns all of the 100 shares of outstanding L stock. A grants options for the purchase of his L stock, exercisable for 10 years from the date of issuance, in the following transactions: An option to B for four shares (issued January 1, 1988), an option to C for six shares (issued June 1, 1989), and an option to D for 15 shares (issued July 30, 1989). On July 30, 1990, A sells 41 shares of his L stock to BB.

(*ii*) Pursuant to paragraph (a)(2)(i) of this section, the date on which each option is acquired is a testing date. The issuance of options to acquire L stock to each of B, C, and D is not treated as an acquisition of the underlying stock on any such testing date since such treatment with respect to any one of the option owners (or any combination thereof) would not have resulted in an ownership change on any of those testing dates.

(*iii*) The date on which BB acquires 41 shares also is a testing date. BB's acquisition of 41 percent of the L stock, taken together with the shift in ownership that would result if the options held by B, C and D were exercised, would result in an ownership change, because the stock owned or treated as owned by Public L (a group including only B, the sole shareholder who owns less than five percent of L stock), C, D and BB would have increased by 66 percentage points (four, six, 15, and 41 percentage points, respectively) during the testing period. Subject to paragraph (h)(4)(ix) of this section, the options are treated as exercised and an ownership change occurs on July 30, 1990, pursuant to paragraph (h)(4)(i) of this section. Accordingly, no new testing period can begin before July 31, 1990. Under paragraph (h)(4)(x)(F) of this section, the option attribution rules of paragraph (h)(4)(i) of this section shall not be applicable with respect to any of the options owned by B, C, and D immediately before the ownership change until such time, if any, that such options are transferred to (or by) 5-percent shareholder (or a person who would be a 5-percent shareholder if such option were exercised). In addition, the subsequent exercise of any of those options by A, B, or C (the persons owning such options immediately before the ownership change) is disregarded. See paragraph (h)(4)(vi) of this section. Also see paragraph (h)(4)(viii) of this section for the treatment of options that lapse or are forfeited.

(*iv*) The facts are the same as in (*i*), except that the sale of A's 41 shares of L stock to BB occurs on July 30, 1995. Because the options are treated as exercised and the related stock is treated as acquired on the July 30, 1995 testing date, the results are the same as described in (*iii*).

Example (2) (*i*) A owns all of the outstanding 100 shares of the stock of L. On July 22, 1988, the value of A's stock in L is $500 and the following agreements are entered into: (i) A sells 40 shares of his L stock to B for $200, (ii) in exchange for $10, A grants B an option to acquire the balance of his L stock for $305 at any time before July 22, 1992, and (iii) L grants A an option to acquire 100 shares of L stock at a price of $600 exercisable until such time as B's option is no longer outstanding.

(*ii*) If the stock subject to the options owned by both A and B were treated as acquired on the July 22, 1988 testing date, B would have increased his ownership interest in L by only 50 percentage points to 50 percent ([40 shares purchased + 60 shares acquired pursuant to the option]/200 outstanding shares of L stock, including 100 shares deemed outstanding pursuant to the option issued to A by L) as compared with 0 percent prior to July 22, 1988. In determining whether the options with respect to the stock of L would, if exercised, result in an ownership change, paragraph (h)(4)(i)(B) of this section requires that such options be treated as exercised separately with respect to each 5-percent shareholder, each person who would be a 5-percent shareholder if the option were treated as exercised or each combination of such persons. Therefore, by treating the option owned by A as not having been exercised and the option owned by B as having been exercised, B's interest in L increases by 100 percentage points during the testing period. An ownership change with respect to L therefore results from the transactions occurring on July 22, 1988.

(iii) *Contingencies.* Except as provided in paragraph (h)(4)(x)(D) of this section, the extent to which an option is contingent or otherwise not currently exercisable shall be disregarded for purposes of this section.

(iv) *Series of options.* For purposes of this section, an option to acquire an option with respect to the stock of the loss corporation, and each one of a series of such options, shall be considered as an option to acquire such stock.

(v) *Interests that are similar to options.* For purposes of this section,

(A) An interest that is similar to an option includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock, a put, a stock interest subject to risk of forfeiture, and a contract to acquire or sell stock, and

(B) Any such interest shall be treated as an option.

(vi) *Actual exercise of options*—(A) *In general.* The actual exercise of any

option in existence immediately before and after an ownership change, whether or not the option was treated as exercised in connection with the ownership change under paragraph (h)(4)(i) of this section, shall be disregarded for purposes of this section, but only if the option is exercised by the 5-percent shareholder (or person who would have been a 5-percent shareholder if the options owned by such person had been exercised immediately before the ownership change) who owned the option immediately before and after such ownership change.

(B) *Actual exercise within 120 days of deemed exercise.* If the actual exercise of an option occurs on or before the end of the period which is 120 days after the date on which the option is treated as exercised under paragraph (h)(4)(i) of this section, the loss corporation may elect to treat paragraphs (h)(4)(i) and (vi)(A) of this section as not applying to such option and take into account only the acquisition of loss corporation stock resulting from the actual exercise of the option. An election under this paragraph (h)(4)(vi)(B) shall have no effect on the determination of whether an ownership change occurs, but shall apply only for the purpose of determining the date on which the change date occurs. An election under this paragraph (h)(4)(vi)(B) shall be made in the statement described in paragraph (a)(2)(ii) of this section.

(vii) *Effect of deemed exercise of options on the outstanding stock of the loss corporation*—(A) *Right or obligation to issue stock.* Solely for purposes of determining whether an ownership change has occurred under paragraph (h)(4)(i) of this section, the deemed exercise of an option with respect to unissued stock (or treasury stock) of a corporation shall result in a corresponding increase in the amount of its total outstanding stock.

(B) *Right or obligation to acquire outstanding stock by the loss corporation.* Solely for purposes of determining whether an ownership change has occurred under paragraph (h)(4)(i) of this section, the deemed exercise of a right to transfer outstanding stock to the issuing corporation (or a right of the issuing corporation to acquire its stock) shall result in a corresponding decrease in the amount of its total outstanding stock.

(C) *Effect on value of old loss corporation.* The deemed exercise of an option with respect to unissued stock (or treasury stock) under paragraph (h)(4)(i) of this section shall have no effect on the determination of the value of the old loss corporation and the computation of the section 382 limitation. See section 382(l)(1)(B) disregarding capital contributions made during the two-year period preceding the change date for purposes of computing the section 382 limitation.

(viii) *Options that lapse or are forfeited.* If an option that is treated as exercised under paragraph (h)(4)(i) of this section lapses unexercised or the owner of such option irrevocably forfeits his right to acquire stock pursuant to the option, the option shall be treated for purposes of this section as if it never had been issued. In that case, the loss corporation may file an amended return for prior years (subject to any applicable statute of limitations) if the section 382 limitation was thus inapplicable. If paragraph (h)(4)(i) of this section applied to an option (or options) with respect to a taxable year for which an income tax return has not been filed by the date that the option (or options) lapses or is irrevocably forfeited, the loss corporation may treat paragraph (h)(4)(i) of this section as inapplicable to such option (or options).

(ix) *Option rule inapplicable if pre-change losses are de minimis.* Paragraph (h)(4)(i) of this section shall not apply to treat the stock of the loss corporation as acquired by the owner of an option if, on a testing date, the amount of pre-change losses (determined as if the testing date were a change date and treating the amount of any net unrealized built-in loss as a pre-change loss) is less than twice the amount determined by multiplying.

(A) The value of the loss corporation (as determined under section 382(e)) on the testing date, by

(B) The long-term tax exempt rate (as defined in section 382(f)) for the calendar month in which the testing date occurs.

(x) *Options not subject to attribution.* Paragraph (h)(4)(i) of this section shall not apply to—

(A) *Long-held options with respect to actively traded stock.* Any option with respect to stock of the loss corporation which stock is actively traded on an established securities market (within the meaning of section 1273(b)) for which market quotations are readily available, if such option has been continuously owned by the same 5-percent shareholder (or a person who would be a 5-percent shareholder if such option were exercised) for at least three years, but only until the earlier of such time as—

(*1*) The option is transferred by or to a 5-percent shareholder (or a person who would be a 5-percent shareholder if such option were exercised), or

(*2*) The fair market value of the stock that is subject to the option exceeds the exercise price for such stock on the testing date. For purposes of this paragraph (h)(4)(x)(A), options with respect to the stock of a loss corporation that are assumed (or substituted) in a reorganization and converted into options with respect to the stock of another party to the reorganization shall not be treated as transferred, provided that there are no changes in the terms of the options, other than that the stock that may be acquired pursuant to the option is that of another party to the reorganization and that the amount of stock subject to the option is adjusted only to reflect the exchange ratio for the exchange of stock of the loss corporation in the reorganization.

(B) *Right to receive or obligation to issue a fixed dollar amount of value of stock upon maturity of certain debt.* Any right to receive or obligation to issue stock pursuant to the terms of a debt instrument that, in economic terms, is equivalent to nonconvertible debt because the right to receive stock of the issuer of a fixed dollar amount is based upon the fair market value for such stock determined at or about the date the stock is transferred pursuant to such right or obligation (*i.e.*, the amount of the stock transferred pursuant to the option is equal to a fixed dollar amount, divided by the value of each share of such stock at or about the date of the stock transfer). This paragraph (h)(4)(x)(B) shall not apply if the method for determining the fair market value of the stock of the issuer is intended to or, in fact, provides the owner of the debt instrument with a participation in any appreciation of any stock of the issuer.

(C) *Right or obligation to redeem stock of the loss corporation.* Any right or obligation of the loss corporation to redeem any of its stock at the time such stock is issued, but only to the extent such stock is issued to persons who are not 5-percent shareholders immediately before the issuance.

(D) *Options exercisable only upon death, disability or mental incompetency.* Any option entered into between owners of the same entity (or an owner and the entity in which the owner has a direct ownership interest) with respect to such owner's ownership interest in the entity that is exercisable only upon the death, complete disability or mental incompetency of such owner.

(E) *Right to receive or obligation to issue stock as interest or dividends.* Any right to receive or obligation to issue stock of a corporation in payment of interest or dividends by the issuing corporation. (For an example illustrating

this exception, see paragraph (j)(2)(iv)(B) of this section.)

(F) *Options outstanding following an ownership change*—(*1*) *In general.* Any option in existence immediately before and after an ownership change, whether or not the option was treated as exercised in connection with the ownership change under paragraph (h)(4)(i) of this section, but only so long as the option continues to be owned by the 5-percent shareholder (or person who was treated as a 5-percent shareholder) who owned the option immediately before and after such ownership change.

(*2*) *Example* (*i*) A, B, C and D own all of the outstanding stock of L. A owns 70 shares of L stock and each of B, C and D own 10 shares of L stock. On July 12, 1988, L issues warrants to each of its shareholders entitling them to acquire an additional 8.5 shares of L stock for each share of stock owned.

(*ii*) If B, C and D, but not A, each exercise their respective rights to acquire an additional 85 shares of L stock (10 shares × 8.5 shares that may be acquired for each share owned) on July 12, 1988, their combined ownership interest in L on that date would exceed 80 percent (255 shares deemed to be acquired + 30 shares actually owned)/355 shares outstanding (actual and deemed)). B, C and D thus would increase their ownership interest in L by 50.3 percentage points during the testing period, causing an ownership change, because, under paragraph (h)(4)(i)(B) of this section, the options are treated as exercised if the exercise would cause an ownership change.

(*iii*) Following the ownership change, paragraph (h)(4)(i) of this section applies to prevent A's right to acquire 595 shares of L stock (70 shares x 8.5 shares that may be acquired for each share owned) or the rights held by B, C, or D, to be treated as exercised on any subsequent testing date, except to the extent that those rights are transferred. To the extent any of those options are transferred following the ownership change, paragraph (h)(4)(i) of this section will apply to any such options on the date of the transfer and on any subsequent testing date.

(G) *Right to acquire loss corporation stock pursuant to a default under a loan agreement.* Any right to acquire stock of a corporation by a bank (as that term is defined in section 581), an insurance company (as that term is defined in § 1.801–3(a)), or a trust qualified under section 401(a) solely as the result of a default under a loan agreement entered into in the ordinary course of the trade or business of such bank, life insurance company or qualified trust.

(H) *Agreement to acquire or sell stock owned by certain shareholders upon retirement.* Any option entered into between noncorporate owners of the same entity (or a noncorporate owner and the entity in which the owner has a direct ownership interest) with respect to such owner's ownership interest in the entity, but only if each of such owners actively participate in the management of the entity's trade or business, the option is issued at a time that the loss corporation is not a loss corporation and the option is exercisable solely upon the retirement of such owner. An option with terms described in both this paragraph (h)(4)(x)(H) and in paragraph (h)(4)(x)(D) of this section shall also not be subject to paragraph (h)(4)(i) of this section.

(xi) *Certain transfers of options disregarded.* Transfers of options between persons who are not 5-percent shareholders (and between members of separate public groups resulting from the application of the segregation rules of paragraphs (j)(2) and (3)(iii) of this section) are not taken into account. Transfers of options in any of the circumstances described in section 382(l)(3)(B) are also disregarded and the transferee shall be treated as having owned the option for the period that it was owned by the transferor.

(xii) *Exercise of an option that has not been treated as stock.* The acquisition of stock pursuant to the actual exercise of an option (other than an option described in paragraph (h)(4)(vi)(A) of this section) shall not be disregarded.

(5) *Stock transferred under certain agreements.* Notwithstanding paragraph (h)(4) of this section, no shift results solely because under section 1058(a)—

(i) A shareholder transfers stock of a corporation pursuant to an agreement that meets the requirements of section 1058(b), or

(ii) A person having rights under such an agreement exchanges those rights for stock identical to the stock transferred pursuant to the agreement.

(6) *Family attribution.* For purposes of this section—

(i) Paragraphs (1) and (5)(B) of section 318(a) shall not apply,

(ii) An individual and all members of his family described in section 318(a)(1) shall be treated as one individual,

(iii) Subject to paragraph (k)(2) of this section, paragraph (h)(6)(ii) of this section shall not apply to members of a family who, without regard to that paragraph (h)(6)(ii), would not be 5-percent shareholders, and

(iv) If under paragraph (h)(6)(ii) of this section, an individual may be treated as a member of more than one family, and each family that is treated as one individual is a 5-percent shareholder (or would be treated as a 5-percent shareholder if such individual were treated as a member of such family), then such individual shall be treated only as a member of the family that results in the smallest increase in the total percentage stock ownership of the 5-percent shareholders on the testing date and shall not be treated as the member of any other family.

(i) [Reserved]

(j) *Aggregation and segregation rules.* For purposes of this section, except as provided in paragraphs (k) (2) and (4) of this section—

(1) *Aggregation of public shareholders and public owners into public groups*—(i) *Public group.* Under this paragraph (j), a loss corporation or other entity can be treated as owned, in whole or in part, by one or more public groups. A public group can include public shareholders, public owners, and 5-percent owners who are not 5-percent shareholders of the loss corporation.

(ii) *Treatment of a public group that is a 5-percent shareholder.* Each public group that is treated as a 5-percent shareholder under paragraph (g)(1) (ii), (iii) or (iv) of this section shall be treated as one individual. See paragraph (j)(2)(iv) for a rule combining certain de minimis public groups.

(iii) *Presumption of no cross-ownership.* The public owners, 5-percent owners who are not 5-percent shareholders and public shareholders in any public group, subject to paragraphs (j)(2)(iii), (k)(2) and (k)(4) of this section, are presumed not to be members of any other public group. It also is presumed that each such person is unrelated to all other shareholders (direct and indirect) of the loss corporation. See paragraph (h)(6)(iii) of this section. The members of a public group that exists by virtue of its direct ownership interest in an entity are presumed not to be members (and not to be related to a member) of any other public group that exists at any time by virtue of its direct ownership interest in any other entity. To the extent that the presumptions adopted in this paragraph (j)(1)(iii) are not applicable because the loss corporation has actual knowledge of facts to the contrary and is thus subject to paragraph (k)(2) of this section, public shareholders, public owners and 5-percent owners who are not 5-percent shareholders may be aggregated into additional public groups.

(iv) *Identification of the public groups treated as 5-percent shareholders*—(A) *Analysis of highest tier entities.* The loss corporation must identify first tier entities and higher tier entities in order to identify any highest tier entities that must be identified under paragraph (k)(3) of this section. The loss corporation must then identify any 5-percent owners of each such highest tier entity who indirectly own, at any time during the testing period, five percent or

more of the loss corporation through the ownership interest in such highest tier entity. Under paragraph (g)(1)(i)(B) of this section, any such 5-percent owner is a 5-percent shareholder. See paragraph (k)(3) of this section for rules explaining the extent of the obligation of the loss corporation to determine the identity of its shareholders. Each person who has an ownership interest in any highest tier entity and who is not treated as a 5-percent shareholder (*i.e.*, persons who are public owners or 5-percent owners who are not 5-percent shareholders) is a member of the public group of that highest tier entity. A public group, so identified, that indirectly owns five percent or more of the loss corporation on the testing date is treated under paragraph (g)(1)(ii) of this section as a 5-percent shareholder. If the public group so identified owns less than five percent of the loss corporation on the testing date, such public group is treated as part of the public group of the next lower tier entity.

(B) *Analysis of other higher tier entities and first tier entities.* The analysis and aggregation of public groups described in paragraph (j)(1)(iv)(A) of this section is repeated for any next lower tier entity and successively for any next lower tier entity of any entity described in this paragraph (j)(1)(iv)(B) until applied to each first tier entity.

(C) *Aggregation of the public shareholders.* The public shareholders are aggregated and, under paragraph (g)(1)(iii) of this section, are treated as a public group that is a 5-percent shareholder without regard to whether such group, at any time during the testing period, owns five percent or more of the loss corporation. For this purpose, if the public group of any first tier entity indirectly owns less than five percent of the loss corporation on the testing date, and is thus not treated as a 5-percent shareholder, but is treated as part of the public group of the loss corporation under paragraph (j)(1)(iv)(A) or (B) of this section, the ownership interest of that group is included in the public group of the loss corporation referred to in the preceding sentence.

(v) *Appropriate adjustments.* A loss corporation may apply the principles of paragraph (g)(5) of this section with respect to—

(A) Any public group that is treated as a 5-percent shareholder on the testing date if such public group, at any time during the testing period, was treated as part of the public group of the next lower tier entity, or

(B) Any public group that is treated as part of the public group of a next lower tier entity if such public group, at any time during the testing period, was part of the public group of a higher tier entity that was treated as a 5-percent shareholder and had a direct or indirect ownership interest in such lower tier entity.

(vi) *Examples.*

Example (1)(i) All of the stock of L is owned by 1,000 shareholders, none of whom own as much as five percent of L stock ("Public L"). All of the stock of P is owned by 150,000 shareholders, none of whom own as much as five percent of P stock ("Public P"). Between July 12, 1988 and August 13, 1988, P purchases all of the L stock through a series of transactions on the public stock exchange. P's percentage of direct stock ownership in L increases from 4.9 percent to five percent on July 15, 1988, and from 50 percent to 51 percent on July 30, 1988.

(ii) Before July 15, 1988, P is a public shareholder of L. On and after July 15, 1988, P is a first tier entity (and a highest tier entity) of L. Accordingly, under the rules of paragraph (j)(1) of this section, Public P, on and after July 15, 1988, is treated as a public group that is a 5-percent shareholder. Each acquisition by P on and after such date affects the percentage of L stock that is owned by Public P and thus constitutes an owner shift.

(iii) Immediately after the transaction on July 30, 1988, P owns 51 percent of L stock. Under paragraph (j)(1)(iv)(A) of this section, Public P thus owns 51 percent of L. Under paragraph (j)(1)(iv)(C) of this section, Public L, the public group that includes the public shareholders of L, is treated as a 5-percent shareholder that owns 49 percent of L. Under paragraph (j)(1)(iii) of this section, Public L and Public P are presumed not to have any common members and it is also presumed that no member of either public group is related to any other member of either of the two public groups.

(iv) Assuming that the presumption provided in paragraph (j)(1)(iii) of this section (*i.e.*, that no person owns stock in both P and L) is not rebutted to any extent, Public P is treated as a 5-percent shareholder whose stock ownership in L, as of the July 30, 1988 testing date, has increased by 51 percentage points over its lowest percentage of stock ownership in L at any time during the testing period (0 percent prior to July 12, 1988). Accordingly, an ownership change with respect to L occurs as a result of P's acquisition on July 30, 1988. L is thus a new loss corporation and its pre-change losses are subject to limitation under section 382.

Example (2)(i) All of the stock of P is owned by 1,000 unrelated shareholders, none of whom owns as much as five percent of P stock. L_1 is a wholly owned subsidiary of P. On January 2, 1988, P distributes all of the L_1 stock pro rata to its shareholders.

(ii) Prior to the stock distribution, the public owners of P are members of a public group ("Public P") that is treated as a 5-percent shareholder owning 100 percent of the stock of L_1.

See paragraph (j)(1)(iv)(A) of this section. Following the stock distribution to the P shareholders, L_1 is owned by 1,000 public shareholders that are members of a public group ("Public L_1") that is treated as a 5-percent shareholder owning 100 percent of the stock of L_1. See paragraph (j)(1)(iv)(C) of this section.

(iii) Public P and Public L_1 are treated as unrelated, individual 5-percent shareholders under paragraph (j)(1)(iii) of this section. Although the members of one public group are presumed not to be members of any other public group under paragraph (j)(1)(iii) of this section, L_1 has actual knowledge that all of its public shareholders immediately following the distribution (Public L_1) received L_1 stock pro rata in respect to the outstanding P stock and thus were also members of Public P. Applying paragraph (k)(2) of this section, the loss corporation may take into account the identity of ownership interests between Public L_1 and Public P to establish that Public L_1 did not increase its percentage ownership in L_1. Accordingly, the transaction would not constitute an owner shift.

Example (3)(i) The facts are the same as in Example (1) of paragraph (g)(4) of this section. Thus, 20 percent of L stock is owned by A, 10 percent is owned by P_1, 20 percent is owned by E, a joint venture, and the remaining 50 percent of L stock is owned by Public L. P_1 is owned 15 percent by B and 85 percent by Public P_1. E is owned 30 percent by P_2 and 70 percent by P_3, which are owned by Public P_2 and Public P_3, respectively. See Example (1)(ii) of paragraph (g)(4) of this section for a chart illustrating this ownership structure.

(ii) The public owners of P_2 and P_3 (Public P_2 and Public P_3, respectively), are public groups that are treated as 5-percent shareholders of L, because each such public group indirectly owns five percent or more of L stock (six percent by Public P_2 [(30 percent ownership of E)×(20 percent ownership of L)] and 14 percent by Public P_3 [(70 percent ownership of E)×(20 percent ownership of L)]). The public owners of P_1 ("Public P_1"), who indirectly own 8.5 percent of L stock [(85 percent ownership of P_1)×(10 percent ownership of L)] and B, who indirectly owns 1.5 percent of L and is thus included in Public P_1 under paragraph (j)(1)(iv)(A) of this section, are members of a public group that is treated as a 5-percent shareholder of L that owns ten percent of L stock. Finally, the public group of L ("Public L") is a 5-percent shareholder that owns 50 percent of L. Accordingly, A, Public L, Public P_1 (including B), Public P_2, and Public P_3 are the only 5-percent shareholders of L.

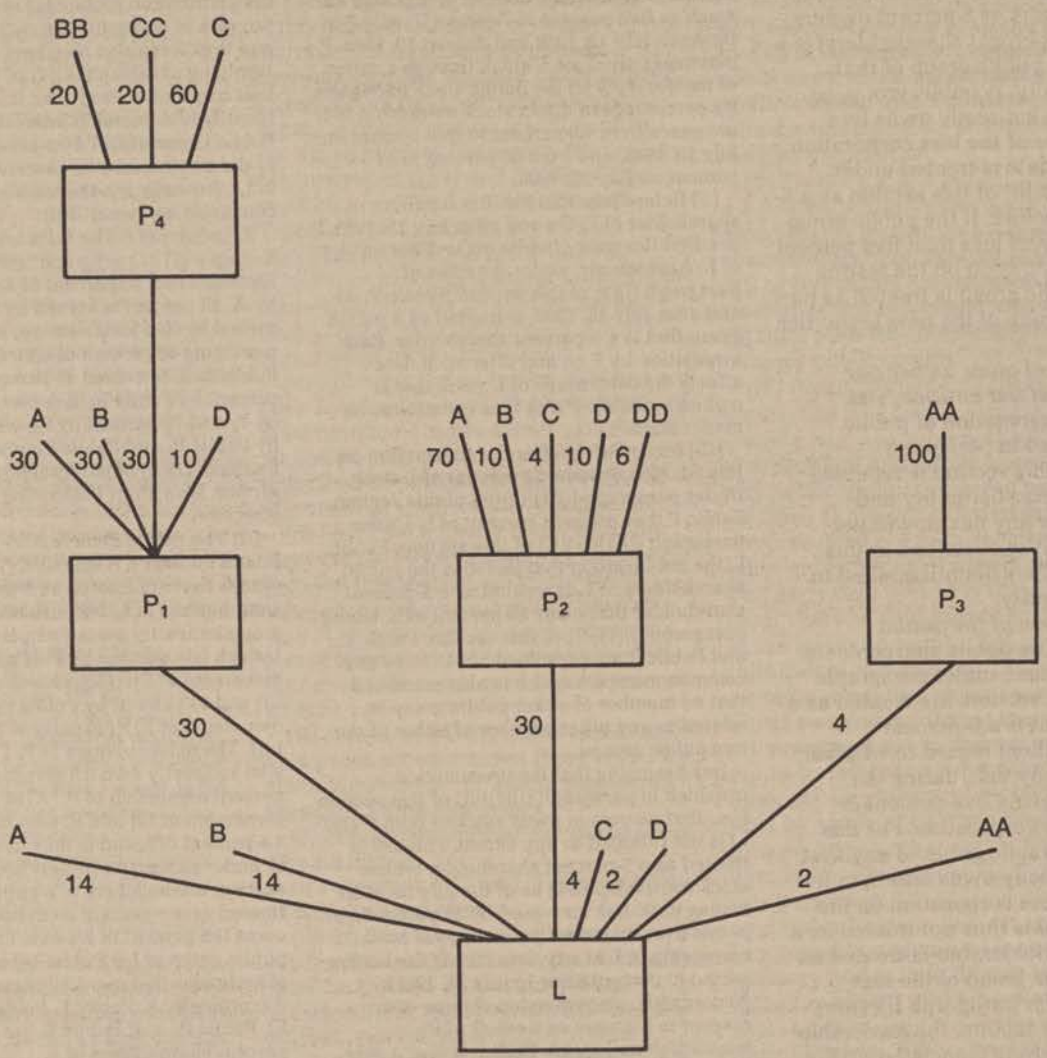
Example (4)(i) The facts are the same as Example (3) above, except that P_3 is owned 60 percent by C, 30 percent by P_4, and 10 percent by P_3. The stock of P_4 is publicly traded and is owned by Public P_4. The facts are thus the same as in Example (2) in paragraph (g)(4) of this section. See Example (2)(ii) of paragraph (g)(4) of this section for a chart illustrating this ownership structure.

(ii) The public owners of P_4(a highest tier entity) are members of a public group that indirectly owns 4.2 percent of L ([30 percent ownership of P_3]×[70 percent ownership of E]×[20 percent ownership of L]). For purposes of identifying public groups that are 5-percent shareholders, L is not required to identify P_4 as a highest tier entity under

paragraph (k)(3) of this section because P_4 does not own five percent or more of L stock. Moreover, under paragraph (h)(2)(iii) of this section, P_4 generally is treated as an individual from which there is no attribution of loss corporation stock. The public group of P_3 (including P_4) indirectly owns 5.6 percent of L ([40 percent of P_3] × [70 percent ownership of E] × [20 percent of L]), and is thus a 5-percent shareholder of L. The public groups of P_2 and P_1 (both Public P_1 and B), respectively, also own five percent or more of L stock and are thus 5-percent shareholders of L. In addition, the public group of L is a 5-percent shareholder regardless of whether it owns five percent of L stock. Accordingly, A, Public L, Public P_3 (including P_4), Public P_2, and Public P_1 (including B), are the only 5-percent shareholders of L.

Example (5) (i) On September 4, 1987, L is owned 14 percent by each of A and B, 30 percent by each of P_1 and P_2, four percent by each of C and P_3, and two percent by each of D and AA. P_1 is owned 30 percent by each of A, B, and P_4 and 10 percent by D. P_2 is owned 70 percent by A, 10 percent by each of B and D, six percent by DD and four percent by C. AA owns 100 percent of the stock of P_3. P_4 is owned 60 percent by C and 20 percent by each of BB and CC.

(ii) The ownership structure of L is illustrated by the following chart:



(iii) In order to identify L's 5-percent shareholders and their respective ownership interests in L on September 4, 1987, the rules of paragraph (j)(1) of this section apply to identify the public groups that are treated as separate 5-percent shareholders. Analysis begins with any highest tier entity, such as P_4. Each of P_4's shareholders is a 5-percent owner of P_4. C owns 5.4 percent of L in his capacity as a 5-percent owner of P_4 and therefore is a 5-percent shareholder. Notwithstanding that C actually owns, directly and by attribution, 10.6 percent of L (four percent directly, 5.4 percent indirectly through P_4, and 1.2 percent through P_2), C's ownership interest in L as a 5-percent shareholder is presumed to include only the 5.4 percent indirect ownership through P_4. (Under paragraphs (g) and (k)(2) of this section, however, L must account for C's direct and indirect ownership interests in determining whether an ownership change occurs on any testing date if it has actual knowledge of such ownership on or berfore the date that its income tax return is filed for the taxable year that includes the testing date). Although BB and CC are each 5-percent owners of P_4, they are not 5-percent shareholders and therefore are members of the public group of P_4. Because the public group of P_4 indirectly owns only 3.6 percent of L, it is treated under paragraph (j)(1)(iv)(A)

of this section as part of the public group of the next lower tier entity, P_1.

(*iv*) With respect to P_1, a first tier entity, each of its shareholders are 5-percent owners. Because A and B each indirectly own nine percent of L as 5-percent owners of P_1 and A indirectly owns 21 percent of L as a 5-percent owner of P_2, they are each 5-percent shareholders without regard to their direct ownership interests in L. A's ownership interest in L as a 5-percent shareholder is 44 percent (14 percent directly, nine percent in his capacity as a 5-percent owner of P_1, and 21 percent in his capacity as a 5-percent owner of P_2). B's ownership interest in L as a 5-percent shareholder is 23 percent (14 percent directly and nine percent in his capacity as a 5-percent and nine percent in his capacity as a 5-percent owner of P_1). B's ownership interest as a 5-percent shareholder does not include the three percent interest he owns indirectly through P_2. (Under paragraphs (g) and (k)(2) of this section, however, L must account for B's direct and indirect ownership interests, including his three percent interest through P_2, in determining whether an ownership change occurs on any testing date if L has actual knowledge of such ownership on or before the date that its income tax return is filed for the taxable year that includes the testing date.) D is a 5-percent owner of P_1. Although D owns eight percent of L (two percent directly, three percent indirectly through P_1, and three percent indirectly through P_2), he is not a 5-percent shareholder because he does not own five percent or more of L stock either directly or in his capacity as a 5-percent owner of either P_1 or P_2. (Under paragraphs (g) and (k)(2) of this section, however, L must account for D's direct and indirect ownership interests in determining whether an ownership change occurs on any testing date to the extent L has actual knowledge of such ownership amounting to five percent or more of L stock before the date that its income tax return is filed for the taxable year that includes the testing date.) The public group of P_1 (comprised of the public group of P_4 and D's direct ownership interest in P_1) has a 6.6 percent interest in L and is therefore treated as a separate 5-percent shareholder.

(*v*) With respect to highest tier entity P_2, D is a 5-percent owner who is not a 5-percent shareholder for the reason described in the preceding subdivision. DD is a 5-percent owner of P_2, who is not a 5-percent shareholder, because DD indirectly owns only 1.8 percent of L. Assuming that L does not have actual knowledge of B's and C's direct ownership interest in P_2, those interests are accounted for in computing the ownership interest are accounted for in computing the ownership interest of the public group of P_2. Therefore, each of P_2's shareholders, except A who is a 5-percent shareholder in his capacity as a 5-percent owner of P_2, are treated as members of the public group of P_2 that owns nine percent of L and is thus treated as a separate 5-percent shareholder.

(*vi*) Because the direct ownership interest of P_3 is less than five percent, it is a public shareholder. Therefore, assuming that L does not have actual knowledge of C's, D's, or AA's direct and/or indirect ownership interests in L, the public group of L is a separate 5-percent shareholder owning 12 percent of L (comprised of the direct ownership interests of C, D, AA and P_3).

(2) *Segregation rules applicable to transactions involving the loss corporation*—(i) *In general.* For purposes of this section, if—

(A) A transaction is described in paragraph (j)(2)(iii) of this section, and

(B) The loss corporation has one or more direct public groups immediately before and after the transaction,

the stock owned by such direct public group or groups is subject to the segregation rules described in paragraph (j)(2)(iii) of this section for purposes of determining whether an ownership change has occurred on the date of the transaction (and on any subsequent testing date with a testing period that includes the date of such transaction). See paragraph (j)(3) of this section for the application of the rules of this paragraph (j)(2) to transactions involving first tier entities or higher tier entities.

(ii) *Direct public group.* For purposes of this section, a direct public group is any public group of the loss corporation described in paragraph (j)(1)(iv)(C) of this section or any public group of the loss corporation resulting from the application of paragraph (j)(2)(iii) or (j)(3)(i) of this section.

(iii) *Transactions to which segregation rules apply*—(A) *In general.* The segregation rules of this paragraph (j)(2)(iii) apply to any transaction described in paragraph (j)(2)(iii) (B), (C), (D), (E), or (F) of this section in the manner specified. The presumptions adopted by this paragraph (j)(2)(iii) shall not apply only if, and to the extent that, the loss corporation either has actual knowledge of facts to the contrary regarding its stock ownership and is thus subject to paragraph (k)(2) of this section, or is subject to paragraph (k)(4) of this section. Any direct public group that is required to be identified as a result of a transaction described in paragraph (j)(2)(iii) of this section shall be treated as a 5-percent shareholder under paragraph (g)(1)(iv) of this section without regard to whether such group, at any time during the testing period, owns five percent or more of the loss corporation stock. To the extent that the presumptions are rebutted, the public shareholders, public owners and 5-percent owners who are not 5-percent shareholders may be aggregated into additional public groups.

(B) *Certain equity structure shifts and transactions to which section 1032 applies*—(*1*) *In general.* In the case of—

(*i*) A transaction that is an equity structure shift that also is described in section 381(a)(2) and in which the loss corporation is a party to the reorganization, or

(*ii*) A transfer of the stock of the loss corporation (including treasury stock) by the loss corporation in any other transaction to which section 1032 applies,

each direct public group that exists immediately after such transaction shall be segregated so that each direct public group that existed immediately before the transaction is treated separately from the direct public group that acquires stock of the loss corporation in the transaction. The direct public group that acquires stock of the loss corporation in the transaction is presumed not to include any members of any direct public group that existed immediately before the transaction. For purposes of this paragraph (j)(2)(iii)(B), a person is treated as acquiring stock of the loss corporation in a reorganization as the result of the person's ownership interest in another corporation that succeeds to the loss corporation's pre-change losses (determined as if the testing date were the change date and treating the amount of any net unrealized built-in loss as a pre-change loss) in a transaction to which section 381(a)(2) applies. In determining whether a transaction is described in section 1032 for purposes of this paragraph (j)(2)(iii)(B), the transfer by the loss corporation of any interest not constituting stock that is treated as stock under paragraph (f)(18)(iii) of this section shall be treated as the transfer of stock.

(*2*) *Examples.*

Example (1) (*i*) P_1 owns 60 percent of the stock of L. The remaining L stock (40 percent) is owned by Public L. A owns 40 percent of the P_1 stock. The remaining P_1 stock (60 percent) is owned by Public P_1. P_2 is a publicly traded corporation owned by shareholders who each own less than five percent of P_2 stock (Public P_2).

(*ii*) On May 22, 1988, L merges into P_2 in a transaction described in section 368(a)(1)(A), with the shareholders of L receiving an amount of P_2 stock equal to 70 percent of the value of P_2 immediately after the reorganization.

(*iii*) Immediately before the merger, L's 5-percent shareholders were Public L (40 percent), Public P_1 (36 percent), and A (24 percent). Although the shareholders of P_2 (immediately before the merger) do not acquire any stock in the merger, they are treated as acquiring a direct ownership interest in the loss corporation in the reorganization because P_2 succeeds to the pre-change losses of L in a transaction to which section 381(a)(2) applies. As a result of the merger, which constitutes a transaction described in (j)(2)(iii)(B)(*1*) of this section, L's direct public group, Public L, must be

segregated from the direct public group that would otherwise exist after the transaction (Public L and Public P_2). Public L, the direct public group that exists before the merger, has a continuing 28 percent interest in the loss corporation [70 percent of P_2 shares received in the merger x 40 percent shares of L owned prior to the merger] that must be segregated from the interests acquired by Public P_2.

(*iv*) In addition, Public P_1, which owns five percent or more of the stock of P_2 through P_1's ownership interest in P_2, also is segregated from any other public group (*i.e.*, both Public L and Public P_2) under paragraph (j)(1) of this section. Therefore, under paragraphs (j)(1) and (2) of this section, Public P_2 (excluding the members of Public L and Public P_1 immediately before the merger) is treated as a separate public group and 5-percent shareholder.

(*v*) The only 5-percent shareholder whose interest in the loss corporation, P_2, has increased during the testing period is Public P_2. Its interest has increased by 30 percentage points. Accordingly, no ownership change results from the merger. For purposes of measuring the shift in ownership of P_2 on any subsequent testing date with a testing period that includes May 22, 1988 (the date on which L merged into P_2), Public P_2 will continue to be treated as a direct public group, separate from Public L (the members of which own P_2 stock as a result of the merger) and Public P_1.

Example (2)(*i*) P and L are each owned by 21 equal shareholders. Each of 14 of the shareholders of P and L are owners of both corporations ("common owners"). L has actual knowledge of this cross ownership. therefore, as a group, these persons own 66⅔ percent of each of P and L. P stock has a value of $600 and L stock has a value of $400.

(*ii*) P merges into L under section 368(a)(1)(A) on June 10, 1988. Ordinarily, the direct public group of L that exists immediately before the transaction would be segregated from the direct public group that acquires stock in the merger (the public group of P immediately before the merger). In view of the common ownership of P and L, however, a third group may be created under paragraph (j)(2)(iii)(A) of this section so that L's owners following the merger would be: The common owners (66⅔ percent), Public L, less the common owners, 13 1/3 percent), and Public P, less the common owners (20 percent). Accordingly, the only 5-percent shareholder increasing its ownership interest by 20 percentage points and no ownership change occurs as a result of the merger.

Example (3)(*i*) L is entirely owned by Public L. L commences and completes a public offering of common stock on January 22, 1988, with the result that its outstanding stock increases from 100,000 shares to 300,000 shares. No person owns as much as five percent of L stock following the public offering.

(*ii*) The public offering of L stock is a transaction to which section 1032 applies. Immediately before the public offering, L's only 5-percent shareholder was Public L, a direct public group. Therefore, Public L (as in existence immediately before the transaction) must be segregated from the direct public group that would otherwise exist immediately after the transaction. Under paragraph (j)(2)(iii)(B)(*1*) of this section, the acquisition of 200,000 shares of L stock in the public offering must be treated as acquired by a direct public group ("New Public L") that is separate from Public L. Each such public group is treated as an individual that is a separate 5-percent shareholder. See paragraphs (g)(1)(iv) and (j)(1)(ii) of this section.

(*iii*) As a result of the public offering, L has two 5-percent shareholders, Public L and New Public L, which own 33⅓ percent and 66⅔ percent of the stock of L, respectively. Because the members of New Public L are presumed not to be members of Public L (and not to be related to any such members), the ownership interest of New Public L immediately prior to the offering of stock was 0 percent.

(*iv*) New Public L is a 5-percent shareholder that has increased its ownership interest in L by more than 50 percentage points during the testing period (by 66⅔ percentage points). Thus, there is an ownership change with respect to L. For purposes of subsequent transactions, Public L and New Public L will not be segregated into two public groups because a new testing period commences on the day following the change date, January 23, 1988 (*i.e.*, any subsequent testing date will not have a testing period that includes the date of the public offering).

Example (4). The facts are the same as in Example (3), but L establishes that 60,000 shares of the newly issued L stock were acquired by its shareholders of record on the date of the stock issuance (*i.e.*, members of Public L, referred to as Acquiring Public L) by persons owning 27 percent of the L stock immediately before the stock issuance. Accordingly, L has actual knowledge that New Public L acquired no more than 140,000 shares of L stock in the public offering. Under paragraphs (j)(2)(iii) and (k)(2) of this section, New Public L may be treated as having increased its ownership interest in L by 46⅔ percentage points (140,000 shares acquired in the offering/300,000 shares outstanding). L also has actual knowledge that the members of Public L owning 27 percent of L stock immediately before the stock issuance (27,000 shares/100,000 shares outstanding) own 29 percent of L stock immediately after such issuance ([27,000 shares + 60,000 shares acquired in the offering]/300,000 shares outstanding). Assuming that L chooses to take its actual knowledge into account for purposes of determining whether an ownership change occurred on January 22, 1988, Public L is segregated into two direct public groups immediately before the stock issuance so that the two percentage point increase in the ownership interest in L by Acquiring Public L is taken into account. The total increased ownership interest in L by New Public L and Acquiring Public L on the testing date over their lowest ownership interest during the testing period is 48 2/3 percent. Thus, no ownership change occurs with respect to L.

Example (5)(*i*) L is owned entirely by 10,000 unrelated individuals, none of whom own as much as five percent of L stock ("Public L"). P is owned entirely by 1,500 unrelated individuals, none of whom own as much as five percent of P stock ("Public P"). On December 22, 1988, L acquires all of the P stock from Public P in exchange for L stock representing 25 percent of the value of L, in a transaction described in section 368(a)(1)(B).

(*ii*) Under paragraph (j)(2)(iii)(B)(*1*) of this section, Public L, the direct public group that owns L stock immediately before and after the transaction to which section 1032 applies, is treated separately from Public P, the direct public group that acquires L stock in the transaction. Because Public P's percentage ownership interest in L increases to only 25 percent (as compared with 0 percent before the acquisition), no ownership change occurs. For purposes of determining whether an ownership change occurs on any testing date with a testing period that includes December 22, 1988, Public L and Public P will continue to be treated as separate 5-percent shareholders.

(*iii*) See Example (4) in paragraph (j)(3)(iv) of this section for the application of paragraph (j)(2)(iii)(B) of this section to a reorganization under section 368(a)(1)(B) in which the loss corporation is acquired.

(C) *Redemption-type transactions*—(*1*) *In general.* In the case of a transaction in which the loss corporation acquires its stock in exchange for property, each direct public group that exists immediately before the transaction shall be segregated at that time (and thereafter) so that the stock that is acquired in the transaction is treated as owned by a separate public group from each public group that owns the stock that is not acquired. For purposes of the preceding sentence, the term property shall include stock described in section 1504(a)(4) and stock described in paragraph (f)(18)(ii) of this section. Each direct public group that owned the stock that is acquired in the transaction is presumed not to own any such stock immediately after the transaction.

(*2*) *Examples.*

Example (1). L is entirely owned by Public L. There are 500,000 shares of L stock outstanding. On July 12, 1988, L acquires 150,000 shares of its stock for cash. Because L's acquisition is a redemption, Public L is segregated into two different public groups immediately before the transaction (and thereafter) so that the redeemed interests ("Public RL") are treated as part of a public group that is separate from the ownership interests that are not redeemed ("Public CL"). Therefore, as a result of the redemption, Public CL's interest in L increases by 30 percentage points (from 70 percent (350,000/500,000) to 100 percent) on the July 12, 1988 testing date. Because the resulting increase is not more than 50 percentage points, no ownership change occurs. For purposes of determining whether an ownership change occurs on any subsequent testing date having a testing period that includes such redemption, Public CL is treated as a 5-percent shareholder whose percentage

ownership interests in L increased by 30 percentage points as a result of the redemption.

Example (2). L is entirely owned by Public L. There are 250,000 shares of L common stock outstanding. On April 22, 1988, L acquires 100,000 shares of its outstanding common stock in exchange for 100,000 shares of preferred stock described in section 1504(a)(4). (The transaction thus constitutes a recapitalization within the meaning of section 368(a)(1)(E).) As a result of the recapitalization, which is a transaction described in paragraph (j)(2)(iii)(C) of this section, Public L is segregated into two different public groups immediately before the transaction (and thereafter) so that the stock acquired by L is treated as owned by a public group ("Public RL") that is separate from the public group that owns the stock that is not so acquired ("Public CL"). Therefore, as a result of the transaction, Public CL's interest in L increases by 40 percentage points (from 60 percent to 100 percent). Because the resulting increase is not more than 50 percentage points, no ownership change occurs. For purposes of determining whether an ownership change occurs on any subsequent testing date with a testing period that includes the date of the recapitalization, Public CL is treated as a separate 5-percent shareholder whose percentage ownership interest increased by 40 percentage points as a result of the redemption type transaction.

(D) *Acquisition of loss corporation stock as the result of the ownership of a right to acquire stock—(1) In general.* In the case of a deemed acquisition of stock of the loss corporation as the result of the ownership of a right issued by the loss corporation to acquire such stock (see paragraph (h)(4) of this section), each direct public group that exists immediately after such acquisition shall be segregated so that each direct public group that existed immediately before the transaction is treated separately from the direct public group that is deemed to acquire stock of the loss corporation as a result of the ownership of the right to acquire such stock. The direct public group that is treated as acquiring stock of the loss corporation in the transaction is presumed not to include any members of any direct public group that existed immediately before the transaction. In applying the rules of paragraph (h)(4) of this section, the segregation rules of this paragraph (j)(2)(iii)(D) shall apply before making the determination required under that paragraph (h)(4) of this section.

(2) Example.

(i) L has 700,000 shares of common stock outstanding. Public L owns all of the outstanding L common stock. On May 20, 1988, L issues a class of debentures to the public that, in the aggregate, may be converted into 300,000 shares of L common stock. On September 7, 1988, P_1 acquires 210,000 shares of L common stock over a public stock exchange. None of the L debentures have been converted as of that date.

(ii) By virtue of L's issuance of convertible debentures, May 20, 1988 is a testing date. See paragraph (a)(2)(i) of this section. Immediately before the issuance of the convertible debentures, L's only 5-percent shareholder was Public L, a direct public group. Therefore, under paragraph (j)(2)(iii)(D) of this section, Public L must be segregated from the direct public group that would otherwise exist immediately after the transaction for the purpose of applying paragraph (h)(4) of this section, so that any acquisition of L stock through the conversion of L's debentures is treated as made by a public group other than Public L ("New Public L"). Assuming the largest increase in the total percentage stock ownership of New Public L on the testing date (see paragraph (h)(4) of this section), New Public L would have increased its ownership interest in L by 30 percentage points. Therefore, the stock of L would not be treated as acquired pursuant to a deemed conversion of the L debentures on May 20, 1988, under paragraph (h)(4) of this section, because the conversion would not cause an ownership change.

(iii) P_1's acquisition of L common stock results in second testing date. For the purpose of applying paragraph (h)(4) of this section, Public L must again be segregated from the direct public group that would otherwise result from conversion of the debentures, so that a deemed acquisition of L stock through the conversion of L's debentures on September 7, 1988 is treated as made by a public group other than Public L ("New Public L"). As on the previous testing date, New Public L would have increased its ownership interest in L by 30 percentage points if it were treated as having acquired L common stock pursuant to the conversion of the L debentures. The increase in New Public L's ownership, taken together with P_1's 21 percentage point ownership increase in L during the testing period [210,000 shares deemed converted/(700,000 (actual) + 300,000 (deemed) shares outstanding)], results in an ownership change.

(E) *Transactions identified in the Internal Revenue Bulletin.* Any transaction that is designated by the International Revenue Service in the Internal Revenue Bulletin shall be subject to the rules, as provided in such bulletin, similar to the rules described in this paragraph (j)(2)(iii).

(F) *Issuance of rights to acquire loss corporation stock—(1) In general.* In the case of any transaction that is described in paragraph (j)(2)(iii) (B), (D) or (E) of this section in which the loss corporation issues rights to acquire its stock to the members of more than one public group, those rights shall be presumed to be exercised pro rata by each such public group as those rights are actually exercised.

(2) Example.

(i) L, which has six million shares outstanding, is owned entirely by Public L and P is owned entirely by Public P. On November 30, 1988, P merges into L in a transaction qualifying under section 368(a)(1)(A) with Public P receiving four million shares of L stock as a result of the reorganization. Under paragraph (j)(2)(iii)(B) of this section, Public L and Public P continue to be treated as separate public groups following the merger. Pursuant to the plan of reorganization, L also issues an amount of warrants in L stock pro rata to Public L and Public P that, if exercised, would result in the issuance of an additional two million shares of L stock. On November 30, 1989, when only one-half of the outstanding warrants have been exercised, A acquires all of the unexercised warrants.

(ii) Without regard to the warrants distributed in reorganization, Public P's ownership interest in L increases by 40 percentage points on November 30, 1988, relative to its lowest ownership interest in L at any time during the testing period (0 percent prior to the merger). For purposes of determining whether an ownership change occurs on November 30, 1988, the segregation rules of paragraphs (j)(2)(iii) (B) and (D) of this section does not require that a third direct public group be separately identified and treated as acquiring the warrants, because L has actual knowledge that Public L and Public P acquired the distributed warrants in proportion to their respective ownership interests in L stock. Because the largest increase in the ownership of L on the testing date results from treating only Public P as exercising the distributing warrants, in which event, its ownership interest would increase by 44.4 percentage points ([four million shares acquired in the merger + 800,000 shares deemed acquired]/10.8 million (actual and deemed) shares outstanding), the issuance of the warrants by L does not cause an ownership change on November 30, 1988.

(iii) Under paragraph (j)(2)(iii)(F)(*1*) of this section, each actual exercise of warrants to acquire one million shares of L stock between November 30, 1988 and November 30, 1989 is treated as made pro rata by Public L and Public P (600,000 shares to Public L and 400,000 shares to Public P). Accordingly, as a result of the actual exercises of warrants during that period the ownership interests of the only 5-percent shareholders, Public L and Public P, are proportionately increased.

(iv) A's acquisition of the all of the outstanding warrants on November 30, 1989 requires the determination whether there has been an ownership change with respect to L, because A would be 5-percent shareholder under paragraph (g)(1)(i) of this section owning 8⅓ percent of the L stock if the acquired warrants were exercised (one million shares deemed acquired/12 million (actual and deemed) shares outstanding). See paragraph (a)(2)(i) of this section. Under paragraph (h)(4)(i) of this section, A is not treated as having exercised those warrants, because an ownership change would not results. (Public P's 36⅔ percentage point increase [(four million shares acquired in the merger + 400,000 shares deemed acquired)/ 12 million (actual and deemed) shares

outstanding] and A's 8⅓ percentage point increase is not greater than 50 percentage points).

(iv) *Combination of de minimis public groups*—(A) *In general.* Notwithstanding paragraph (j)(2)(iii)(A) of this section, any public group first identified during a taxable year, as a result of any transaction described in paragraph (j)(2)(iii) (B), (D), (E), or (F) of this section, that owns less than five percent of loss corporation stock may be combined, at the option of the loss corporation, with any other such groups also first identified as a result of any such transaction that occurs during such taxable year.

(B) *Example.*

(*i*) L is widely held with no person owning as much as five percent of the L stock at any time ("Public L"). L's taxable year ends on December 31. On January 1, 1989, L issues a class of debt maturing on December 31, 2019 ("Class A Debentures") with respect to which it will semi-annually issue L stock in discharge of its interest obligation. In addition, L issues an amount of L stock to the public in two separate transactions during 1989. As a percentage of the L stock outstanding at the close of L's taxable year on December 31, 1989, L issued .45 percent of its stock on each of two dates in payment of interest with respect to the Class A Debentures, 4.5 percent of its stock in the first stock offering and six percent of its stock in the second stock offering. During 1990, L did not issue stock other than in payment of interest with respect to the Class A Debentures. As a percentage of L stock outstanding on December 31, 1990, L issued .41 percent of its stock on each of two dates during 1990 with respect to its outstanding debt.

(*ii*) Under paragraph (h)(4)(x)(E) of this section, L's obligation to issue stock in satisfaction of the interest with respect to the Class A Debentures until December 31, 2019, is not subject to paragraph (h)(4)(i) of this section and thus is taken into account only as such stock is issued.

(*iii*) The application of the segregation rules of paragraphs (j)(2) (iii)(B) and (iv) of this section require the identification of at least two additional, separate direct public groups during 1989. First, the persons who acquire six percent of L stock in a public offering to which section 1032 applies must be treated as a separate 5-percent shareholder ("Public 1L"). See paragraph (j)(2)(iii)(B) of this section. Even though this group was first identified in 1989, it may not be combined with other public groups also first identified in 1989 because it owns five percent or more of L stock. Second, although each of the three other issuances of L stock during the year ordinarily result in the identification of an additional, separate direct public group, each such direct public group may be combined with the two other such groups into a single public group ("Public 2L"). As of the end of 1989, Public 2L would own a total of 5.4 percent of the stock of L.

(*iv*) The application of the segregation rules of paragraphs (j)(2) (iii)(B) and (iv) of this section require the identification of at least one additional, direct public group during 1990. Because each additional, direct public group first identified in 1990 acquires less than five percent of L stock, they may be combined into a single public group ("Public 3L") owning .82 percent of the stock of L. Public 3L is treated as a five percent shareholder even though it owns less than five percent of the stock of L. See paragraph (j)(2)(iv)(A) of this section.

(v) *Multiple transactions*—(A) *In general.* If a transaction (or any part thereof) is described by more than one subdivision of paragraph (j)(2)(iii) of this section, each such subdivision shall apply to the transaction (or each part of the transaction) in the manner that results in the largest increase in the percentage stock ownership by the 5-percent shareholders.

(B) *Example.*

(*i*) All of the common stock of L is owned by 1,000 unrelated persons, none of whom owns as much as five percent of the L stock ("Public CL"). L has outstanding a class of preferred stock described in section 1504(a)(4) that is owned in equal amounts by 500 unrelated persons ("Public PL").

(*ii*) On September 4, 1988, L rearranges its capital structure by redeeming 70 percent of the common stock owned by 700 of the shareholders in exchange for cash. In addition, all of the preferred stock is exchanged for a new class of common stock (nonvoting) representing 40 percent of the value of L.

(*iii*) With respect to the part of the transaction that is treated as a redemption under paragraph (j)(2)(iii)(C) of this section (the exchange of common stock for cash), Public CL is segregated into two different public groups immediately before the transaction (and thereafter) so that the owners of the redeemed stock ("Public RCL") are treated as part of a public group that is separate from the public group comprised of the owners of the stock that is not redeemed ("Public CCL"). As a result of the redemption, Public CCL's percentage ownership interest in L thus increases by 30 percentage points from 30 percent to 60 percent (taking into account all transactions occurring on the testing date, because the change in ownership is measured under paragraph (a)(1)(i) of this section by reference to each 5-percent shareholder's ownership interest immediately after the testing date). In addition, the exchange of preferred stock for nonvoting common stock is a transaction to which section 1032 applies. Under paragraph (j)(2)(v) of this section, the part of the transaction to which section 1032 applies is also subject to the segregation rules in the manner specified in paragraph (j)(2)(iii)(B) of this section. Accordingly, Public PL, the direct public group that acquires L nonvoting common stock in exchange for L preferred stock, must be treated as a separate public group from the other direct public groups, Public CCL and Public RCL. As a separate public group, Public PL's percentage stock ownership in L increases by 40 points (as compared to 0 percent prior to the transaction).

(*iv*) In summary, Public CCL increases its percentage ownership in L by 30 percentage points and Public PL increases its percentage ownership by 40 percentage points. Consequently, an ownership change occurs with respect to L on September 4, 1988.

(vi) *Acquisitions made by either a 5-percent shareholder or the loss corporation following application of the segregation rules.* Unless a different proportion is established by either the loss corporation or the Internal Revenue Service, the acquisition of loss corporation stock by either a 5-percent shareholder or the loss corporation on any date on which more than one public group of the loss corporation exists by virtue of the application of the rules of this paragraph (j)(2) shall be treated as being made proportionately from each public group existing immediately before such acquisition. See paragraph (g)(5)(i)(B) of this section for the application of this paragraph to the ownership interest of a 5-percent shareholder that owns less than five percent of the stock of the loss corporation on the testing date.

(3) *Segregation rules applicable to transactions involving first tier entities or higher tier entities*—(i) *Dispositions.* If a loss corporation is owned, in whole or in part, by a public group (or groups), the rules of paragraphs (j)(2) (iii)(B) and (iv) of this section shall apply to any transaction in which a first tier entity or an individual that owns a direct ownership interest in the loss corporation of five percent or more transfers a direct ownership interest in the loss corporation to public shareholders. Therefore, each direct public group that exists immediately after such a disposition shall be segregated so that the ownership interests of each public group that existed immediately before the transaction are treated separately from the public group that acquires stock of the loss corporation as a result of the disposition by the individual or first tier entity. The principles of this paragraph (j)(3)(i) shall also apply to transactions in which an ownership interest in a higher tier entity that owns five percent or more of the loss corporation (determined without regard to the application of paragraph (h)(2)(i)(A) of this section) or a first tier entity is transferred to a public owner or 5-percent owner who is not a 5-percent shareholder.

(ii) *Example.*

(A) L is owned equally by Public L, P and E. Public L consists of 150 equal, unrelated

shareholders. P is owned by Public P, a group consisting of 1,500 equal, unrelated shareholders. E is a partnership and none of its partners are 5-percent owners. On October 22, 1988, E sells its entire interest in L over a public stock exchange. No individual or entity acquires as much as five percent of L's stock as the result of E's disposition of the L stock.

(B) The disposition of the L stock by E is a transaction that causes the segregation of L's direct public group that exists immediately before the transaction (Public L) from the direct public group that acquires L stock in the transaction (Public EL). As a result, L has three 5-percent shareholders, Public L, Public P (through the application of paragraph (j)(1) of this section) and Public EL, each of which owns 33⅓ percent of L stock. Therefore, Public EL is a 5-percent shareholder that has increased its ownership interest in L by 33⅓ percentage points during the testing period. For purposes of subsequent transactions, Public L and Public EL will continue to be treated as separate direct public groups until any subsequent testing date that does not have a testing period that includes E's disposition of L stock.

(iii) *Other transactions affecting direct public groups of a first tier entity or higher tier entity.* The rules of paragraphs (j)(2) (i), (iii), (iv) and (v) of this section shall apply to transactions described in such paragraphs that involve either a higher tier entity that owns five percent or more of the loss corporation (determined without regard to the application of paragraph (h)(2)(i)(A) of this section) or a first tier entity. In applying those rules for purposes of this paragraph (j)(3)(iii), each direct public group of a first tier entity or a higher tier entity is any public group of any such entity identified in paragraph (j)(1)(iv) (A) or (B) of this section or resulting from the application of this paragraph (j)(3)(iii). The principles of paragraph (j)(2)(iii)(C) of this section also shall apply to any transaction that has the effect of a redemption-type transaction (e.g., an acquisition by the loss corporation of stock in a first tier entity).

(iv) *Examples.*

Example (1). The facts are the same as in Example (1) of paragraph (j)(2)(iii)(B)(*2*) of this section, except that Public L and P_1 own 40 percent and 60 percent, respectively, of the stock of HC which, in turn, owns 100 percent of L and HC merges into P_2. Under paragraph (j)(3)(iii) of this section, the rules of paragraph (j)(2)(iii)(B) of this section apply to segregate HC's direct public group (Public L) immediately before the merger from the direct public group (Public P_2) that acquires loss corporation stock in the merger. The consequences of the merger of HC into P_2 are thus the same as in Example (1) of paragraph (j)(2)(iii)(B)(*2*) of this section.

Example (2) (*i*) Twenty-five individual shareholders each own four percent of L ("Public L"). Public L is therefore the only 5-percent shareholder of L. Each of the shareholders of L contribute their L stock to a newly formed corporation, HC. In exchange for their contribution of L stock, HC issues 100 percent of each of its two classes of common stock (voting and nonvoting).

(*ii*) The formation of HC, a first tier entity of L, is a transaction to which section 1032 applies. Under paragraph (j)(3)(iii) of this section, the rules of paragraphs (j)(1)(iii) and (j)(2)(iii)(B) of this section are applied to this transaction with the result that the shareholders of HC, immediately after the issuance of HC stock, are presumed not to include any persons that previously had a direct or indirect ownership interest in L. The presumption underlying those rules, however, is rebutted by establishing that all of the HC stock outstanding immediately after the transaction was issued solely in exchange for L stock. Thus, Public HC (immediately after the transaction) and Public L (immediately before the transaction) would be treated owned by the same direct public group.

Example (3) (*i*) All of the stock of L is owned by unrelated shareholders, none of whom owns as much as five percent of L stock. P also is owned by unrelated shareholders, none of whom owns as much as five percent of P stock. On November 22, 1988, P incorporates P_1 with a contribution of P stock. Immediately thereafter, P_1 acquires all of the properties of L in exchange for its P stock in a forward triangular merger qualifying under sections 368 (a)(1)(A) and (a)(2)(D). The P stock transferred by P_1 equals 45 percent of the total outstanding P stock.

(*ii*) Immediately before the merger of L into P_1, P's only 5-percent shareholder was Public P, a direct public group of P. The rules of paragraph (j)(2)(iii)(B) of this section thus apply to the transaction under paragraph (j)(3)(i) of this section since P, a first tier entity, is a party to the reorganization described in such paragraph. Although Public P does not acquire any stock in the merger, it is treated as acquiring stock in the loss corporation, P_1, because such corporation succeeds to the pre-change losses of L in a transaction to which 381(a) applies. As a result of the merger, Public P, the direct public group of P that exists immediately before the merger, must be segregated from the direct public groups acquiring P stock in the reorganization. Public P is, therefore, treated as acquiring 55 percent of the outstanding stock of the loss corporation, P_1, in the transaction. The transaction, therefore, results in an ownership change for P_1.

Example (4) (*i*) L is owned 20 percent by A and 80 percent by 1,000 unrelated individuals and entities, none of whom owns as much as five percent of L stock ("Public L"). P is owned 10 percent by B, 40 percent by E, and 50 percent by 5,000 unrelated individuals, none of whom owns as much as five percent of P stock ("Public P"). E is owned 30 percent by C and 70 percent by 30 unrelated individuals, none of whom owns as much as five percent of E ("Public E").

(*ii*) On October 31, 1987, P acquires all of the L stock from A and Public L in exchange for P stock representing 20 percent of the value of P (determined immediately after the acquisition) in a transaction described in section 368(a)(1)(B). After the acquisition, P is owned eight percent by B, 32 percent by E, four percent by A, and 56 percent by 6,000 unrelated individuals, none of whom owns as much as five percent of P. Because L is wholly owned by P immediately after the acquisition, L, under paragraph (j)(1) of this section, is treated as owned as follows: Eight percent by B, 9.6 percent by C (through C's ownership interest in E, a highest tier entity, and E's ownership interest in P, a first tier entity), 22.4 percent by Public E (through its ownership interest in E and E's ownership interest in P), four percent by A, and 56 percent by the shareholders who each own less than five percent of L through their ownership interest in P.

(*iii*) Under paragraph (j)(3)(iii) of this section, the rules of paragraph (j)(2)(iii)(B) of this section apply to the reorganization since the transaction involved a first tier entity of L. Thus, the direct public group of P that exists immediately after the transaction must be segregated into two public groups—the direct public group of P that existed immediately before the acquisition (Public P) is treated separately from the direct public group consisting of the persons who acquire P stock in the transaction (Public L). Accordingly, immediately after the reorganization, Public P and Public L own 40 percent and 16 percent of L, respectively. See paragraph (h) of this section. (Under paragraph (g)(5)(ii)(B) of this section, L may treat the four percent of L stock owned by A immediately after the reorganization as the amount of L stock owned by A for each subsequent testing date having a testing period that includes the reorganization.)

(*iv*) In summary, after applying the rules of paragraphs (j) (1) and (3) of this section, L is treated as owned as follows:

5-percent shareholder	Percentage ownership interest
A	4.0
B	8.0
C	9.6
Public E	22.4
Public P	40.0
Public L	16.0

(*v*) The reorganization results in an ownership change, because B, C, Public E and Public P, all of whom are 5-percent shareholders, together have increased their percentage ownership in L by 80 percentage points as compared to their lowest percentage ownership in L at any time during the testing period (0 percent prior to the acquisition).

(v) *Acquisitions made by a 5-percent shareholder, a higher tier entity, or a first tier entity following application of the segregation rules.* The rules of paragraph (j)(2)(vi) of this section shall apply to the acquisition of an ownership interest in a first tier entity (or higher tier entity) if more than one direct public group of any such entity are segregated under the rules of this paragraph (j)(3).

Accordingly, an acquisition by such an entity or a 5-percent shareholder of any ownership interest in such an entity shall be treated as made proportionately from the direct public groups resulting from the application of this paragraph (j)(3).

(k) *Operating rules*—(1) *Presumptions regarding stock ownership.* Subject to paragraphs (k) (2) and (4) of this section, for purposes of applying paragraphs (f), (g), (h), and (j)(1) of this section—

(i) *Stock subject to regulation by the Securities and Exchange Commission.* With respect to loss corporation stock that is described in Rule 13d–1(d) of Regulation 13D–G (or any rule or regulation to generally the same effect), promulgated by the Securities and Exchange Commission under the Securities and Exchange Act of 1934 ("registered stock"), a loss corporation may rely on the existence and absence of filings of Schedules 13D and 13G (or any similar schedules) as of any date to identify all of the corporation's shareholders who have a direct ownership interest of five percent or more (both individuals and first tier entities) on such date. A loss corporation may similarly rely on the existence and absence of such filings as of any date with respect to registered stock of any first tier entity or any higher tier entity to identify the 5-percent owners of any such entities on such date who indirectly own five percent or more of the loss corporation stock, and are thus 5-percent shareholders, and to identify any higher tier entities of such entities.

(ii) *Statements under penalties of perjury.* A loss corporation may rely on a statement, signed under penalties of perjury, by an officer, director, partner, trustee, executor or similar responsible person, on behalf of a first tier entity or a higher tier entity to establish the extent, if any, to which the ownership interests of any 5-percent owners or higher tier entities with respect to such entities have changed during a testing period. A loss corporation may not rely on such a statement (A) that it knows to be false or (B) that is made by either a first tier entity or higher tier entity that owns 50 percent or more of the stock of the loss corporation. For purposes of the preceding sentence, any first tier entities and higher tier entities that are known by the loss corporation to be members of the same controlled group (within the meaning of section 267(f)) shall be treated as one corporation.

(2) *Actual knowledge regarding stock ownership.* For purposes of this section (other than paragraphs (g)(5) and (j)(1)(v) of this section), to the extent that the loss corporation has actual knowledge of stock ownership on any testing date (or acquires such knowledge before the date that the income tax return is filed for the taxable year in which the testing date occurs) by—

(i) An individual who would be a 5-percent shareholder, but for the application of paragraphs (h)(2)(iii), (h)(6)(iii) or (g)(2) of this section, or

(ii) A 5-percent shareholder that would be taken into account, but for paragraphs (h)(2)(iii), (h)(6)(iii) or (g)(3) of this section,

the loss corporation must take such stock ownership into account for purposes of determining whether an ownership change has occurred on that testing date. If a loss corporation acquires such knowledge after such income tax return is filed, the loss corporation may take such ownership into account for purposes of determining whether an ownership change occurred on that testing date and, if appropriate, file an amended income tax return (subject to any applicable statute of limitations). To the extent the loss corporation has actual knowledge on or after any testing date regarding the ownership interest in the loss corporation by members of one public group (described in paragraphs (g)(1) (ii), (iii) or (iv) of this section) and the ownership interest of those members in the loss corporation as members in another such public group, the loss corporation may take such ownership into account for purposes of determining whether an ownership change occurred on that testing date.

(3) *Duty to inquire as to actual stock ownership in the loss corporation.* For purposes of this section, the loss corporation is required to determine the stock ownership on each testing date (and, except as otherwise provided in this section, the changes in the stock ownership during the testing period) of—

(i) Any individual shareholder who has a direct ownership interest of five percent or more in the loss corporation,

(ii) Any first tier entity,

(iii) Any higher tier entity that has an indirect ownership interest of five percent or more in the loss corporation (determined without regard to paragraph (h)(2)(i)(A) of this section), and

(iv) Any 5-percent owner who indirectly owns five percent or more of the stock of the loss corporation in his capacity as a 5-percent owner in any one first tier entity or higher tier entity.

The loss corporation does not have any obligation to inquire or to determine facts relating to the stock ownership of any shareholders other than those described in the preceding sentence. In addition, the loss corporation does not have any obligation to inquire or to determine if the actual facts relating to the stock ownership of any shareholder are consistent with the ownership interests of the loss corporation as determined by applying the presumptions and other rules of paragraphs (g), (h), (j) or (k)(1) of this section.

(4) *Ownership interest structured to avoid the section 382 limitation.* For purposes of this section, if the ownership interests in a loss corporation are structured by a person with a direct or indirect ownership interest in the loss corporation to avoid treating a person as a 5-percent shareholder (or to permit the loss corporation to rely on the presumption provided in paragraph (g)(5)(i)(B) of this section) for a principal purpose of circumventing the section 382 limitation, then—

(i) Paragraph (h)(2)(iii) of this section shall not apply with respect to the ownership interests so structured and the constructive ownership rules of paragraph (h)(2)(i) of this section shall thus apply to attribute stock from any entity without regard to the amount of stock it owns in the loss corporation or any other corporation,

(ii) Paragraphs (g) (2) and (3) of this section shall be modified with respect to the ownership interests so structured so that the ownership interest of a person includes all of an individual's direct and indirect ownership in the loss corporation, without regard to whether each such interest represents five percent or more of the stock of the loss corporation, and

(iii) Paragraph (g)(5)(i)(B) of this section shall not apply with respect to the ownership interests so structured so that the ownership interest of a person takes into account his actual ownership interest in the loss corporation.

This paragraph (k)(4) shall apply, however, only if application would result in an ownership change.

(5) *Example.*

L is owned by 25 individuals who each own four percent of the outstanding L stock. A purchases 40 percent of L stock from such shareholders on August 13, 1988. Thereafter, B plans to acquire 15 percent of the L stock. B is advised concerning the potential application of section 382 to L. On February 1, 1989, B acquires a 15 percent interest in L pursuant to a program in which each of four corporations, P_1 through P_4, each of which is wholly-owned by B, acquire a 3.75 percent interest in L. A principal purpose of acquiring the L stock through four corporations is to avoid treating B as owning any ownership interest in L amounting to as much as five percent, and thus to circumvent the section 382 limitation by avoiding an ownership

change. Under paragraph (k)(4) of this section, the limitation on the constructive ownership rules of paragraph (h)(2)(iii) of this section are disregarded and B is treated as a 5-percent shareholder owning 15 percent of the stock of L by virtue of his ownership interests in P_1 through P_4, notwithstanding paragraph (g)(2) of this section. Accordingly, an ownership change occurs with respect to L.

(6) *First tier entity or higher tier entity that is a foreign corporation or entity.* [Reserved]

(l) *Changes in percentage ownership which are attributable to fluctuations in value.* [Reserved.]

(m) *Effective Date*—(1) *In general.* Except as provided in this paragraph (m), section 382 shall apply to any ownership change that occurs immediately after an owner shift or an equity structure shift that occurs after December 31, 1986, or any other event occurring after such date that requires the determination of whether an ownership change has occurred under paragraph (a)(2)(i) of this section. In the case of an equity structure shift (including an equity structure shift that also constitutes an owner shift), any equity structure shift completed pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring on the date such plan was adopted. Therefore, section 382 shall apply to any ownership change occurring immediately after—

(i) An owner shift (excluding an owner shift that also constitutes an equity structure shift) that occurs on or after January 1, 1987,

(ii) An equity structure shift that occurs after December 31, 1986, if it is completed pursuant to a plan of reorganization adopted on or after January 1, 1987, or

(iii) Any transfer or issuance of an option, or other interest that is similar to an option, that occurs on or after January 1, 1987 and that is taken into account under paragraph (a)(2)(i) of this section.

With respect to equity structure shifts completed pursuant to plans adopted before January 1, 1987, section 382 shall be inapplicable only if the equity structure shift that is treated as occurring on the date the plan of reorganization for such shift was adopted (or other event occurring after the adoption of such plan) results in an ownership change before January 1, 1987. In that event, a new testing period for the loss corporation shall begin on the day after such ownership change.

(2) *Plan of reorganization.* For purposes of paragraph (m)(1) of this section, a plan of reorganization shall be treated as adopted on the earlier of—

(i) The first date that the boards of directors of all the parties to the reorganization have adopted the plan or have recommended adoption to their shareholders, or

(ii) The date the shareholders approve such reorganization.

If there is an ownership change with respect to a subsidiary as the result of a reorganization of the parent, the treatment of the subsidiary under this paragraph (m)(2) shall be governed by the classification of the parent-level transaction. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary of another corporation only if the other corporation owns stock in that corporation meeting the requirements of section 1504(a)(2).

(3) *Earliest commencement of the testing period.* For purposes of determining if an ownership change has occurred at any time after May 5, 1986, the testing period shall begin no earlier than May 6, 1986. Under paragraph (d)(4) of this section, therefore, shifts in the ownership of stock of the loss corporation prior to May 6, 1986 are disregarded.

(4) *Transitional rules*—(i) *Rules provided in paragraph (j) of this section for testing dates before September 4, 1987.* For purposes of determining whether an ownership change occurs for any testing date before September 4, 1987,

(A) The rules of paragraph (j)(1) of this section shall apply only to stock of the loss corporation acquired after May 5, 1986, by any first tier entity or higher tier entity and shall not apply to any stock acquired by such an entity on or before that date,

(B) The rules of paragraph (j)(2) of this section shall apply only to equity structure shifts in which more than one corporation is a party to the reorganization and shall not apply to any other transactions, and

(C) The rules of paragraph (j)(3) of this section shall apply only to—

(*1*) Dispositions of stock acquired by an individual, a first tier entity or higher tier entity after May 5, 1986 (and shall not apply to dispositions of stock acquired on or before such date), and

(*2*) Equity structure shifts in which more than one corporation is a party to the reorganization (and shall not apply to any other transactions).

For any testing date before September 4, 1987, however, the loss corporation is permitted to apply all of the rules of paragraph (j) of this section. A loss corporation that applies the rules of paragraph (j) of this section under the preceding sentence must apply all of the rules of such paragraph in determining whether any ownership change occurs on any testing dates after May 5, 1986.

(ii) *Example.*

(*i*) L is owned entirely by 10,000 unrelated individuals, none of whom owns as much as five percent of the stock of L ("Public L"). P is owned entirely by 1,000 unrelated individuals, none of whom owns as much as five percent of the stock of P ("Public P").

(*ii*) Between March 1, 1987 and June 1, 1987, P acquires 45 percent of L stock in a series of transactions. On June 15, 1987, L redeems 20 percent of the L stock from Public L.

(*iii*) Under paragraph (m)(4)(i)(A) of this section, the rules of paragraph (j)(1) of this section apply to the acquisitions made by P, because they occurred after May 5, 1986. Accordingly, following those acquisitions, the stock of L is owned 45 percent by Public P and 55 percent by Public L. Because the increase in the percentage ownership by Public P as a result of P's stock purchases is not more than 50 percent, no ownership change occurs as the result of P's purchases.

(*iv*) On or after September 4, 1987, the rules of paragraph (j)(2)(iii)(C) of this section apply to treat any L stock that is redeemed as owned by a public group that is separate from the public group owning the stock that is not redeemed. (Under paragraph (j)(2)(iii)(C) of this section, the continuing shareholders of Public L, who owned 35 percent of the stock of L before the redemption ([55 percent—20 percent]/100 percent) increase their ownership interest in L by 8.8 percentage points as a result of such redemption (43.8 percent—35 percent)). Those rules, however, do not apply to the June 15, 1987 redemption because it occurs before the date that paragraph (j)(2)(iii) of this section generally is effective. (Until September 4, 1987, paragraph (j)(2)(iii) of this section generally is effective only for equity structure shifts in which more than one corporation is a party to the reorganization.) Solely because of the application of paragraph (j)(1) of this section to P's acquisitions of L stock, Public P's ownership interest in L as a result of the redemption has increased from 45 percentage points to 56.2 percentage points which, compared to its lowest percentage ownership interest at any time during the testing period (0 percent prior to March 1, 1987), is a more than 50 percentage point increase thus causing an ownership change with respect to L on June 15, 1987.

(iii) *Rules provided in paragraph (j) of this section for testing dates on or after September 4, 1987.* For purposes of determining whether an ownership change occurs for any testing date on or after September 4, 1987, the rules of paragraphs (j) (2) and (3) of this section shall not apply to identify any public group resulting from—

(A) Any transaction described in such paragraphs (j) (2) and (3), unless that transaction is also described in paragraph (m)(4)(i) (B) or (C) of this section, or

(B) Any disposition of stock acquired on or before May 5, 1986, but only if such disposition or other transaction

occurs before September 4, 1987. Thus, for example, the rules of paragraph (j)(2)(iii)(D) of this section shall apply only to rights to acquire stock of the loss corporation issued on or after such date.

(iv) *Rules provided in paragraphs (f)(18) (ii) and (iii) of this section.* For purposes of determining whether an ownership change occurs for any testing date, the rules of paragraphs (f)(18) (ii) and (iii) of this section apply only to stock (or any other ownership interest) that is—

(A) Issued on or after September 4, 1987, or

(B) Transferred to (or by) a person who is a 5-percent shareholder (or would be a 5-percent shareholder if paragraph (f)(18)(iii) of this section were applicable) on or after September 4, 1987.

(v) *Rules provided in paragraph (a)(2)(ii) of this section.* The information statement required under paragraph (a)(2)(ii) of this section is not required to be filed with respect to any taxable year for which the due date (including extensions) of the income tax return of the loss corporation is on or before October 5, 1987.

(5) *Bankruptcy proceedings*—(i) *In general.* In the case of a reorganization described in section 368(a)(1)(G) or an exchange of debt for stock in a Title 11 or similar case (within the meaning of section 368(a)(3)), section 382 shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986. Accordingly, any shift in ownership in the loss corporation arising out of such reorganization or proceeding shall not be taken into account for purposes of determining whether an ownership change occurs on any testing date that occurs after December 31, 1986.

(ii) *Example.*

(i) L filed a petition in bankruptcy on September 29, 1985. As a result of a title 11 bankruptcy reorganization of L that is confirmed by a court on February 2, 1988, there is a shift in the ownership of L so that JK increased her interest in L by 24 percentage points relative to her lowest ownership interest in L during the testing period. JK is the only 5-percent shareholder of L following the reorganization whose interest in L increased as a result of the transaction. On December 25, 1988, GK purchases 42 percent of the outstanding stock of L from shareholders other than JK.

(ii) There is no ownership change on December 25, 1988 because the 24 percentage point increase in JK's ownership interest in L is not taken into account under paragraph (m)(6)(i) of this section.

(iii) The facts are the same as in *(i)*, except that the acquisitions by JK and GK occurred on August 5, 1986 and September 26, 1986, respectively. Because paragraph (m)(6)(i) of this section is only applicable with respect to the determination of whether an ownership change has occurred on any testing date that occurs after December 31, 1986, there is an ownership change as a result of GK's acquisition on September 26, 1986. Accordingly, section 382 is inapplicable to such ownership change under paragraph (m)(1) of this section because it occurred prior to January 1, 1987. Under paragraph (d)(2) of this section, the testing period for determining whether an ownership change occurs on any subsequent testing date shall commence no earlier than September 27, 1986.

(6) *Transactions of domestic building and loan associations.* The rules of paragraph (j)(2)(iii)(B) of this section (and the application of those rules by virtue of paragraph (j)(3) of this section) shall not apply to a public offering of stock by a domestic building and loan association described in section 591 (or any corporation that owns stock in the association meeting the requirements of section 1504(a)(2)) prior to January 1, 1989. In the case of any transaction described in the preceding sentence, any transitory ownership of stock by any entity that is an underwriter shall be disregarded so that the rules of paragraph (j)(1) of this section shall not apply to treat such stock as owned by the owners of the underwriter and thus the rules of paragraph (j)(3)(i) of this section shall not apply to the disposition of such stock by the underwriter. For purposes of this paragraph (m)(7)—

(i) Ownership shall be considered transitory only with respect to an underwriter acquiring stock in a firm commitment underwriting to the extent the stock is disposed of pursuant to the offer (but in no event later than sixty (60) days after the initial offering) and,

(ii) To the extent a transaction may be described both by paragraph (j)(2)(iii)(B) of this section and any other provision of paragraph (j) (2)(iii) or (3) of this section, paragraph (j)(2)(v)(A) of this section shall not apply and the transaction shall be treated as described solely by paragraph (j)(2)(iii)(B) of this section.

(7) *Transactions not subject to section 382*—(i) *Application of old section 382.* Old section 382 shall not apply to a loss corporation on or after the date on which an ownership change occurs, but only if such ownership change results in the application of the section 382 limitation (as defined in section 382(b)) with respect to the loss corporation.

(ii) *Effect on testing period.* The application of old section 382 to a transaction is disregarded for purposes of paragraph (d)(2) of this section unless the transaction that results in such application is the last component of an ownership change after May 5, 1986 that is not subject to section 382 under the effective date rules of this paragraph (m) (*e.g.*, an ownership change occurring as the result of an individual's purchase of more than 50 percent of L stock on any date on or before December 31, 1986).

(iii) *Termination of old section 382.* [Reserved]

(8) *Options issued or transferred before January 1, 1987*—(i) *Options issued before May 6, 1986.* An option issued before May 6, 1986, is subject to the rules of paragraph (h)(4) of this section only if it is transferred by (or to) a 5-percent shareholder (or a person who would be a 5-percent shareholder if the option were treated as exercised) on or after such date. In all other cases, such an option shall not be subject to paragraph (h)(4)(i) of this section, but shall be subject to paragraph (h)(4)(xii) of this section. Thus, for example, a warrant to acquire stock of the loss corporation issued before May 6, 1986 shall not be subject to paragraph (h)(4) of this section unless the warrant is transferred by (or to) a 5-percent shareholder. The exercise of such a warrant, however, would be taken into account as required by this paragraph (m)(8)(i) and paragraph (h)(4)(xii) of this section.

(ii) *Options issued on or after May 6, 1986 and before September 18, 1986.* An option issued or transferred on or after May 6, 1986, and before September 18, 1986, is subject to the rules of paragraph (h)(4) of this section.

(iii) *Options issued on or after September 18, 1986 and before January 1, 1987.* An option issued or transferred on or after September 18, 1986, and before January 1, 1987, is subject to the rules of paragraph (h)(4) of this section, except that the option shall be treated for purposes of this section as if it never had been issued in the event that either—

(A) The option lapses unexercised or is irrevocably forfeited by the holder thereof, or

(B) On the date the option was issued, there was no significant likelihood that such option would be exercised within the five-year period from the date of such issuance and a purpose for the issuance of the option was to cause an ownership change prior to January 1, 1987.

(9) *Examples.* The rules of this paragraph (m) may be illustrated by the following examples.

Example (1) (i) A owns all 100 outstanding shares of L stock. A sells 11 shares to B on January 1, 1986. The January 1, 1986 testing date is disregarded under paragraph (m)(3) of

this section. A sells another 40 shares to B on January 1, 1988. B's second stock purchase is an owner shift that does not result in an ownership change. B's percentage ownership interest on the testing date (51 percent) is only 40 percentage points greater than the lowest percentage of L stock owned by B at any time during the testing period (11 percent on and after May 6, 1986).

(ii) The facts are the same as in (i). In addition A sells 20 shares of his L stock to C on July 1, 1990. C's stock purchase is an owner shift. Because B and C together have increased their respective ownership interests in L by 40 and 20 percentage points relative to their lowest percentage stock ownership interests in L at any time during the testing period, C's purchase causes an ownership change. The testing period for any subsequent ownership change begins on the first day following C's acquisition, July 2, 1990.

Example (2) (i) C has owned 100 percent of L since March 22, 1980. On October 13, 1986, P merges into L. As a result of the merger, 40 percent of L stock is acquired by A, the sole shareholder of P. The merger of P into L is both an equity structure shift and an owner shift. The transaction, however, is not an ownership change with respect to L, because A's percentage ownership interest has increased by only 40 percentage points. On August 22, 1987, B purchases 15 percent of the L stock from C. B's purchase constitutes an owner shift resulting in an ownership change that is subject to section 382 because the aggregate increases in percentage ownership by B and C (respectively 40 percent and 15 percent) is more than 50 percentage points.

(ii) The facts are the same as in (i), except that the plan of reorganization is adopted on October 13, 1986, and the merger is completed on July 22, 1987. The result is the same as in (i).

(iii) The facts are the same as in (ii), except that the reorganization is completed on August 22, 1987, and B's purchase of the L stock occurs one month earlier, on July 22, 1987. Assume that after the reorganization on August 22, 1987, A and B own 40 percent and 15 percent, respectively, of L stock. Although the merger occurred pursuant to a plan of reorganization adopted before 1987, L is subject to section 382 following the equity structure shift, because the merger would not have caused an ownership change if it had been completed in 1986 after the commencement of the L's testing period.

(iv) The facts are the same as in (ii), except that B's purchase occurs on June 7, 1986. Assume that immediately after the reorganization on August 22, 1987, A and B own 40 percent and 15 percent, respectively, of L stock. Since the reorganization pursuant to a plan adopted before 1987, taken together with the other shifts in the ownership of L's stock between May 5, 1986, and December 31, 1986, would have caused an ownership change, section 382 does not apply as a result of the merger. Since an ownership change occurs as a result of the merger, L's testing period for purposes of any subsequent ownership change begins on October 14, 1986.

(v) The facts are the same as in (iv), except that B makes an additional purchase from C of one percent of L's stock on February 14, 1987. The result is the same as in (iv). B's additional purchase, however, is taken into account for the purpose of determining whether there is a second ownership change with respect to L.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.382–1T . . . 1545–0123".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: July 29, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–18104 Filed 8–5–87; 3:47 pm]

BILLING CODE 4830–01–M

POSTAL SERVICE

39 CFR Parts 10 and 20

Code of Ethical Conduct for Postal Service Employees

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule which implements Executive Orders 11222 and 11590, establishes the Code of Ethical Conduct for Postal Service Governors, adopted by the Board of Governors of the Postal Service on July 7, 1987.

Like the Executive Orders, this Code is designed to prevent conflicts of interest which could undermine public confidence in the integrity of the Board of Governors and its members.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley, (202) 268–2971.

SUPPLEMENTARY INFORMATION: This Code, which implements Executive Orders 11222 and 11590, establishes standards of conduct for Governors of the Postal Service. It was adopted by a unanimous vote of the Board of Governors at its meeting on July 7, 1987, and approved by the Director, Office of Government Ethics, on July 14, 1987, as agency ethics regulations must be. The newly adopted Code complements the Code of Ethical Conduct for other officers and employees of the Postal Service which is published as Part 447 of 39 CFR. The standards generally prohibit types of activity which, although not in all instances inherently improper, may be seen as tending to bias a Governor in favor of particular persons who have dealings with the Postal Service.

Specifically, the Code sets forth regulations pertaining to business and financial interests; outside employment; the acceptance of gifts, entertainment, and other favors; ethical conduct advisory services; and post-employment activities. The regulations regarding post-employment activities incorporate those applicable provisions in the Code of Ethical Conduct for Postal Employees, 39 CFR 447.33 and 447.34, which detail the post-employment restrictions contained in 18 U.S.C. 207. The Code also sets forth regulations regarding the filing of nonpublic financial disclosure reports.

The Code, which is an appendix to the By-Laws of the Board of Governors, will comprise a new Part 10 of 39 CFR. The existing Part 10, which relates to international mail service, will be renumbered as Part 20 of 39 CFR.

List of Subjects

39 CFR Part 10

Conflicts of interest.

39 CFR Part 20

Foreign relations, Postal Service.

For the reasons set out in the preamble, Title 39, Chapter I, Subchapters A and B of the Code of Federal Regulations are amended as set forth below.

PART 10—[REDESIGNATED AS PART 20]

1. In Subchapter B, Part 10 is redesignated as Part 20.

2. In Subchapter A, Part 10 is added as follows:

PART 10—CODE OF ETHICAL CONDUCT FOR POSTAL SERVICE GOVERNORS

Subpart A—Basic Purpose and Applicability

Sec.

Subpart B—Standards of Conduct

Authority: 39 U.S.C. 401, 18 U.S.C. 207(j); E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp., p. 10, as amended by E.O. 11590, 36 FR 7831, 3 CFR Part 405 (1972); 5 CFR 735.104.

Subpart A—Basic Purpose and Applicability

§ 10.11 Introduction.

Executive Order 11222 sets forth standards of ethical conduct for Government officers and employees. It directs agencies to issue regulations which both implement the Order and supplement it with regulations of special applicability to the particular functions and activities of the agency. Accordingly, the Board of Governors has established this Code of Ethical Conduct for Postal Service Governors.

§ 10.12 Code of Ethics for Government Service.

The Code of Ethics for Government Service, adopted by Joint Resolution of the 85th Congress, properly calls for the best from all who are in public service and should be followed by all Postal Service Governors.

Code of Ethics for Government Service

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

Subpart B—Standards of Conduct

§ 10.21 General.

(a) *General Principles.* A Governor shall avoid any action, whether or not specifically prohibited by this Code, which might result in or create the appearance of:

(1) Giving preferential treatment to any person;

(2) Impeding Postal Service efficiency or economy;

(3) Losing complete independence or impartiality;

(4) Making a Postal Service decision outside official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Postal Service.

(b) No Governor shall use his or her position with the Postal Service to coerce, or give the appearance of coercing, a person to provide financial benefit to him- or herself or another person.

(c) No Governor shall directly or indirectly use, appear to use, or allow the use of, his or her official position or information obtained as a result of his or her position to further any private interest, whether his or her own or that of another person.

(d) For the purposes of the conflict of interest statutes found at Chapter 11 of Title 18 of the United States Code, the Director, Office of Government Ethics has determined that Governors of the Postal Service are special Government employees within the meaning of 18 U.S.C. 202.

(e) The conduct expected and required of a Governor will often depend on the particular facts of each instance. Although detailed regulations cannot practically be prescribed that will cover every situation, the following rules provide guidance and illustrate the manner in which the general principles should be applied.

§ 10.22 Conflicts of interest—financial.

(a) *General principles.* No Governor may have a financial interest, direct or indirect, that conflicts substantially, or appears to conflict substantially, with his or her duties and responsibilities to the Postal Service. For the purposes of this Code, a Governor's interests include those of his or her spouse, his or her minor child or children, and other individuals related to the Governor by blood who are residents of the Governor's household.

(b) No Governor shall enter into any contract with the Postal Service or otherwise have an interest in any contract with the Postal Service unless there has been a prior determination by an ethics official that the interest is so minor that no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists. No such determination is required, however, if:

(1) The interest results solely from the Governor's ownership of publicly traded securities of a corporation or the Governor's service as a fiduciary of a trust or estate that owns such publicly traded securities; and

(2) Neither the contract, nor a transaction of which it is a part, requires action by the Board.

(c) No Governor shall engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, information obtained as a result of his or her position as Governor.

(d) No Governor shall sell or lease property to the Postal Service.

(e) No Governor shall recommend or suggest the employment of any private person offering services as a consultant, agent, attorney, expeditor or the like for the purpose of assisting a private party in any negotiations, transactions or other business with the Postal Service.

(f) Section 203 of title 18, United States Code, prohibits any Governor, as a special Government employee, from soliciting or accepting any fee or other compensation for services rendered by him- or herself or another person in representing any person other than the United States before any executive department, agency, court martial, officer or commission in relation to any proceeding or other particular matter involving a specific party or parties in which a Governor has participated personally and substantially during his or her term.

(g) section 208(a) of Title 18, United States Code, prohibits participation by any Governor in any decision or other matter in which, to the Governor's knowledge, he or she, any entity of which he or she is an employee, director, partner, or other fiduciary, or

any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. Although this statute applies even though the interest is minimal, section 208(b) permits the application of section 208(a) to be waived, if it is properly determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which may be expected from a Governor.

§ 10.23 Conflicts of interest—employment.

(a) *General principles.* No Governor shall accept employment, compensation, payment of expense, or any other thing of monetary value under circumstances in which acceptance may result in, or create the appearance of, a conflict of interest.

(b) No Governor shall engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her position as Governor. To this end, each Governor should avoid the following:

(1) Working for any person with whom the Governor has official dealings on behalf of the Postal Service;

(2) Acting as consultant to any person who has a contract with the Postal Service or who the Governor has reason to believe intends to obtain, or seek to obtain, such a contract.

(3) Being employed by, or engaging in professional practice for, a person whose business interests are:

(i) Substantially dependent upon, or may be significantly affected by, postal rates, fees or classifications; or

(ii) Substantially dependent upon providing goods or services to or for use in connection with the Postal Service.

(c) No Governor shall engage in any activity for compensation, or accept any outside employment, or receive any salary or other thing of monetary value which is, directly or indirectly, a form of compensation from a private source for his or her services to the Postal Service.

(d) No Governor shall engage in, or be associated with an entity that is principally engaged in, the private business of delivering any type of mailable matter in substantial competition with the Postal Service.

(e) Section 205 of Title 18, United States Code, prohibits any Governor, as a special Government employee, from acting as agent or attorney in representing a private party before any department, agency, court, court-martial, officer, or commission in connection with any claim, proceeding or other particular matter involving a specific party or parties in which a Governor has participated personally and substantially during his or her term.

(f) No Governor shall use his or her official title, position, or authority in the endorsement or advertisement of a commercial product or service.

(g) Within the limitations imposed by this section, a Governor may engage in teaching, lecturing, and writing. He or she shall not, however, receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance whose subject matter is devoted substantially to the responsibilities, programs, or operations of the Postal Service, or which draws substantially on official data or ideas which have not become part of the body of public information.

§ 10.24 Conflicts of interest—gifts, entertainment, and favors.

(a) *General principles.* No Governor shall solicit or accept for him- or herself or another person any gift, favor, entertainment, meal, loan, or other thing of value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Postal Service;

(2) Conducts operations or activities that are regulated by the Postal Service; or

(3) Has interests that may be substantially affected by the performance or non-performance of the Governor's official duties.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Governor may:

(1) Accept such gift or other thing of value when the circumstances make it clear that it is family or personal relationships (such as those of parent, child, so spouse) rather than the business of the persons concerned which are the motivating factors;

(2) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or similar event where he or she is properly in attendance and where payment by the Governor is impracticable;

(3) Accept loans from banks or other financial institutions on customary terms in order to finance proper and usual activities, such as home mortgage loans; and

(4) Accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(c) When a Governor travels on official business he or she should use commercial transportation at Postal Service expense.

(d) No Governor shall except a gift, present, decoration, or any other thing from a foreign government unless authorized in accordance with the Foreign Gifts and Decorations Act, 5 U.S.C. 7432.

Subpart C—Ethical Conduct Advisory Services and Post-employment Activities

§ 10.31 Advisory service.

(a) The General Counsel is the Ethical Conduct Officer and Designated Agency Ethics Official of the Postal Service.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest covered by this Code from the General Counsel or from a designated assistant.

(c) If the General Counsel determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of a Governor, he or she shall bring this to the attention of the Governor or shall notify the Chairman of the Board of Governors, or the Vice Chairman, as appropriate.

§ 10.32 Post-employment activities.

Governors of the Postal Service are subject to the restrictions on the post-employment activities of special Government employees imposed by section 207 (a) and (b)(i) of Title 18, United States Code. These post-employment restrictions are set out in the Code of Ethical Conduct for Postal Employees, §§ 447.33 and 447.34 of this title.

Subpart D—Reports of Employment and Financial Interests

§ 10.41 Financial disclosure reports.

(a) *Requirement of submission of reports.* The Director of the Office of Government Ethics has ruled that Governors of the Postal Service are not required to file financial disclosure reports that are open to the public. In practice, nonetheless, Governors are asked to complete a non-public financial disclosure report at the time of their nomination and annually thereafter in accordance with this section

(b) *Person with whom reports should be filed and time for filing.* (1) A Governor shall file a financial disclosure report with the General Counsel on or

before May 15 of each year when the Governor has been in office for more than 60 consecutive calendar days during the previous year.

(2) The General Counsel may, for good cause shown, grant to a Governor an extension of up to 45 days. An additional extension of up to 45 days may be granted by the Director of the Office of Government Ethics for good cause shown.

(c) *Information required to be reported.* Each report shall be a full and complete statement, on the form prescribed by the General Counsel and the Office of Government Ethics and in accordance with instructions issued by him or her. The form currently in use is Standard Form 278.

(d) *Reviewing reports.* (1) Financial disclosure reports filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the General Counsel who shall either approve the report, or make an initial determination that a conflict or appearance thereof exists. If the General Counsel determines initially that a conflict or the appearance of a conflict exists, he or she shall inform the Governor of his determination

(2) If the General Counsel considers that additional information is needed to complete the report or to allow an adequate review to be conducted, he or she shall request the reporting Governor to furnish that information by a specified date.

(3) The General Counsel shall refer to the Chairman of the Board of Governors or the Vice Chairman the name of any Governor he or she has reasonable cause to believe has wrongfully failed to file a report or has falsified or wrongfully failed to report required information.

(e) *Custody of and public access to reports—(1) Retention of reports.* Each report filed with the General Counsel shall be retained by him or her for a period of six years. After the six-year period, the report shall be destroyed unless needed in connection with an investigation then pending.

(2) *Confidentiality of reports.* The financial disclosure reports filed by Postal Service Governors shall not be made public.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-18159 Filed 8-10-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the Queets River to Leadbetter Point; Washington, at midnight, August 6, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW), that the recreational fishery quota of chinook salmon for the subarea will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

DATES: Closure of the EEZ from the Queets River to Leadbetter Point, Washington, to recreational salmon fishing is effective at 2400 hours local time, August 6, 1987. Comments on this closure will be received until August 21, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070. Information relevant to notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species from the Queets River to Leadbetter Point, Washington, was established as June 28 through the earliest of September 24 or the attainment of a quota of either 74,300 coho salmon or 28,000 chinook salmon. Subarea quotas were modified during the season (52 FR 27560, July 22, 1987; 52 FR 29019, August 5, 1987). The current chinook quota for the subarea is 27,675 fish.

Based on the best available information, the recreational fishery catch in the subarea is projected to reach the 27,675 chinook quota by midnight, August 6, 1987.

Therefore, NOAA issues this notice to close the recreational salmon fishery in the EEZ from the Queets River to Leadbetter Point, Washington, effective 2400 hours, local time, August 6, 1987. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council and the representatives of WDF and ODFW regarding a closure of the recreational fishery between the Queets River and Leadbetter Point, Washington. The Director of WDF confirmed that Washington will close the recreational fishery in state waters adjacent to this subarea of the EEZ in accordance with this notice.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 6, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-18303 Filed 8-7-87; 12:14 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 154
Tuesday, August 11, 1987

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 221

[Docket No. R-0608; Regulation U]

Credit by Banks for the Purpose of Purchasing or Carrying Margin Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend Regulation U to exempt banks, when making loans of $100,000 or less, from the requirement that Federal Reserve Form U-1 must be executed. This will have the effect of restoring the compliance mechanism for loans of $100,000 or less to the status that existed prior to 1968 when the mandatory form was first required.

DATE: Comments should be received by August 27, 1987.

ADDRESS: Comments, which should refer to Docket No. R-0608, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. weekdays. Comments received may be inspected in Room B-2223 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781; or for any user of a Telecommunication Device for the Deaf (TDD), Ernestine Hill or Dorothea Thompson, (202) 452-3244.

SUPPLEMENTARY INFORMATION: In order to reduce the paperwork burden imposed by the requirement in Regulation U that a Federal Reserve Form U-1 be executed for every loan secured by any margin stock, the Board is proposing an amendment to Regulation U. The amendment will delete this requirement for loans of $100,000 or less.

Initial Regulatory Flexibility Analysis

The Board's Initial Regulatory Flexibility Analysis indicates that this proposed amendment, if adopted, is expected to reduce paperwork burden on small banks and, therefore, will have no adverse economic impact on a substantial number of small entities. Comments are invited on the statement. The amendment reduces information collection requirements.

List of Subjects in 12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Investments, Margin, Margin Requirements, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and w), the Board proposes to amend 12 CFR Part 221 as follows:

PART 221—[AMENDED]

1. The authority citation for Part 221 is revised to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h and 78w.

2. Section 221.3 is proposed to be amended by revising paragraph (b), redesignating (c)(i) and (ii) as (c)(1) and (2), and revising (c)(1) as follows:

§ 221.3 General requirements.

* * * * *

(b) *Purpose statement.* (1) Except for credit extended under paragraph (c) of this section, whenever a bank extends credit secured directly or indirectly by any margin stock in an amount exceeding $100,000, the bank shall require its customer to execute Form FR U-1 (OMB No. 7100-0115), which shall be signed and accepted by a duly authorized officer of the bank acting in good faith.

(c) *Purpose statement for revolving credit or multiple-draw agreements.* (1) If a bank extends credit, secured directly or indirectly by any margin stock in an amount exceeding $100,000, under a revolving credit or other multiple-draw agreement, Form FR U-1 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 5, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18138 Filed 8-10-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 179

Life Estates and Future Interests

April 23, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs is proposing to add a new regulation for the administration of life estates and future interests in Indian land. The regulation cite the authorities and enunciate the policies and procedure which are to be followed in such administration. These regulations are being proposed to address the need for a clearly stated uniform policy. Application of the Indian Land Consolidation Act (96 Stat. 2517; 25 U.S.C. 2201-11) and the increasing sophistication in business practices on Indian land make it necessary and desirable that the Secretary promulgate these regulations.

DATES: Comment should be received on or before October 13, 1987.

ADDRESSES: Comments should be sent to the Chief, Branch of Titles and Research, Division of Real Estate Services, Bureau of Indian Affairs, MS-4520 MIB, 1951 Constitution Ave., NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th and C Streets NW., Washington, DC; Telephone Number (202) 343-5473; or by mail, at the address listed above.

SUPPLEMENTARY INFORMATION: The proposed rules are the result of efforts of a Task Force appointed by the Deputy to the Assistant Secretary - Indian Affairs (Trust and Economic Development) which met in Phoenix, Arizona, on October 21-23, 1986, and March 24-25,

1987. This proposal would add a new Part 179 to Title 25 of the Code of Federal Regulations to set forth the authorities, policy, and procedures to be followed in the administration of life estates and future interests in Indian land. At the present time, there are no regulations specifically dealing with life estates and future interests, even though these have become increasingly prevalent in the activities of Indians and the Bureau of Indian Affairs.

The following is a list of proposed sections and the reasons for each:

Section 179.1

The Secretary of the Interior is charged by various statutes with the responsibility to probate Indian trust estates, and, under certain circumstances to administer Indian lands and funds. The Secretary has the authority to promulgate regulations as to how such responsibilities will be implemented. These regulations establish procedure governing the Secretary's administration of life estates and future interests in Indian trust property.

Section 179.2

This section contains definitions of key terms in the proposed regulations. The Secretary is responsible for probating the estates of individual Indians who died possessed of interests in land held through trust or restricted fee patents, or who have received or been devised trust or restricted interests in lands under a variety of circumstances. Therefore, the definitions have been drafted as broadly as possible to include all of the various circumstances. The definitions also cover interests held in lands acquired by tribes either through sale or devise by tribal members, escheats resulting from section 207 of the Indian Land Consolidation Act, or by any other means. The terms "principal" and "income" have been defined in accordance with the generally accepted understanding of those terms as applied to life estates and future interests. Definitions of other terms, such as "vested remainderman" and "contingent remainderman", will depend upon applicable laws.

Section 179.3

There are no Federal statutes of general applicability governing the administration of life estates and future interests by the Bureau of Indian Affairs. Some consideration was given to the creation of a uniform Federal rule of law through the rulemaking process. However, such a rule would in many cases create anomalous and inconsistent results since, under 25 U.S.C. 348, the Secretary must apply State law in ascertaining heirs and distributing property. In order to ensure that the same body of law is applied to all aspects of the determination and administration of estates, this section requires that the State law be used to determine basic rights and incidents of life estates and future interests, in the absence of Federal or Tribal law to the contrary. The regulations do, however, make inapplicable any State law regarding the appointment and duties of private trustees, as such provision is inconsistent with the Secretary's authority to administer trust lands and funds. The use of State law to the extent provided herein, does not affect, nor does it imply to affect, the sovereignty and/or jurisdiction of Federally-recognized Indian tribes.

Section 179.4

Ideally, rights and privileges of a life tenant, his/her entitlement to income, royalties, bonuses, penalties, trespass damages, etc., should be spelled out in the document creating the life estate. In many cases, however, they are not spelled out. Thus, because of the heirship problem, the increasing numbers of life estates prompted by the Indian Land Consolidation Act, and the needs of many individual Indians, several parties have suggested that the Secretary should deviate from the general common law rules of life estates and tailor administration of Indian lands to produce immediate benefits for life tenants, vested remainderman, and/or contingent remainderman. Certain problems associated with the administration of life estates, and problems faced by interest holders in such estates do warrant a slight deviation from general common law rules.

This section provides that, in those cases where the document that created the life estate is not specific as to the distribution of proceeds, or where the life tenant and vested remainderman cannot reach an agreement on how to distribute such proceeds, or where by such document or agreement or by application of State law the open mine doctrine does not apply, the Secretary will: (a) Pay all rent and income to the life tenant (the common law rule); and (b) interpret bonuses received from the execution of contracts involving the life estate and corpus as being "signing money," i.e., money given as an additional incentive for the execution of the contract, and pay one-half of the bonus to the life tenant and one-half to the remainderman (There is a split among the States as to whether, under common law, a bonus is income or principal. This regulation will create a uniform rule); and (c) in the case of mineral contracts, follow the normal common law rule and invest the principal and make only interest payments to the life tenant, except whenever the administrative cost of investment is disproportionately high, e.g., investment expense exceeds interest income (as might occur with the investment of principal derived from a small gravel permit, etc.), the following (d) shall be utilized; and (d) in all other instances, make an immediate distribution of the principal to the life tenant and vested remainderman based on the value of the life estate (In the event of a contingent remainderman, his/her share will be placed in a special account.)

Section 179.5

This section establishes a uniform method for determining the value of life estates and remainders. Tables A(1) and A(2), which currently also appear in 26 CFR 20.2031–10, have been selected because of their widespread use by the Internal Revenue Service which also deals with life estates and future interests, and because the 6% interest rate is representative of the historic market rate of return where real property is of primary concern.

Section 179.6

This section provides for the formal recordation of death certificates or other evidence of death, for life tenants, and for recordation of renunciations when executed by life tenants.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the Addresses section of this preamble.

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

The Department of the Interior has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require the approval of the Office of

Management and Budget under 44 U.S.C. 3501 *et seq.*

The proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The primary author of this document is Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th and C Sts., NW., Washington, DC 20245; Telephone Number (202) 343–5473.

List of Subjects in 25 CFR Part 179

Future interests, Indians—lands, Life estates.

For the reasons set out in the preamble, Part 179 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be added as set forth below.

PART 179—LIFE ESTATES AND FUTURE INTERESTS

Sec.

Authority: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201–11.

Cross Reference: For regulations pertaining to income, rents, profits, bonuses and principal from Indian lands and the recording of title documents pertaining thereto, see Parts 150, Land Records and Title Documents; 152, Sale of Certain Indian Lands; 162, Leasing and Permitting; 163, General Forest Regulations; 166, General Grazing Regulations; 169, Rights of Way over Indian Lands; 170, Roads of the Bureau of Indian Affairs; 212, leasing of Allotted Lands for Mining; 213, Leasing Restricted Lands of Members of the Five Civilized Tribes of Oklahoma for Mining; 215, Lead and Zinc Mining Operations and Leases, Quapaw Agency.

§ 179.1 Purpose and scope.

These regulations set forth the authorities, policy and procedures governing the administration of life estates and future interests in Indian lands by the Secretary of the Interior.

§ 179.2 Definitions.

"Agency" means an Indian Agency or other field unit of the Bureau of Indian Affairs having the Indian land under its immediate jurisdiction.

"Income" means the rents and profits of real property and the interest on invested principal.

"Indian Land" means all lands held in trust by the United States for individual Indians or tribes; or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance.

"Principal" means the corpus and capital of an estate as opposed to the income.

"Secretary" means the Secretary of the Interior or authorized representative.

"Superintendent" means the designated officer in charge of an Agency.

§ 179.3 Application of State law.

Rules of life estates and future interests to be applied on Indian land are those prescribed by the laws of the State in which the land is located, unless by Federal law or regulation a different rule is prescribed or recognized. State laws concerning the appointment and duties of private trustees, shall not apply.

§ 179.4 Distribution of principal and income.

In all cases where the document creating the life estate does not specify a distribution of proceeds; or where the vested remainderman and life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or where by such document or agreement or by the application of State law the open mine doctrine does not apply; the Secretary shall;

(a) Distribute all rents and profits, as income, to the life tenant.

(b) Consider any contract bonus as incentive for the execution of the contract, and distribute one-half each to the life tenant and the remainderman.

(c) In the case of mineral contracts, invest the principal, with interest income to be paid the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately high, in which case § 179.4(d) shall apply. The principal will be distributed to the remainderman upon termination of the life estate.

(d) In all other instances, distribute the principal immediately according to the formulas set forth in 25 CFR 179.5, investing all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

§ 179.5 Value of life estates and remainders.

(a) The value of a life estate shall be determined by the formula: Value of Life Estate=P×L, where P=Value of principal, and L=Life estate factor for the age and sex of the life tenant, as shown in Column 3 on Tables A(1) and A(2).

(b) The value of a remainder shall be determined by the formula: Value of Remainder=P×R, where P=Value of principal, and R=Remainder factor for the age and sex of the life tenant, as shown in Column 4 on Tables A(1) and A(2).

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
0	15.6175	0.9305	0.06295
1	16.0362	.96217	.03783
2	16.0283	.96170	.03830
3	16.0089	.96053	.03947
4	15.9841	.95905	.04095
5	15.9553	.95732	.04268
6	15.9233	.95540	.04460
7	15.8885	.95331	.04669
8	15.8508	.95195	.04895
9	15.8101	.94861	.05139
10	15.7663	.94598	.05402
11	15.7194	.94316	.05684
12	15.6698	.94019	.05981
13	15.6180	.93708	.06292
14	15.5651	.93391	.06609
15	15.5115	.93069	.06931
16	15.4576	.92746	.07254
17	15.4031	.92419	.07581
18	15.3481	.92089	.07911
19	15.2918	.91751	.08249
20	15.2339	.91403	.08597
21	15.1744	.91046	.08954
22	15.1130	.90678	.09328
23	15.0487	.90292	.09702
24	14.9807	.89884	.10116
25	14.9075	.89445	.10555
26	14.8287	.88972	.11028
27	14.7442	.88465	.11535
28	14.6542	.87925	.12075
29	14.5588	.87353	.12647
30	14.4584	.86750	.13250
31	14.3528	.86117	.13883
32	14.2418	.85451	.14549
33	14.1254	.84752	.15248
34	14.0034	.84020	.15980
35	13.8758	.83255	.16745
36	13.7425	.82455	.17545
37	13.6036	.81622	.18378
38	13.4591	.80755	.19245
39	13.3090	.79854	.20146
40	13.1538	.78923	.21077
41	12.9934	.77960	.22040
42	12.8279	.76967	.23033
43	12.6574	.75944	.24056
44	12.4819	.74891	.25109
45	12.3013	.73808	.26192
46	12.1158	.72695	.27305
47	11.9253	.71552	.28448
48	11.7308	.70385	.29615
49	11.5330	.69198	.30802
50	11.3329	.67997	.32003
51	11.1308	.66785	.33215
52	10.9267	.65560	.34440
53	10.7200	.64320	.35680
54	10.5100	.63060	.36940
55	10.2960	.61776	.38224
56	10.0777	.60466	.39534
57	9.8552	.59131	.40869
58	9.6297	.57778	.42222
59	9.4028	.56417	.43583
60	9.1753	.55052	.44948
61	8.9478	.53687	.46313
62	8.7202	.52321	.47679
63	8.4924	.50954	.49046
64	8.2642	.49585	.50415
65	8.0353	.48212	.51788
66	7.8060	.46836	.53164
67	7.5763	.45458	.54542

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
68	7.3462	.44077	.55923
69	7.1149	.42689	.57311
70	6.8823	.41294	.58706
71	6.6481	.39889	.60111
72	6.4123	.38474	.61526
73	6.1752	.37051	.62949
74	5.9373	.35624	.64376
75	5.6990	.34194	.65806
76	5.4602	.32761	.67239
77	5.2211	.31327	.68673
78	4.9825	.29895	.70105
79	4.7469	.28481	.71519
80	4.5164	.27098	.72902
81	4.2955	.25773	.74227
82	4.0879	.24527	.75473
83	3.8924	.23354	.76646
84	3.7029	.22217	.77783
85	3.5117	.21070	.78930
86	3.3259	.19955	.80045
87	3.1450	.18870	.81130
88	2.9703	.17822	.82178
89	2.8052	.16831	.83169
90	2.6536	.15922	.84078
91	2.5162	.15097	.84903
92	2.3917	.14350	.85650
93	2.2801	.13681	.86319
94	2.1802	.13081	.86919
95	2.0891	.12535	.87465
96	1.9997	.11998	.88002
97	1.9145	.11487	.88513
98	1.8331	.10999	.89001
99	1.7554	.10532	.89468
100	1.6812	.10087	.89913
101	1.6101	.09661	.90339
102	1.5416	.09250	.90750
103	1.4744	.08846	.91154
104	1.4065	.08439	.91561
105	1.3334	.08000	.92000
106	1.2452	.07471	.92529
107	1.1196	.06718	.93282
108	.9043	.05426	.94574
109	.4717	.02830	.97170

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
0	15.8972	0.95383	0.04617
1	16.2284	.97370	.02630
2	16.2287	.97372	.02628
3	16.2180	.97308	.02692
4	16.2029	.97217	.02783
5	16.1850	.97110	.02890
6	16.1648	.96989	.03011
7	16.1421	.96853	.03147
8	16.1172	.96703	.03297
9	16.0910	.96541	.03459
10	16.0608	.96365	.03635
11	16.0293	.96176	.03824
12	15.9958	.95975	.04025
13	15.9607	.95764	.04236
14	15.9239	.95543	.04457
15	15.8856	.95314	.04686
16	15.8460	.95076	.04924
17	15.8048	.94829	.05171
18	15.7620	.94572	.05428
19	15.7172	.94303	.05697
20	15.6701	.94021	.05979
21	15.6207	.93724	.06276
22	15.5687	.93412	.06588
23	15.5141	.93085	.06915
24	15.4565	.92739	.07261
25	15.3959	.92375	.07625

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
26	15.3322	.91993	.08007
27	15.2652	.91591	.08409
28	15.1946	.91168	.08832
29	15.1208	.90725	.09275
30	15.0432	.90259	.09741
31	14.9622	.89773	.10227
32	14.8775	.89265	.10735
33	14.7888	.88733	.11267
34	14.6960	.88176	.11824
35	14.5989	.87593	.12407
36	14.4975	.86985	.13015
37	14.3915	.86349	.13651
38	14.2811	.85687	.14313
39	14.1663	.84998	.15002
40	14.0468	.84281	.15719
41	13.9227	.83536	.16464
42	13.7940	.82764	.17236
43	13.6604	.81962	.18038
44	13.5219	.81131	.18869
45	13.3781	.80269	.19731
46	13.2290	.79374	.20626
47	13.0746	.78448	.21552
48	12.9147	.77488	.22512
49	12.7496	.76498	.23502
50	12.5793	.75476	.24524
51	12.4039	.74423	.25577
52	12.2232	.73339	.26661
53	12.0367	.72220	.27780
54	11.8436	.71062	.28938
55	11.6432	.69859	.30141
56	11.4353	.68612	.31388
57	11.2200	.67320	.32680
58	10.9980	.65988	.34012
59	10.7703	.64622	.35378
60	10.5376	.63226	.36774
61	10.3005	.61803	.38197
62	10.0587	.60352	.39648
63	9.8118	.58871	.41129
64	9.5592	.57355	.42645
65	9.3005	.55803	.44197
66	9.0352	.54211	.45789
67	8.7639	.52583	.47417
68	8.4874	.50924	.49076
69	8.2068	.49241	.50759
70	7.9234	.47540	.52460
71	7.6371	.45823	.54177
72	7.3480	.44088	.55912
73	7.0568	.42341	.57659
74	6.7645	.40587	.59413
75	6.4721	.38833	.61167
76	6.1788	.37073	.62927
77	5.8845	.35307	.64693
78	5.5910	.33546	.66454
79	5.3018	.31811	.68189
80	5.0195	.30117	.69883
81	4.7482	.28489	.71511
82	4.4892	.26935	.73065
83	4.2398	.25439	.74561
84	3.9927	.23956	.76044
85	3.7401	.22441	.77559
86	3.5016	.21010	.78990
87	3.2790	.19674	.80326
88	3.0719	.18431	.81569
89	2.8808	.17285	.82715
90	2.7058	.16241	.83759
91	2.5502	.15301	.84699
92	2.4116	.14470	.85530
93	2.2901	.13741	.86259
94	2.1839	.13103	.86897
95	2.0891	.12535	.87465
96	1.9997	.11998	.88002
97	1.9145	.11487	.88513
98	1.8331	.10999	.89001
99	1.7554	.10532	.89468
100	1.6812	.10087	.89913
101	1.6101	.09661	.90339
102	1.5416	.09250	.90750
103	1.4744	.08846	.91154
104	1.4065	.08439	.91561

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
105	1.3334	.08000	.92000
106	1.2452	.07471	.92529
107	1.1196	.06718	.93282
108	.9043	.05426	.94574
109	.4717	.02830	.97170

§ 179.6 Notice of termination of life estate.

Upon receipt of a renunciation of interest or notice of death of an Indian or non-Indian who died possessed of a life estate in Indian land, the Superintendent having jurisdiction thereof shall file a copy of the renunciation or death certificate or other evidence of death with the appropriate Bureau of Indian Affairs' Land Titles and Records Office for recording.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-18085 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-106-86]

Limitation on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is adding temporary regulations pertaining to section 382 of the Internal Revenue Code of 1986 ("Code"), which was amended by section 621 of the Tax Reform Act of 1986. The temporary regulations provide the necessary guidance for determining when there is an ownership change resulting in a limitation on corporate net operating loss carryforwards under section 382. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

Dates for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by October 13, 1987.

ADDRESS: Send comments or requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR–106–86], 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone (202) 566–3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add temporary regulations §§ 1.382–1T and 1.382–2T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR"). The final regulations which are proposed to be based on the temporary regulations would be added to Part 1 of Title 26 of the CFR. The final regulations would provide the necessary guidance with respect to the determination of when there is an ownership change that results in a limitation on corporate net operating loss carryforwards under section 382. Section 382 of the Code was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085). For the text of the temporary regulations, see T.D. 8149 published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the added regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the rules provided herein are interpretive. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the **Federal Register.** The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB also send copies of the comments to the Service.

Drafting Information

The principal author of these regulations is Keith E. Stanley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both in matters of substance and style.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–18105 Filed 8–5–87; 3:47 pm]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Docket No. 635]

Western Connecticut Highlands Viticultural Area; Connecticut

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Connecticut to be known as Western Connecticut Highlands. The proposed viticultural area is made up of all of Litchfield County and parts of Fairfield, New Haven and Hartford Counties. The petition was submitted by a winery located in the proposed viticultural area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to further specify the origin of wines they offer for sale to the public.

DATE: Written comments must be received by September 25, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC, 20044–0385 (Notice No. 635).

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4.

These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be ued as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguished by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing a viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally

and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area encompassing the western highlands area of Connecticut which borders on New York and Massachusetts. The proposed viticultural area is to be known as Western Connecticut Highlands. The petition was submitted by Mr. & Mrs. William Hopkins of Hopkins Vineyard, New Preston, Connecticut.

Within the proposed Western Connecticut Highlands viticultural area there are four wineries, with others being established. In addition, there are six grape growers. Overall the area covers approximately 1,570 square miles or 1,004,550 acres.

Evidence of Name

According to the petitioner, the proposed name Western Connecticut Highlands is descriptive of the rolling hills and small mountains in the western part of Connecticut which are different from the surrounding area in Connecticut, southwestern Massachusetts and southeastern New York state.

The petitioner provided documentation from various sources to support only the name Western Highlands. The name Western Highlands has been used by the Connecticut Agricultural Experimental Station, and the U.S. Soil Conservation Service in the publication *Soils of Connecticut*, Bulletin #787, December 1980, by Hill, Sauter and Gonick, to describe the area. The name Western Highlands is also commonly referred to on the General Soil Map of Connecticut. The petitioner also included excerpts from the book *Connecticut: A New Guide* by William Bixby (Scribner's, 1974). The excerpts gave a description of the Western Highlands region as well as other regions of Connecticut.

The petitioner acknowledges that the area is locally called Western Highlands. However, the petitioner chose the proposed viticultural area name Western Connecticut Highlands because that name would distinguish the area from all other highland areas in the United States.

Evidence that the boundaries are as spcified in the petiton. The petitioner claims that the boundary of the proposed viticultural area is based on distinguishing geographic features as well as established and proposed grape-growing in the area. One U.S.G.S. map was submitted by the petitioner with the proposed boundaries prominently marked on it. The boundary description may be found in the regulations section in the back of this document. The petitioner believes the basis for recognition of this boundary is supported by the name Western Highlands in reference material and the unique geography and climate found only in this section of Connecticut.

Evidence Relating to the Geographic Features such as Climate, Soil, Elevation, Physical Features, etc., which set the proposed Western Connecticut Highlands viticultural area apart from the surrounding areas.

(a) Physical Features

According to the petitioner, Connecticut's area is small, but its 5,000 square miles contain more variety of terrain than many larger states. The state can be divided into four physiographic zones: (1) The Coastal Lowlands or Coastal Plain (Long Island Sound influence), (2) the Central Lowlands or Central Valley (Connecticut River influence), (3) the Western Highlands and (4) the Eastern Highlands.

The Coastal Lowlands and Central Valley have elevations ranging from 0 to less than 500 feet above sea level. The long broad central Valley actually begins far to the north in New Hampshire, Vermont and Massachusetts.

The Western and Eastern features are somewhat similar in climate and other features but are geographically separated by the Central Valley. There are some bonded wineries and grape growers in the eastern Highlands. There are no bonded wineries located in the Central Valley.

The Western Highlands are an extension of the Green Mountain and Taconic Ranges to the north in Massachusetts with the general elevation in the proposed viticultural area varying from 200 to 1,500 feet above sea level. The Western Highlands are generally more rugged than the corresponding Eastern Highlands which have altitudes varying from 200 to 1,000 feet above sea level.

(b) Precipitation

Snowfall is heavier in the proposed Western Connecticut Highlands than anywhere else in the state, and ranges from 35 to 100 inches annually. Long-term records indicate that there is considerable variation in seasonal amounts of snowfall in the proposed viticultural area; in one location more than 130 inches fell in one year, during another year at the same location only 37 inches fell. Snowfall varies throughout the State, lighter along the Coastal Lowlands and heavier in the northwest portion of the proposed viticultural area. The northwestern portion of the proposed viticultural area receives about 100 inches of snow annually. At the Coastal Lowlands the average annual rainfall is lower than in the Western Highlands.

(c) Temperature

The Eastern and Western Highlands have mean annual temperatures of 47° F. and 46° F., respectively. The mean annual temperature for the Coastal Lowlands is 50° F. and the Central Valley is 49°. Because of their relatively low elevation the Coastal Lowlands and Central Valley have warmer climates than the proposed area. The climate of the Coastal Lowlands and to some extent the climate of the Central Valley are also greatly influenced by the moderating effect of the Long Island Sound.

The winters in Connecticut are not as long, or as severe, as they are in the northern New England states. In the fall, freezing temperatures throughout the Connecticut regions usually begin about the middle of November, and end by the last week in March along the Coastal Lowlands and early in April in the Western and Eastern Highlands.

The area to the west of the proposed viticultural area is the Hudson River Region, a complex distinct geological region characterized by the Hudson River Valley and surrounding hills. This area has been a grape-growing region for over 300 years. In 1982, the Hudson River Region (encompassing approximately 3,500 square miles) was established as an American viticultural area.

Immediately north of the proposed viticultural area is the Berkshire Mountain region of Massachusetts and further north is the Green Mountain Range. The Berkshire Mountain region is similar in broad physiography to the proposed viticultural area. However, it

is further north than the Western Connecticut Highlands and has a slightly cooler climate. The elevation is higher in the Green Mountain Range which is further into the northern interior, resulting in a more rugged terrain, colder average temperatures, and a shorter growing season than the proposed viticultural area and the Berkshire Mountain Range.

(d) Soils and Geography

The soils within the proposed Western Connecticut Highlands viticultural area are predominantly formed in glacial till derived from gneiss, schist and granite. The Hollis-Charlton, Paxton-Woodbridge, Charlton-Hollis, and Stockbridge-Farmington-Amenia soils are the most commonly found soil series of the Western Connecticut Highlands. The Eastern Highlands also have the same soils except that the Stockbridge-Farmington-Amenia soils are only found in the Western Connecticut Highlands.

The north-south strip of lowland bisected by the Connecticut River comprises the Central Valley, which extends northerly from the Long Island Sound into Massachusetts. Although broken with occasional traprock ridges, most of the land is gently sloping with productive agricultural soils.

The Central Valley is dominated by soils formed in glacial till derived from sandstone, shale, conglomerate and basalt. The Wethersfield-Holyoke-Broadbrook, Penwood-Manchester, Windsor-Ninigret-Merrimac, Elmwood-Buxton-Scantic, and Hadley-Winooski soils are the most commonly found soil series of the Central Valley. These soil series are not found in the Western or Eastern Highlands.

Connecticut's southern boundary is formed by 253 miles of irregular shoreline on the Long Island Sound. Along this shore, stretches a narrow strip of fairly level land designated as the Coastal Lowlands. The coastline is characterized by alternating limited sections of sandy beach, rocky bluffs, and salt water marshes, indented with numerous small coves and inlets. This area is greatly influenced by the moderating temperatures of the Long Island Sound.

Based on the petitioner's evidence provided in this notice, it is his opinion that the proposed Western Connecticut Highlands viticultural area defines a grape-growing region with unique climate and growing conditions different from the surrounding area.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981) because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. ATF especially requests comments concerning the proposed name "Western Connecticut Highlands." ATF requests evidence that the proposed area is locally and/or nationally known as "Western Connecticut Highlands." ATF also notes that there may be other possible names such as Western Highlands, Western Highlands (Connecticut) or Western Highlands of Connecticut. Comments concerning other possible boundaries or names for this proposed viticultural area will be given full consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

Authority and Issuance

27 CFR Part 9—*American Viticultural Areas* is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.122 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.122 Western Connecticut Highlands.

Par. 3. Subpart C is amended by adding § 9.122 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.122 Western Connecticut Highlands.

(a) *Name.* The name of the viticultural area described in this section is "Western Connecticut Highlands."

(b) *Approved map.* The appropriate map for determining the boundaries of the "Western Connecticut Highlands". Viticultural area is 1 U.S.G.S. 1:125,000 series map. It is titled State of Connecticut, Compiled in 1965, Edition of 1966.

(c) *Boundary.* The boundary of the proposed Western Connecticut Highlands viticultural area is as follows:

(1) The beginning point is where Connecticut Route #15 (Merritt Parkway) meets the Connecticut-New York State line near Glenville, CT, in the Town of Greenwich.

(2) The boundary proceeds approximately 80 miles northerly along the Connecticut-New York State line to the northwest corner of Connecticut at the Town of Salisbury (Connecticut-New York-Massachusetts State line);

(3) The boundary proceeds approximately 32 miles east along the Connecticut-Massachusetts State line to the northeast border of the Town of Hartland;

(4) The boundary proceeds approximately 5 miles south along the eastern boundary of the Town of Hartland to the northeast corner of the Town of Barkhamstead (Litchfield-Hartford County line);

(5) The boundary then proceeds south approximately 25 miles along the Litchfield-Hartford County line to the southeast corner of the Town of Plymouth (Litchfield-Hartford-New Haven County line);

(6) The boundary then proceeds approximately 7 miles west along the Litchfield-New Haven County line to Connecticut Route #8 at Waterville in the Town of Waterbury;

(7) The boundary proceeds approximately 25 miles south along Connecticut Route #8 to the intersection of Connecticut Route 15 (Merritt Parkway) near Nichols in the Town of Trumbull;

(8) The boundary proceeds approximately 32 miles west along Connecticut Route 15 (Merritt Parkway) to the beginning point.

Approved: August 3, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-18186 Filed 8-10-87; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 265, and 270

[FRL-3246-1]

Permitting Mobile Hazardous Waste Treatment Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Tentative response to petition; extension of comment period.

SUMMARY: The purpose of this notice is to extend the public comment period on the regulatory exclusion portion of the Agency's June 3, 1987 tentative response to a petition submitted by the Hazardous Waste Treatment Council (HWTC) (52 FR 20914). The agency will accept comment until September 3, 1987, solely on the regulatory exclusion issues raised in section III.D of the June 3, 1987 notice (see 52 FR 20926–20928). The comment period for the remainder of the June 3 proposal and tentative response to the petition remains unaffected and closes on August 3, 1987.

EPA received a request for an extension of the comment period on the regulatory exclusion portion of the June 3 notice from the HWTC. The basis of the request was that more time was needed to provide data and adequately respond to the questions raised in the notice regarding conditional regulatory exclusions from the RCRA permitting requirements. Therefore, to ensure that the HWTC and other commentors have adequate time to prepare their comments on these issues, we are taking this opportunity to lengthen the comment period by 30 days, from August 3 to September 3, 1987.

DATES: The deadline for submitting written comments on the regulatory exclusion issues in section III.D of the June 3, 1987 notice is extended from August 3, 1987 to September 3, 1987.

ADDRESSES: Members of the public must submit an original and two copies of all their comments to: EPA RCRA Docket (S-212), 401 M Street, SW., Washington, DC 20460. Communications should identify the docket number F-87-PMTU-FFFF. The EPA RCRA docket is located at the U.S. Environmental Protection Agency, Sub-basement, 401 M Street, Washington, DC 20460. The docket is open from 9:00–4:00 Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 475-9327. The public may copy a maximum of 50 pages from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424-9346 (in Washington, DC, call 382-3000) or Robin Anderson, (202) 382-4498, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460.

Date: August 3, 1987.

Jack McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87-18212 Filed 8-10-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 558, 559, 560, 561, 562, 564, 566, and 569

[Docket No. 87-9]

Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in connection with its pending proposal to amend its rules governing the filing of agreements by common carriers and other persons subject to the Shipping Act, 1916, requests comments on the termination of the exemption of credit information agreements from that Act's filing and approval requirements.

DATE: Comments due on or before September 10, 1987.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Acting Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5787

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5740

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking published in the **Federal Register** on May 4, 1987 (52 FR 16282) pursuant to sections 15, 18(a), 21, 22, 35 and 43 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a, the Commission invited comments on a proposal to consolidate and amend its rules governing agreements in the domestic offshore trades subject to the 1916 Act. Commenters were particularly requested to address the continuing need for exemptions presently contained in 46 CFR Parts 558 and 559.

The Proposed Rule would consolidate the Commission's rules on 1916 Act agreements under one rule, designated as 46 CFR Part 560, in a manner paralleling the rules under 46 CFR Part 572 governing agreements in U.S. foreign waterborne commerce under the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 through 1720. It was also proposed that the 1916 Act rules, which were previously derived from rules primarily intended to deal with conditions in the foreign commerce, be amended to make them more compatible with conditions in the domestic offshore commerce. Among other things, the Proposed Rule would incorporate under Part 560 the exemption for credit information agreements now set forth under Part 559.

After further consideration of the issues presented by the exemption of credit information agreements from the filing and approval requirements of the 1916 Act, the Commission is requesting comment on a proposal to terminate the exemption. This Supplemental Notice of Proposed Rulemaking is being issued pursuant to section 35 of the 1916 Act, 46 U.S.C. App. 833a, among other authorities, and serves to notify all interested parties of the proposed termination of this exemption, and to give all interested parties an opportunity to be heard through the filing of written comment in accordance with section 35 of the 1916 Act.

The existing exemption for credit information agreements appears at 46 CFR 559.2(e) which states:

> *"Credit information agreement"* means an agreement between common carriers by water or their duly appointed representatives which provides only for the collection, compilation and exchange of credit experience information. Under such an agreement, the parties cannot discuss or agree on any matter which is required to be published in a tariff pursuant to the Shipping Act, 1916 or any rule published pursuant thereto.

The Commission is now further proposing via this Supplemental Notice of Proposed Rulemaking to terminate the current exemption for this class of agreements under the 1916 Act, since credit is an important factor in price competition and should be placed under regulatory scrutiny. The distinction between the sharing of credit information and the collective formation of credit policy and pricing can easily become blurred. The significance of credit information agreements to price competition would therefore appear to militate against their being exempted from the 1916 Act's filing requirements, in order that the Commission can ensure that the 1916 Act's standards are adhered to. Moreover, there would appear to be no reason to treat this class of agreements differently under the 1916 Act and the 1984 Act.

In this connection, the Commission wishes to note that it recognizes that the sharing of certain credit information is inherent in the process of forming collective credit rules generally interstitial to collective ratemaking authority. Thus, where parties already have collective ratemaking authority and wish to form a credit information agreement, depending on the contents of that agreement, they may already have all the authority they require and may not need to file an additional credit information agreement for approval.

Additionally, the Commission wishes to note that the termination of the exemption would not result in a bar to the formation of credit information agreements, but would merely require the parties to comply with the 1916 Act's filing and approval requirements.

The Commission, therefore, invites comments on the termination of the exemption of credit information agreements in the context of its pending rulemaking proposal to combine all of its rules pertaining to agreements subject to the 1916 Act under Part 560. Because this is a modification of the original proposal, the comment period in this proceeding is reopened and extended an additional thirty days after publication of this Supplemental Notice of Proposed Rulemaking in the **Federal Register** for the sole purpose of receiving comments on the credit information agreement exemption. Issuance of a Final Rule in this proceeding will be held in abeyance pending the Commission's consideration of the comments filed in response to this Supplemental Notice of Proposed Rulemaking.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-16203 Filed 8-10-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 647

[Docket No. 87-B]

Project Management Oversight

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 324 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, effective April 2, 1987 (the Act), permits the Urban Mass Transportation Administration (UMTA) to use up to ½ of 1 percent of the funds made available in each fiscal year under UMTA's major capital programs for project management oversight of major capital projects. Section 324 also requires a grantee constructing a major capital project to prepare and, upon UMTA approval, to implement a project management plan. The section further requires that its provisions be implemented by a regulation. Accordingly, this notice of proposed rulemaking seeks comment on UMTA's proposed implementation of the requirements of section 324 of the Act.

DATE: Comments should be received by October 13, 1987.

ADDRESS: Comments should be addressed to Docket Clerk, Docket 87-B, UMTA, Department of Transportation, Room 9316, 400 7th Street, SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: For general program questions: Frank McCarron, Office of Grants Management, Room 9315, UMTA, 400 7th St., SW., Washington, DC 20590, (202) 366-2440. For legal matters: Daniel Duff, Assistant Chief Counsel, Room 9316, same address, (202) 366-4063.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background

A few years ago the Urban Mass Transportation Administration (UMTA) reviewed the way in which it provided oversight of the construction of major

capital projects. After examining a number of other Federal and related agency oversight programs, UMTA concluded that it was important to increase its independent oversight of significant UMTA-funded projects. In light of the budget deficit, however, UMTA did not want to expand its staff to address the problem. As a result, UMTA developed a national project management oversight program for major capital projects. Under this program, UMTA assigned independent contractors, paid by and directly reporting to UMTA, to perform project management oversight functions on major capital projects. The contractors reported to UMTA staff, thus allowing UMTA to more carefully monitor significant capital projects.

The program was immediately useful to UMTA and its grantees. There were, however, significant funding problems. UMTA was not authorized to use funds from any of its major capital programs to provide for such a program, and instead had to rely on funding from its smaller research and study programs. This problem was resolved when Congress, in both the FY 1986 and FY 1987 DOT appropriation acts, authorized UMTA to use up to ½ of 1 percent of the funding available under its major capital programs in each of those fiscal years to contract directly with independent contractors for project management oversight.

In 1985, in light of the funding made available in the appropriation acts, UMTA undertook a competitive procurement. As a result, UMTA retained ten highly qualified national firms as support contractors. Currently nine of the ten contractors are actively working on fourteen separate assignments that cover twenty-three different projects. In making assignments, considerable efforts are taken to make certain that there are no real or apparent conflicts of interest between the UMTA contractors and the projects assigned to them. Once assigned to a project, the contractor monitors the grantee's overall implementation of the project and reports directly to UMTA on the grantee's general management of the project. Such reports emphasize project cost, schedule and quality.

B. Statutory Program

Because of the success and usefulness of this initiative, a project management oversight program was included in UMTA's recently enacted reauthorization legislation (the Surface Transportation and Uniform Relocation Assistance Act of 1987). Section 324 of that Act authorizes UMTA to use funds from its capital programs for project management oversight. In any fiscal year, UMTA may use up to ½ of 1 percent of the funds available under sections 3, 9, and 18 of the Urban Mass Transportation Act of 1964, as amended, 23 U.S.C. 103(e)(4) (interstate transfer—transit projects), and the National Capital Transportation Act of 1969 (the Washington, DC, Metrorail system) for project management oversight. In addition, section 324 requires a grantee constructing a major capital project to prepare a project management plan and, upon UMTA approval, to implement such plan.

Section 324 further requires UMTA to issue regulations to implement its provisions. This notice of proposed rulemaking is issued in response to that requirement.

C. The Proposed Regulation

Section 647.4 describes UMTA's authority to contract directly for project management oversight using funds from its major capital programs, and provides a 100 percent Federal share for any such contracts. In accordance with section 324 of the Act, this section also requires a grantee to provide UMTA and its contractors reasonable access to its records and construction sites. Essentially, each of these provisions reflects the way UMTA has been administering the program.

Section 647.5 reflects the language of section 324 of the Act by requiring a grantee constructing a major capital project with UMTA funds to submit a project management plan to UMTA for review and approval. The grantee will be advised during the grant approval process when its plan should be submitted to UMTA. (Section 647.5(a).) Under section 324 of the Act, UMTA must approve the grantee's plan within 60 days of submission, or explain to the grantee why additional time is required. (Section 647.5(a) (1) and (2).) If a plan is disapproved, UMTA must explain why. (Section 647.5(a)(3).) This section also provides that the grantee shall submit updates to its plan periodically as requested by UMTA. (Section 647.5(d).) These updates are to include such items as revisions to the project budget and schedule, financing, and ridership estimates.

Section 647.6 covers the contents of a grantee project management plan and reflects the elements specified in the statute. The elements, which essentially are self-explanatory, include the following components.

—Adequate recipient staff organization, complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;
—A budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;
—A construction schedule;
—A document control procedure and recordkeeping system;
—A change order procedure which includes a documented, systematic approach to the handling of construction change orders;
—Organizational structures, management skills, and staffing levels required throughout the construction phase;
—Quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;
—Materials testing policies and procedures;
—Internal plan implementation and reporting requirements;
—Criteria and procedures to be used for testing the operational system or its major components; and
—The recipient's commitment to make monthly submissions of project budget and project schedule to the Administrator.

In specifying the contents of the plan, section 324 of the Act states that the plan "* * * shall, as required in each case by the Secretary, provide for * * *." the above-listed elements. It is UMTA's view that in certain circumstances not all of these elements may be necessary or appropriate. Arguably, the language "as required in each case by the Secretary" provides some discretion to the Administrator in determining the proper contents of each plan. Section 647.6(b) thus would permit the Administrator, upon application of a grantee or on his own initiative, to waive certain requirements upon a clear showing that any of the elements are unnecessary.

Under the "Definitions" section, at § 647.3, there is one key definition that UMTA particularly seeks comment on. That definition is "major capital project," which triggers both project management oversight on the part of UMTA and the project management plan that a grantee must prepare. We have defined "major capital project" generally based on our experience with the program to date. Clearly, any new fixed guideway (i.e., a new start) or extension to a fixed guideway funded by UMTA should be subject to project

management oversight, which the first part of the definition requires. (The definition of "fixed guideway" is the same as that in section 12(c)(2) of the Urban Mass Transportation Act of 1964, as amended.) In addition, any project involving a significant expenditure of Federal funds, such as those rail modernization projects funded by UMTA that have been subject to UMTA's full funding contract concept, also is covered. (A full funding contract establishes the maximum amount of Federal funding for a project and requires a grantee to pay the rest.) In general, the cost of new start and rail modernization projects included in the definition of major capital projects will exceed $100 million.

Recognizing, however, that there may well be projects that do not meet these criteria but in fact require project management oversight, we have included a catchall provision that permits the Administrator to decide whether a particular project should be subject to the program. Any such determination would be guided by such factors as degree of difficulty of the project, its uniqueness, or past construction problems on the part of a particular grantee.

Finally, in accordance with the statute, the definition provides that it does not apply to any project which is exclusively for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

It should also be pointed out that the requirements of this regulation do not affect UMTA's oversight of other projects not covered by this regulation. UMTA continues to provide oversight of its projects, particularly through the triennial review process, periodic reviews and other administrative practices.

II. Regulatory Impacts

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more. Moreover, this regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that economic impact of this regulation is so minimal that a full regulatory evaluation is not necessary.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

C. Environmental Impacts

This proposed regulation would not adversely affect the environment.

D. Paperwork Reduction Act

The collection of information requirements in this rule is subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. Section 324(e) of the Act specifically requires a grantee constructing a major capital project to prepare a plan and submit it to UMTA for approval. These requirements are reflected in this rule and are being submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for approval.

List of Subjects in 49 CFR Part 647

Government contracts, Grant programs—Transportation, Mass transportation.

Dated: August 5, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

III. New 49 CFR Part 647

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI would be amended by adding new Part 647 to read as follows:

PART 647—PROJECT MANAGEMENT OVERSIGHT

Sec.

Authority: Section 324, Pub. L. 100-17, 101 Stat. 235, 49 U.S.C. 1619.

§ 647.1 Purpose.

This part implements section 324 of the Surface Transportation and Uniform Relocation Assistance Act (Pub. L. 100-17), which authorizes UMTA, by delegation of the Secretary of Transportation, to contract directly with any person to oversee construction in connection with a major capital project funded by UMTA. The rule also implements section 324 of the Act by requiring a recipient of Federal financial assistance from UMTA to prepare and carry out a project management plan in connection with a major capital project the recipient is undertaking.

§ 647.2 Scope.

This rule applies to a recipient of Federal financial assistance undertaking a major capital project using funds made available under the Urban Mass Transportation Act of 1964, as amended, 23 U.S.C. 103(e)(4), or the National Capital Transportation Act of 1969.

§ 647.3 Definitions.

As used in this part:

(a) "Act" means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17).

(b) "Administrator" means the Administrator of the Urban Mass Transportation Administration or the Administrator's designee.

(c) "Days" means calendar days.

(d) "Major capital project" means a project that:

(1) Involves the construction of a new fixed guideway segment, or extension of an existing fixed guideway, for use by bus or rail;

(2) Rehabilitates or modernizes an existing fixed guideway or segment of guideway pursuant to a full funding contract with UMTA; or

(3) The Administrator determines is major.

The term does not apply to any project which is exclusively for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

(e) "Fixed guideway" means any public transportation facility which utilizes and occupies a separate right-of-way or rails for the exclusive use of public transportation service including, but not limited to, this fixed rail, automated guideway transit and exclusive facilities for buses and other high occupancy vehicles, and also means a public transportation facility which uses a fixed catenary system and utilizes a right-of-way useable by other forms of transportation.

(f) "Full funding contract" means an agreement between UMTA and a grantee that specifically limits the amount of Federal funding for a particular project.

(g) "UMTA" means the Urban Mass Transportation Administration.

§ 647.4 Project Management Oversight.

(a) The Administrator may use up to ½ of 1 percent of the funds made available each fiscal year under sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964, as amended, 23 U.S.C. 103(e)(4), or 14(b) of the National Capital Transportation Act of 1965, to contract with any person to provide a project management oversight service in connection with a major capital project funded under any such section.

(b) Project management oversight of a major capital project by UMTA begins

as soon as practicable, preferably during the preliminary engineering stage of a project. This oversight function is administered by UMTA staff with outside contractor support as dictated by specific circumstances.

(c) A contract entered into by the Administrator with a contractor to perform project management oversight services shall provide for the payment by the Administrator of 100 percent of the cost of carrying out the contract.

(d) A grantee constructing a major capital project with UMTA funds shall provide the Administrator and contractors chosen by the Administrator such access to its records and construction sites as may reasonably be required.

§ 647.5 Grantee Project Management Plan.

(a) A grantee undertaking a major capital project with UMTA funds shall submit a project management plan, prepared in accordance with § 647.6, to the Administrator within the time period specified at the time of grant approval.

(1) The Administrator shall review and approve a plan, or modification of a previously approved plan, within 60 days of submission of a completed plan.

(2) If the plan is not approved within 60 days, the Administrator shall advise the grantee how much additional time will be required to complete the review and what changes, if any, are necessary.

(3) If the Administrator disapproves the plan, the Administrator will inform the grantee of the reasons for such disapproval.

(b) Upon approval of the plan by the Administrator, the grantee shall implement the plan.

(c) If an approved plan requires substantial modification, the grantee shall submit the proposed changes, with an explanation, to the Administrator.

(d) The grantee shall submit periodic updates to the project management plan. Such updates shall include, but not be limited to:

(1) Project budget;

(2) Project schedule;

(3) Financing;

(4) Ridership estimates; and

(5) Where applicable, the status of local efforts to enhance ridership when estimates are contingent, in part, upon the success of such efforts.

(e) The grantee shall submit to the Administrator on a monthly basis current data on the project's budget and schedule on a monthly basis.

§ 647.6 Contents of a Grantee Project Management Plan.

(a) Except as provided in paragraph (b) of this section, a grantee's project management plan shall include:

(1) Adequate recipient staff organization, complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) A budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;

(3) A construction schedule;

(4) A document control procedure and recordkeeping system;

(5) A change order procedure which includes a documented, systematic approach to the handling of construction change orders;

(6) Organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) Quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;

(8) Materials testing policies and procedures;

(9) Internal plan implementation and reporting requirements;

(10) Criteria and procedures to be used for testing the operational system or its major components;

(11) The recipient's commitment to make monthly submissions of project budget and project schedule to the Administrator.

(b) Upon the request of a grantee, or on his own initiative, the Administrator may waive any of the elements in paragraph (a) of this section that the Administrator deems are not necessary for a particular plan.

[FR Doc. 87-18132 Filed 8-10-87; 8:45 am]
BILLING CODE 4910-57-M

Notices

Federal Register
Vol. 52, No. 154
Tuesday, August 11, 1987

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 COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.
Title: Statement by Ultimate Consignee and Purchaser.
Form Number: Agency—ITA-629P, EAR 375.2; OMB—0625-0136.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 38,000 respondents; 19,633 reporting/recordkeeping hours.
Needs and Uses: Through the use of Form ITA-629P, the foreign consignee and or purchaser is required to provide information regarding the disposition of the licensed commodities and technology. The information is used by the Export Administration to determine whether or not the commodities are appropriate for the ultimate consignees stated end-use. In the event of a diversion, Export Administration also uses the information as a means to revoke or deny future export privileges.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion/recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: John Griffen, 395-7340.

Agency: International Trade Administration.
Title: Swedish Consignee's Letter of Assurance.
Form Number: Agency—EAR 372.5; OMB—0625-0142.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 300 respondents; 160 reporting/recordkeeping hours.
Needs and Uses: The United States is concerned that reexports of U.S. commodities/technology may fall into undesirable hands, and be diverted to the Soviet Union. Export Administration needs assurance that consignees in Sweden have a record of compliance with the Export Administration Act. The end-use assurances are needed due to the fact that Sweden does not unilaterally control the transit of non-Swedish origin commodities. Prelicense checks are conducted by diplomatic staff in some instances. The U.S. exporter, however, can request his Swedish customers to affirm that they will uphold the Export Administration requirements and agree to provide information on the disposition of U.S. licensed goods.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion/recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: John Griffen, 395-7340.

Agency: International Trade Administration.
Title: Record of Validated License Shipments.
Form Number: Agency—EAR 386.2(d); OMB—0625-0051.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 80,000 respondents; 6,666 reporting/recordkeeping hours.
Needs and Uses: Through the Record of Validated License Shipments procedure, the U.S. export license holder must supply information regarding the disposition of the licensed commodities and technology. The purpose of this procedure is to prevent shipments to unauthorized destinations.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion/recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NE., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-18168 Filed 8-10-87; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 362]

Approval of Extension of Manufacturing Authority For the Berg Steel Pipe Corporation Operation in Foreign-Trade Zone 65, Panama City, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Panama City Port Authority (PCPA), Grantee of Foreign-Trade Zone (FTZ) 65, has applied to the Board for an extension of Berg Steel Pipe Corporation's (BSPC) authority to use zone procedures for its steel pipe manufacturing operations at its plant in FTZ 65:

Whereas, the application was accepted for filing on June 27, 1986, and notice inviting public comment was given in the **Federal Register** on July 11, 1986 (Docket No. 23-86, 51 FR 25225);

Whereas, BSPC was given authority to manufacture pipe in FTZ 65 for a limited time ending March 1, 1987, when the zone was approved in 1981 (Board Order 171, 46 FR 8072);

Whereas, BSPC's authority was temporarily extended to August 31, 1987 (Board Order 345, 52 FR 7286);

Whereas, BSPC has made a commitment to purchase only domestic steel and foreign steel licensed under

the President's Steel Program while the program is in effect;

Whereas, the examiners committee which investigated the application has found that the proposal would be in the public interest provided that approval is given for a limited time; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that approval of the application would be in the public interest, provided that approval is subject to a time limit extending one year beyond the present expiration of the President's Steel Program;

Now, therefore, the Board hereby orders:

That BSPC is authorized to use zone procedures for its steel pipe manufacturing operations in FTZ 65 for a period ending September 30, 1990. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 31st day of July 1987.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 87-18231 Filed 8-10-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 9-87]

Application for Subzone for U.S. Shoe Corporation Plant; Foreign-Trade Zone 46; Cincinnati, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of FTZ 46, requesting special-purpose subzone status for the storage and distribution facilities of U.S. Shoe Corporation in Cincinnati, Ohio, within the Cincinnati Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 17, 1987.

U.S. Shoe is a retailing and footwear manufacturing firm with 1985 sales of $1.9 billion. Headquartered in Cincinnati, it has 16 footwear manufacturing plants in 7 states.

The proposed subzone is for the company's primary raw material and finished product storage and distribution center, covering 15 acres at Eastwood and Kingsley Drives, Cincinnati. Raw materials for footwear production are received, stored, and distributed to U.S. manufacturing plants. Some 35 percent of the materials are sourced abroad. The facility also receives finished footwear from the company's production plants and directly from abroad for distribution in the U.S. and abroad. These operations employ close to 300 persons.

No manufacturing approvals are being sought. Zone procedures will allow the company to defer duty payment on the raw materials and finished footwear sourced abroad. Zone savings will contribute to the company's overall cost reduction program, improving its international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 18, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 9504 Federal Office Building, 550 Main Street, Cincinnati, OH 45202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230

Dated: August 5, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-18232 Filed 8-10-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Export Trade Certificate of Review; Gerhardt Holding Co., Inc.

Editorial Note.—In the issue of July 8, 1987, on pages 25621 and 25622, a notice of export trade certificate of review (Application No. 86-00011) was inadvertently printed twice and the following notice was omitted.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the certificiate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Reviews, application number 84-A0024."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #84-00024, which was issued on September 20, 1984 (49 FR 37821, September 26, 1984 and 49

FR 38964, October 2, 1984) and amended effective July 15, 1985 (50 FR 36126, September 5, 1985).

Applicant: Gerhardt Holding Company, Inc., 819 Central Avenue, P.O. Box 10161, Jefferson (New Orleans), Louisiana 70181

Application #: 84–A0024

Date Deemed Submitted: June 22, 1987.

Members (in addition to applicant):

Gerhardt's, Inc., Jefferson (New Orleans), LA

Gerhardt's, Inc., Houston, TX

Gerhardt's, International, Inc., Houston, TX

Gerhardt's, Inc., Odessa, TX

Gerhardt's, Inc., Ventura, CA

Gerhardt's S.A. de C.V., Tlalnepantla, Mexico

Summary of the Application

Gerhardt's, Inc., of Louisiana was issued an export trade certificate of review on September 20, 1984 (Application #84–00024) (49 FR 37821, September 26, 1984 and 49 FR 38964, October 2, 1984) and an amended certificate effective July 15, 1985 (Application #84–00024) (50 FR 36126, September 5, 1985). Members of its certificate currently are: Gerhardt's, Inc. (Houston, TX); Gerhardt's, Inc. (Odessa, TX); and Gerhardt's International, Inc. (Houston, TX).

Gerhardt's Holding Company, Inc. seeks to amend the certificate for Gerhardt's, Inc. of Louisiana to make the following changes:

1. The certificate holder will be changed from Gerhardt's, Inc. to its controlling entity, Gerhardt Holding Company, Inc.

2. Gerhardt's, Inc. of Louisiana is no longer the certificate holder and will be added as a "Member" of the certificate.

3. Gerhardt's, Inc. of California and Gerhardt S.A. de C.V. of Mexico will be added as "Members" of the certificate.

4. "Taking title to goods" will be added to "Export-Related Services" under "Export Trade".

5. Under "Export Trade Activities and Methods of Operation," Gerhardt Holding Company, Inc. seeks certification to establish the resale price of Products in Export Trade.

Date: June 30, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–15434 Filed 7–7–87; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 552]

Marine Mammals; Permit Modification; Dr. Gerald L. Kooyman

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 552 issued to Dr. Gerald L. Kooyman, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, La Jolla, California 92093, is modified as follows:

Section A is deleted and replaced by:

A. Numbers and Kinds of Marine Mammals

The following species shall be obtained from beached/stranded rehabilitated or captive born stocks:

1. Up to 10 harbor seals (*Phoca vitulina*) of which seven (7) may be used in open physiological studies and released at the conclusion of the experiments provided they meet the criteria in Special Conditions B.3 and 8.

2. Up to 15 California sea lions (*Zalophus californianus*) of which five (5) may be used in open ocean work may be released if they meet the criteria in Special Conditions B.3 and 8."

Section B.1 is Deleted and Replaced by

1. The research shall be conducted by the means and for the purposes set forth in the Application and Modification request.

Section B.3 is Deleted and Replaced by

3. Animals authorized for release into the open ocean must appear robust and able to adopt to feeding in the wild. All other animals no longer needed for research shall be returned to the facility from which they were obtained if that facility has agreed to the return. The return of animals to other than the source facility shall be coordinated through the Stranding Coordinator, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Section B.8 Through B.11 are Added

8. Animals which can not be used for open ocean studies are:

a. Beached/stranded animals that have been determined "unreasonable" by the authority at the facility in which they were rehabilitated; and

b. Captive born animals.

9. The Permit Holder must make arrangements for visual monitoring of the animals for at least 30 days post-release or escape to determine whether and how the animals are readapting to the wild.

10. Every feasible effort shall be made to recover, treat, and provide for any released/escaped animals that show signs of aberrant behavior, stress, or starvation as a result of their inability to readapt to the wild. If necessary to ensure the well-being of animals, such efforts should include making arrangements for captive maintenance.

11. The annual report of activities required by Special Condition B.5 should include the results of post-release monitoring, particularly in regard to its background with respect to human contact.

This Modification becomes effective on August 5, 1987.

The Permit, as modified, is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: July 31, 1987.

Nancy Foster,

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–18194 Filed 8–10–87; 8:45 am]

BILLING CODE 3510–22–M

[P77#27]

Marine Mammals; Issuance of Permit; Southwest Fisheries Center National Marine Fisheries Service

On April 15, 1987, notice was published in the **Federal Register** (52 FR 12227) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, to take harbor seals (*Phoca vitulina*) for scientific research.

Notice is hereby given that on August 4, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine

Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: August 4, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–18195 Filed 8–10–87; 8:45 am]

BILLING CODE 3510–22–M

Coastal Zone Management Federal, Consistency Appeal by Exxon Company, U.S.A. From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of stay.

On July 31, 1987, the Acting Secretary of Commerce issued an Order granting a stay in the Federal consistency appeal of Exxon Company, U.S.A. Exxon's appeal is taken from an objection by the California Coastal Commission (Commission) to Exxon's proposed expanded development and production from the Santa Ynez Unit (SYU) pursuant to its offshore option.

In a letter dated June 3, 1987, the Chairman of the County of Santa Barbara Board of Supervisors (County) requested that the Secretary stay the appeal to allow the permitting by the County of a modified onshore option. Both Exxon and the Attorney General for the State of California, on behalf of the Commission, endorsed the County's request for a stay.

The Order stays the proceedings indefinitely pending the issuance of permits for the modified onshore option. The Order provides that the Secretary will lift the stay upon request by any party informing the Secretary that the timely permitting of the modified onshore option with acceptable conditions is unlikely to occur.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235 (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: August 6, 1987.

James W. Brennan,

Acting General Counsel.

[FR Doc. 87–18196 Filed 8–10–87; 8:45 am]

BILLING CODE 3510–08–M

Patent and Trademark Office

Special Status for Patent Applications Relating to Superconductivity

In his Remarks of July 28, 1987, to the Federal Conference On Commercial Applications Of Superconductivity, the President stated that "We need to strengthen patent laws to increase protection for manufacturing processes and speed up the patent process so that it can keep pace with the fast-paced world of high technology." The President also noted that "to most of us laymen, superconductivity was a completely new term, but it wasn't long before we learned of the great promise it held out to alter our world for the better—a quantum leap in energy efficiency that would bring with it a host of benefits, not least among them a reduced dependence on foreign oil, a cleaner environment, and a stronger national economy." The President's Superconductivity Initiative of even date included, as a major administrative component, a proposal "Directing the Patent and Trademark Office to accelerate the processing of patent applications and adjudication of disputes involving superconductivity technologies when requested by the applicants to do so."

In accordance with the President's proposal, the Patent and Trademark Office will, on request, accord "special" status to all patent applications for inventions involving superconductive materials. Examples of such inventions would include those directed to the superconductive materials themselves as well as to their manufacture and application. In order that the Patent and Trademark Office may implement this procedure, we invite all applicants, desiring to participate in this program to request that their applications be accorded "special" status. Such requests should be in writing, should identify the application by serial number and filing date, and should be accompanied by a statement under 37 CFR 1.102 that the invention involves superconductive materials. No fee is required. The statement must be the Patent and Trademark Office. Decisions whether to accord "special" status on the basis of a request will be made by the appropriate Group Director.

Requests should be addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Dated: August 5, 1987.

Donald J. Quigg,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 87–18209 Filed 8–10–87; 8:45 am]

BILLING CODE 3510–16–M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

Summary: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and times: Monday, August 17, 1987; Beginning 9:00 a.m.; Tuesday, August 18, 1987, Beginning 9:00 a.m.; Wednesday, August 19, 1987, Beginning 9:00 a.m.

Place: Suite 520 4401 Ford Avenue, Alexandria, Virginia, 22301–0268;

Type of meeting: Closed.

Contact person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301–0268, Telephone (202) 756–0411.

Purpose of meeting: To receive

additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefing and public hearings.

Supplementary information: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(9) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 87-18160 Filed 8-10-87; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 7th, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will meet from August 26th through 28th, 1987, at the Pentagon, Washington, DC from 8:00 am to 5:00 pm each day. The purpose of the meeting is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III ICBM.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-18448 Filed 8-10-87; 11:13 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Invitation of Applications for New Awards for Fiscal Year 1988

Title of Program: Research in Education of the Handicapped.

Purpose: To assist research and related purposes, and to conduct research, surveys, or demonstrations, relating to the education of handicapped children.

Applications Available: August 21, 1987.

Applicable Regulations: (a) The Research in Education of the Handicapped Program Regulations, 34 CFR Part 324, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and (c) the Biennial-Funding Priorities published in the **Federal Register** on March 10, 1987 at 52 FR 7386.

Priorities: The Secretary announces, pursuant to 34 CFR 75.105(c)(3), 34 CFR 324.30, and the Biennial-Funding Priorities noted above, the following prorities for fiscal year 1988. The Secretary will give an absolute preference to applications that meet any of these priorities.

Field-Initiated Research Projects

This priority provides support for a broad range of field-initiated research projects focusing on the education of handicapped children and youth consistent with the purpose of the program as stated in 34 CFR 324.1.

Student-Initiated Research Projects

This priority provides support to postsecondary students to initiate and direct a broad range of research and research-related projects focusing on the education of handicapped children consistent with the purpose of the program as stated in 34 CFR 324.1.

Home and School Cooperation in Social and Motivational Development

This priority supports research projects that identify strategies and students in the elementary grades. Projects must explore practices and experiences at home, in school, and in the community that result in the development of self-esteem, feelings of self-confidence and independence which have been found to be related to the achievement of handicapped students. Projects must research the cooperative involvement of parents, educational personnel, and guidance and other related service personnel in planning and implementing those strategies and experiences. Applications submitted under this priority must provide a conceptual framework, based on previous research, that shows the hypothesized relationships between the home, school, and community practices and experiences to be studied and the development of self-esteem, self-confidence, and independence by handicapped students. Procedures and instruments that will be used to measure self-esteem, self-confidence, and independence must also be specified.

For Applications or Information Contact: Linda Glidewell, U.S. Department of Education, Office of Special Education Programs, Division of Innovation and development, 400 Maryland Avenue SW., (Switzer Building, Room 3094-M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

Program Authority: 20 U.S.C. 1441-1444.

Supplementary Information and Requirements: None.

Dated: August 6, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

APPLICATION NOTICES FOR FISCAL YEAR 1988

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Field—Initiated Research Projects (CFDA No. 84.023C1)	10/09/87	$2,000,000	$30,000-$130,000	$100,000	20	Up to 60.
Student—Initiated Research Projects (CFDA No. 84.023B1)	02/16/88	$150,000	$3,000-$12,000	$8,000	20	Up to 18.
Home and School Cooperation in Social and Motivational Development (CFDA No. 84.023T1).	10/30/87	$1,050,000	$140,000-$160,000	$150,000	7	Up to 48.

[FR Doc. 87-18221 Filed 8-10-87; 8:45 am]

BILLING CODE 4000-01-M

[Program (CFDA No.: 84.167)]

Invitation of Applications for New Awards Under the Library Literacy

Purpose: Provides grants not to exceed $25,000 each to State and local public libraries to support literacy projects.

Deadline for Transmittal of Applications: November 20, 1987.

Deadline for Intergovernmental Review Comments: January 20, 1988.

Applications Available: September 18, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Average Size of Awards: $20,000.

Estimated Number of Awards: 250.

Project Period: 12 months.

Applicable Regulations: (a) The Library Services and Construction Act Library Literacy Program Regulations, 34 CFR Part 769, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402L, Washington, DC 20208–1430. Telephone (202) 357–6315.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: August 6, 1987.

Ronald P. Preston,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–18179 Filed 8–10–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No: 84.163A]

Invitation of Applications for New Awards Under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program for Fiscal Year 1988

Purpose: Provides basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Deadline for Transmittal of Applications: October 15, 1987.

Deadline for Intergovernmental Review Comments: December 14, 1987.

Applications Available: August 31, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Average Size of Awards: $3,700. (Actual amount to be determined by final appropriation.)

Estimated Number of Awards: 200.

Project Period: 12 months.

Applicable Regulations: (a) The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations, 34 CFR Part 771, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208–1430. Telephone (202) 357–6315.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: August 6, 1987.

Ronald P. Preston,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–18180 Filed 8–10–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.163B]

Invitation of Applications for New Awards Under the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program for Fiscal Year 1988

Purpose: With funds remaining after Basic Grants are awarded, the program provides discretionary grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indians and Hawaiian natives.

Deadline for Transmittal of Applications: May 6, 1988.

Deadline for Intergovernmental Review Comments: July 5, 1988.

Applications Available: March 14, 1988.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Average Size of Award: $67,000.

Estimated Number of Awards: 17.

Project Period: 12 months.

Applicable Regulations: (a) The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations, 34 CFR Part 772, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208–1430. Telephone: (202) 357–6315.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: August 6, 1987.

Ronald P. Preston,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–18181 Filed 8–10–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award to the State of Alaska (Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a 12-month grant to the State of Alaska, Department of Natural Resources, Division of Geological and Geophysical Surveys, in the amount of $91,800 on a 45/55 cost-shared basis.

The DOE has determined that restriction to the State of Alaska is appropriate based upon the following information:

The DOE and the State of Alaska have entered into an agreement relating to fossil energy resource characterization, research and technology development, and technology transfer to advance the application of new technologies to the Alaskan reserves of crude oil, natural gas, heavy oil, tar sand oil, coal, shale oil, methane hydrates, and peat, and may include scientific activities and investigations of underlying environmental concerns.

This project will focus on research to develop an on-line North Slope bibliography. The on-line North Slope bibliography will consist of a computerized bibliographic listing of all pertinent geologic literature for the North Slope of Alaska, including Arctic National Wildlife Refuge. This bibliography will list geologic literature by author, subject, geographic area, or other specified search-and-retrieval criteria. The resulting list of references will be readily available on-line or as a conventional hard copy document and will benefit all parties interested in issues relevant to the area.

These activities to research the application of new technologies to the arctic fossil energy reserves are in furtherance of the DOE mission and the Alaskan objectives to ensure a

continued supply of fossil fuels to the consumer in a safe, economic and environmentally acceptable manner. Since the State of Alaska has been charged with research in support of Alaska resource development, has an ongoing program (facilities, equipment and personnel), and is an integral part of the Alaskan infrastructure involved in resources recovery issues, it is uniquely qualified to carry out the work under this grant. Therefore, it has been determined that it is appropriate to award this grant to the State of Alaska on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: Brenda L. Summers, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4340, Procurement Request No. 21–87MC24052.000.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

Dated: July 23, 1987.

[FR Doc. 87–18223 Filed 8–10–87; 8:45 am]

BILLING CODE 6450–10–M

Morgantown Energy Technology Center; Financial Assistance Award to the University of Alaska (Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a 12-month grant to the University of Alaska in the amount of $50,000 on a 50/50 cost-sharing basis.

The DOE has determined that restriction to the University of Alaska is appropiate based upon the following information:

The DOE and the State of Alaska have entered into an agreement relating to fossil energy resource characterization, research and technology development, and technology transfer to advance the application of new technology to the Alaskan reserves of crude oil, natural gas, heavy oil, tar sand oil, coal, shale oil, methane hydrates, and peat, and may include scientific activities and investigations of underlying environmental concerns. The University of Alaska has been designated in the agreement as a unit of the State for purposes of activities that may be conducted under this agreement.

This project will focus on research to assess and characterize the extent of natural gas in the arctic, and compare the technology, environmental, and economic issues associated with options for Alaskan natural gas use and conversion for assimilation into a meaningful development strategy.

These activities to research the application of new technologies to the arctic fossil energy reserves are in furtherance of the DOE mission and the Alaskan objectives to ensure a continued supply of fossil fuels to the consumer in a safe, economic and environmentally acceptable manner. Since the University of Alaska has been charged with research in support of Alaska resource development, has an ongoing program (facilities, equipment and personnel), and is an integral part of the Alaskan infrastructure involved in resources recovery issues, it is uniquely qualified to carry out the work under this grant. Therefore, it has been determined that, in cooperation with the State of Alaska, it is appropriate to award this grant to the University of Alaska on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: Brenda L. Summers, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4340, Procurement Request No. 21–87MC24219.000.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

Date: July 23, 1987.

[FR Doc. 87–18224 Filed 8–10–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA C&E 87–58; Certification Notice—3]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended; Central Jersey Energy Associates, Ltd., et al.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Thirteen owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Central Jersey Energy Associates, Ltd., Windsor, NJ	7–27–87	Combined Cycle	280	Windsor, NJ.
Gordonsville Energy Associates, Gordonsville, VA	7–27–87	Combined Cycle	300	Gordonsville, VA.
North Jersey Energy Associates, Ltd., Sayreville, NJ	7–27–87	Combined Cycle	140	Sayreville, NJ.
Central Virginia Energy Associates, Mechanicsville, VA	7–27–87	Combined Cycle	300	Mechanicsville, VA.
South Virginia Energy Associates, Glen Allen, VA	7–27–87	Combined Cycle	280	Glen Allen, VA.
North Virginia Energy Associates, Manassas, VA	7–27–87	Combined Cycle	420	Manassas, VA.

Name	Date received	Type facility	Megawatt capacity	Location
Howell Energy Associates, Howell, NJ	7-27-87	Combined Cycle	140	Howell, NJ.
Fredericksburg Energy Associates, Fredericksburg, VA	7-27-87	Combined Cycle	300	Fredericksburg, VA.
Northeast Energy Associates, Bellingham, MA	7-27-87	Combined Cycle	280	Bellingham, MA.
South Jersey Energy Associates, Williamstown, NJ	7-27-87	Combined Cycle	140	Williamstown, NJ.
International Paper Company, Oswego, NY	7-29-87	Combined Cycle	50	Oswego, NY.
International Paper Company, Corinth, NY	7-29-87	Combined Cycle	40	Corinth, NY.
TBG Cogen, Bethpage, NY	7-24-87	Combined Cycle	50	Bethpage, NY.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure. Pertinent provisions are restated in the appendix to this notice.

Issued in Washington, DC, on August 3, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix—"Sec. 201. Coal Capability of New Electric Powerplants: Certification of Compliance

(a) General Prohibitions

Except to such extent as may be authorized under subtitle B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability To Use Coal or Alternate Fuel

An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability To Base Load Powerplants

(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-Certification

(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b).

Such certification shall be effective to establish compliance with the requirement of subsection (a) as the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the **Federal Register** a notice reciting that the certification has been filed.

(2) The Secretary within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification".

[FR Doc. 87–18186 Filed 8–10–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–43–NG]

Order Granting Authorization To Import Natural Gas; Granite State Gas Transmission, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Granite State Gas Transmission, Inc. (Granite State), an authorization to import Canadian natural gas. The import authorization allows Granite State to import up to 25,000 Mcf of Canadian natural gas per day on an interruptible, best-efforts basis from November 1, 1987, through October 31, 1988. Beginning on November 1, 1988, and extending through March 31, 1999, the import authorization allows Granite State to increase its imports to a total of 40,000 Mcf of natural gas per day, with up to 25,000 Mcf per day on a firm basis and an additional daily quantity of up to 15,000 Mcf on an interruptible basis.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 5, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18225 Filed 8–10–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER87–552–000]

Notice of Filing; Commonwealth Edison Co.

August 5, 1987.

Take notice that Commonwealth Edison Company on July 30, 1987 tendered for filing proposed changes in its FERC Electric Service Tariff Rate 79A.

The Company states that the filing is required to comply with the provisions of a previously approved Electric Service Contract with the City of Rochelle. Because the City of Rochelle is a partial requirements customer and is not dependent upon the Company for its entire electric supply, it is impossible to predict the increase in revenue resulting from the proposed rate schedule. However, based upon actual firm energy supplied to the City of Rochelle for the 12 months ended June 1987, increased

rate effective October 1, 1987 will result in increased annual revenues of approximately $13,488.

Copies of the filing were served upon the City of Rochelle and the Illinois Commerce Commission.

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, 385.214). All such motions or protests should be filed on or before August 18, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18169 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-551-000]

Notice of Filing; Florida Power & Light Co.

August 5, 1987.

Take notice that on July 30, 1987, Florida Power & Light Company (FPL) tendered for filing an agreement entitled Stanton Test Energy Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Stanton Test Energy Agreement).

Under the Stanton Test Energy Agreement FPL has agreed to provide transmission service on an if and when available basis for each specified Florida Municipal Power Agency (FMPA) Participating Member in order for that FMPA Participating Member to receive its proportionate share of test energy from the Stanton No. 1 which Orlando Utilities Commission (OUC) banked for such FMPA Participating Members' accounts during the testing period of Stanton No. 1.

The FMPA Participating Members are the City of Homestead, Florida; Fort Pierce Utilities Authority; City of Lake Worth, Florida; City of Starke, Florida; City of Vero Beach, Florida; and Utility Board of the City of Key West, Florida.

FMPA has requested service under the Stanton Test Energy Agreement to commence on July 11, 1987. FPL, therefore, requests a waiver of Section 35.3 of the Commission's Regulations and that the Stanton Test Energy Agreement be made effective on July 11, 1987. Accordingly, FPL is authorized to represent that FMPA supports this request for a waiver.

Copies of the filing were served upon FMPA, the FMPA Participating Members and the Florida Public Service Commission.

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, 385.214). All such motions or protests should be filed on or before August 18, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18170 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-553-000]

Notice of Filing; Florida Power & Light Co.

August 5, 1987.

Take notice that on July 31, 1987, Florida Power & Light Company (FPL) tendered for filing a revised Attachment A to each of the respective Agreements entitled: (1) Stanton Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Stanton Transmission Agreement); and (2) Stanton Tri-City Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Stanton Tri-City Transmission Agreement).

Under the Agreements, FPL has agreed to provide transmission service for each FMPA Participating Member's entitlement share of FMPA's ownership interest in Orlando Utilities Commission (OUC) Curtis H. Stanton Energy Center Unit One (Stanton No. 1), a coal fired steam electric power plant being constructed by OUC. The FMPA Participating Members under the Stanton Transmission Agreement are: City of Homestead, Florida; Fort Pierce Utilities Authority; City of Lake Worth, Florida; City of Starke, Florida; and City of Vero Beach, Florida. The FMPA Participating Members under the Stanton Tri-City Transmission Agreement are City of Homestead, Florida; Fort Pierce Utilities Authority and Utility Board of the City of Key West, Florida.

These Attachments A have been revised pursuant to section 7.1.1 of the Agreements to delineate the original Contract Demand of each FMPA Participating Member for transmission services provided under each of the respective Agreements. Each revised Attachment A supersedes and replaces in its entirety the blank Attachment A to each of the respective Agreements that were filed in Docket No. ER87-154 and approved by the Commission on February 19, 1987.

Copies of the filing were served upon Florida Municipal Power Agency, the FMPA Participating Members and the Florida Public Service Commission.

FPL requests that waiver of § 35.3 of the Commission's Regulation be granted and that these revised Attachments A be made effective July 1, 1987, the date of the commercial operation of Stanton Unit No. 1.

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, 385.214). All such motions or protests should be filed on or before August 18, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18171 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-52-000]

Notice of Filing; Midland Cogeneration Venture Limited Partnership

August 5, 1987.

Take notice that on July 29, 1987, Midland Cogeneration Venture Limited Partnership (MCV Partnership), pursuant to 5 USCA 554(e) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, tendered for a declaratory order to

remove uncertainty about the meaning of "subsidiary" as used in the Commission's rules defining ownership criteria for qualifying facilities, 18 CFR 292.206 as promulgated under the Public Utility Regulatory Policies Act of 1978.

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, 385.214). All such motions or protests should be filed on or before August 18, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18172 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-150-000, RP85-150-002, RP85-200-000, RP85-200-006, RP86-97-000 and RP86-97-017]

Filing of Refund Report; Natural Gas Pipeline Co. of America

August 5, 1987.

Take notice that on July 27, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing its Report of Distribution of Refunds for Docket No. RP85-150 for the period January 1, 1986 through April 30, 1987 and Docket No. RP86-97 for the period July 1, 1986 through April 30, 1987.

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). All such motions or protests must be filed on or before August 12, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18173 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-150-000, RP85-150-002, RP85-200-000, RP85-200-006, RP86-97-000 and RP86-97-017]

Filing of Refund Report; Natural Gas Pipeline Co. of America

August 5, 1987.

Take notice that on July 27, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing its Report of Distribution of Refunds for Docket No. RP85-150 for the period January 1, 1986 through April 30, 1987 and Docket No. RP86-97 for the period July 1, 1986 through April 30, 1987.

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 Capital 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). All such motions or protests must be filed on or before August 12, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18217 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TF87-7-59-000]

Proposed Change in Rates; Northern Natural Gas Co.

August 5, 1987.

Take notice that on July 29, 1987, Northern Natural Gas Company (Northern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1:

Substitute Forty-Fifth Revised Sheet No. 4b

Forty-Sixth Revised Sheet No. 4b

Substitute Thirteenth Revised Sheet No. 4b.1

Fourteenth Revised Sheet No. 4b.1

and the following tariff sheets to its FERC Gas Tariff, Original Volume No. 2:

Substitute Fifty-Second Revised Sheet No. 1c

Fifty-Third Revised Sheet No. 1c

Northern states that the purpose of the tariff sheets is to reflect a decrease in Northern's base average commodity cost of purchased gas. Northern adds that the effect of such reduction in purchased gas costs is a 3.7 cents per Mcf decrease in the commodity rate for Northern's jurisdictional market area sales and field area sales.

Northern requests that the tariff sheets be given an effective date of August 1, 1987.

Copies of Northern's filing were mailed to each of Northern's gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said 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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 12, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18174 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51687; FRL-3245-7]

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). This notice announces receipt

of forty-nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-1462, 87-1463, 87-1464, 87-1465, 87-1466, 87-1467, 87-1468, 87-1469, 87-1470, 87-1471, 87-1472, 87-1473, 87-1474, 87-1475, 87-1476, 87-1477, 87-1478, and 87-1479—October 21, 1987

P 87-1480, 87-1481, 87-1482, 87-1483, 87-1484, 87-1485, 87-1486, 87-1487, 87-1488, 87-1489, 87-1490, 87-1491, 87-1492, 87-1493, and 87-1494—October 24, 1987

P 87-1495, 87-1496, 87-1497, 87-1498, 87-1499, 87-1500, 87-1501, and 87-1502—October 25, 1987

P 87-1503, 87-1504, 87-1505, 87-1506, and 87-1507—October 26, 1987

P 87-1508, 87-1509, and 87-1510—October 27, 1987.

Written comments by:

P 87-1462, 87-1463, 87-1464, 87-1465, 87-1466, 87-1467, 87-1468, 87-1469, 87-1470, 87-1471, 87-1472, 87-1473, 87-1474, 87-1475, 87-1476, 87-1477, 87-1478, and 87-1479—September 21, 1987

P 87-1480, 87-1481, 87-1482, 87-1483, 87-1484, 87-1485, 87-1486, 87-1487, 87-1488, 87-1489, 87-1490, 87-1491, 87-1492, 87-1493, and 87-1494—September 24, 1987

P 87-1495, 87-1496, 87-1497, 87-1498, 87-1499, 87-1500, 87-1501, and 87-1502—September 25, 1987

P 87-1503, 87-1504, 87-1505, 87-1506, and 87-1507—September 26, 1987

P 87-1508, 87-1509, and 87-1510—September 27, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51687]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1462

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol esters; triethanolamine salts.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Mild, Eye—Mild; Inhalation: Slightly toxic.

P 87-1463

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol esters, potassium salts.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Moderate, Eye—Moderate.

P 87-1464

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol esters, triethanolamine.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

P 87-1465

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol esters, triethanolamine salt.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

P 87-1466

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol ester, amine salt.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Moderate.

P 87-1467

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol ester; potassium salts.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Moderate, Eye—Moderate; Inhalation: Slightly toxic; LC_{50}: 48 hr. (Daphnia Magna): > 5,600 parts per million (ppm) LC_{50}: 96 hr. (Fathead minnows): 450 ppm.

P 87-1468

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed linear alcohol ester, triethanolamine salts.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Slight, Eye—Slight.

P 87-1469

Manufacturer. Confidential.

Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a diamine and a monoamine.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-1470

Manufacturer. Confidential.

Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a diol, ethylenediamine and a mono basic acid.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-1471

Manufacturer. SpecialtyChem Products Corporation.

Chemical. (G) Aryloxyalkyl halide.

Use/Production. (G) Intermediate. Prod. range: Confidential.

P 87-1472

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87-1473

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87-1474

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87-1475

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87-1476

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87-1477

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87-1478

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87–1479

Manufacturer. Confidential.
Chemical. (G) Tertiary amine salt.
Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87–1480

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Polymer of 2,4,6,-trimethyl-2,4,6-tris(3,3,3-trifluoropropyl) cyclotrisiloxane and phenyltrichlorosilane.
Use/Import. (S) Industrial ingredient for silicone rubber compound. Import range: 300 to 800 kg/yr.

P 87–1481

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Import. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesives. Import range Confidential.

P 87–1482

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer latex.
Use/Import. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesives. Import range: Confidential.

P 87–1483

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer latex.
Use/Import. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesives. Import range: Confidential.

P 87–1484

Manufacturer. Confidential.
Chemical. (G) Alkanolamine phosphates.
Use/Production. (S) Component of corrosion inhibitor concentrate and inhibited solvent for hydrocarbon extraction process. Prod. range: Confidential.

P 87–1485

Importer. Confidential.
Chemical. (G) Fluorinated acrylic copolymer.
Use/Import. (G) Oil and water-proofing agent. Import range: Confidential.
Toxicity Data. Acute oral: 75,250 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87–1486

Manufacturer. Confidential.
Chemical. (G) Silane-modified polyurethane polyvinyl alcohol copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: 7,200 to 40,000 kg/yr.

P 87–1487

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for medical applications and for dynamics parts. Prod. range: Confidential.

P 87–1488

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for sheeting and for molded articles. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87–1489

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for medical applications and for dynamic parts. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87–1490

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for sheeting and molded articles. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87–1491

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for medical applications and dynamic parts. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87–1492

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for sheeting and molded articles. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87–1493

Manufacturer. Confidential.
Chemical. (G) Reaction product between halogenated rubbers.
Use/Production. (G) Theroplastic resin for sheeting and molded articles. Prod. range: Confidential.

P 87–1494

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for medical applications and dynamics parts. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Mild.

P 87–1495

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Copolyether ester.
Use/Production. (G) Liner and film. Prod. range: Confidential.
Toxicity Data. Irritation: Skin-Non-irritant.

P 87–1496

Manufacturer. NL Industries, Incorporated.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1497

Manufacturer. Confidential.
Chemical. (G) Mono substituted aryl diol.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 87–1498

Importer. Roure Bertrand Dupont, Incorporated.
Chemical. (S) Butene-2-oic acid, cyclohexyl ester.
Use/Import. (S) Industrial, commercial and consumer frangance ingredient. Import range: 100 to 500 kg/yr.
Toxicity Data. Acute oral: > 8,000 mg/kg; Irritation: Eye—Minimal.

P 87–1499

Importer. Biddle Sawyer Corporation.
Chemical. (S) Pentasodium[u-7-[[3,3'-dihydroxy-4'-[[6-hydroxy-8-sulfo-2(3-sulfophenyl)-2*H*-naphtho[1,2-*d*]triazol-]-yl]azo] [1,1'-biphenyl]-4-yl]azo]-8-hydroxy-1,3,6-naphthalenetrisulfonato (9-)]]dicuprate(5-).
Use/Import. (S) Direct dye for textile. Import range: 40,000 kg/yr.

P 87–1500

Importer. Jarchem Industries, Incorporated.
Chemical. (S) Mixture of 2-octyl-1-decanol and 2-hexyl-1-dodecanol.

Use/Import. (S) Industrial base for ethoxylation; solvent perfumes; emollient for cosmetics; and lubricant-machinery, etc., textiles. Import range: 20,000 to 200,000 kg/yr.

P 87-1501

Importer. Jarchem Industries, Incorporated.

Chemical. (S) 2-Decyl tetradecanol.

Use/Import. (S) Lubricant for textiles and machinery; ethoxylation; and emollient for cosmetics. Import range: 40,000 to 200,000 kg/yr.

P 87-1502

Importer. Jarchem Industries, Incorporated.

Chemical. (S) Mixture of 2-hexyl-1-decanol; 2-hexyl-1-dodecanol; 2-octyl-1-decanol; and 2-octyl-1-dodecanol.

Use/import. (S) Industrial lubricant-machinery; base for ethoxylation; emollient for cosmetics; and solvent perfumes. Import range: 60,000 to 500,000 kg/yr.

P 87-1503

Importer. Confidential.

Chemical. (G) Alkyl aryl phosphonium halide.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 87-1504

Manufacturer. Confidential.

Chemical. (G) Urethane-modified water reducible alkyd resin.

Use/Production. (S) Air-dry water reducible varnish, stains and enamels. Prod. range: Confidential.

P 87-1505

Manufacturer. Confidential.

Chemical. (G) Imide-anhydride-olefin polymer.

Use/Production. (G) Oil additive. Prod. range: Confidential.

P 87-1506

Manufacturer. Minnesota Mining and Manufacturing Company.

Chemical. (G) Fluorochemical sulfonate ester.

Use/Production. (G) Electronic liquid. Prod. range: Confidential.

P 87-1507

Importer. Fairmount Chemical Company Incorporated.

Chemical. (G) Methylene-bis-benzotriazole.

Use/Import. (S) Ultra-violet stabilizer. Import range: Confidential.

P 87-1508

Manufacturer. Iovite, Incorporated.

Chemical. (S) Alkyd polymer.

Use/Production. (S) Industrial in manufacture of printing inks. Prod. range: 8,000 to 10,000 kg/yr.

P 87-1509

Manufacturer. Products Research and Chemical Corporation.

Chemical. (S) 2-Ethanol,1,1-thiobis, ethanol, 2-mercapto, reaction product with propylene oxide, 1,3-propanediol, 2-ethyl-2[hydroxy methyl] 3-thiahept-5-ene-1-ol.

Use/Production. (S) Industrial prepolymer for manufacture of thiol terminated polymer and reactive plasticizer for vucanizable rubbers, sealants, adhesives and coatings. Prod. range: 100,000 to 450,000 kg/yr.

P 87-1510

Importer. Marubeni America Corporation.

Chemical. (S) Styrene-glycidyl methacrylate copolymer.

Use/Import. (S) Industrial cimpatiblizing agent for polymer blends. Import range: Confidential.

Date: August 3, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-18214 Filed 8-10-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59248; FRL-3245-8]

Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATE: Written comments by: August 26, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59248]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the TME application received by EPA. The complete non-confidential application is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87-25.

Close of Review Period. September 9, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (S) Polymer of 3-(2-aminoethyl) amino propyl methyl, dimethyl polysiloxane and dimethyl, methyl 3-(oxiranylmethoxy)-propyl polysiloxane.

Use/Import. (S) Consumer silicone coating agent for heat transfer recording materials. Import range: 100 to 300 kg/yr.

T 87-26

Close of Review Period. September 9, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) 1-Amino-4-hydroxy-2-(4-alkylphenoxy) anthraquinone.

Use/Import. (S) Consumer dye for heat transfer recording materials. Import range: 20 to 100 kg/yr.

T 87-27

Close of Review Period. September 9, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) 4-(4-N,N-dialkyl amino-2-alkyl phenyl)-imino-2-(alkyl carbamoyl)-1-oxo-1,4-dihidro naphthalene.

Use/Import. (S) Consumer dye for heat transfer recording materials. Import range: 20 to 100 kg/yr.

T 87-28

Close of Review Period. September 9, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) Polymer with vinylacetal polymers, polyoxiethylene alkylether phosphoricacid, sodium polyoxiethylene alkenylether phosphate and polyisocyanate.

Use/Import. (S) Consumer heat resisting slipping agent for heat transfer recording material. Import range: 1,500 to 3,000 kg/yr.

Date: August 3, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-18213 Filed 8-10-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; French Market Homestead, Metairie, LA

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for French Market Homestead, Metairie, Louisiana on August 6, 1987.

Dated: August 6, 1986.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87-18236 File 8-10-87; 8:45 am]

BILLING CODE 6720-01-M

Acceptance of Appointment as Liquidator; French Market Homestead, Metairie, LA

Notice is hereby given that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1) (1982), and as directed by the Federal Home Loan Bank Board the Federal Savings and Loan Insurance Corporation on August 6, 1987, accepted appointment by the Commissioner of Financial Institutions for the State of Louisiana, pursuant to §§ 6:873 and 6:880 of the Louisiana Revised Statutes Annotated, as liquidator for French Market Homestead, Metairie, Louisiana, for the purpose of liquidation.

Dated: August 6, 1986.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87-18235 File 8-10-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interest parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200014.

Title: Philadelphia Port Corporation Terminal Lease Agreement.

Parties:

Philadelphia Port Corporation
Delaware Operating Company

Synopsis: The proposed agreement provides for the lease of the Packer Avenue Marine Terminals, including the berths, cranes, crane rails, equipment maintenance, container storage and related facilities thereon.

Agreement No.: 224-200015.

Title: Maryland Port Administration Terminal Agreement.

Parties:

Maryland Port Administration
Seapac Services, Inc.

Synopsis: The proposed agreement leases premises at the Dundalk Marine Terminal to Seapac Services, Inc. for three years. The agreement affords Seapac a discount percentage of the tariff rates based on annual tonnage levels. Seapac guarantees to Maryland Port Administration a minimum of 200,000 gross cargo tons by direct liner service.

Agreement No.: 224-010764-001.

Title: Encinal Terminals Agreement.

Parties:

Encinal Terminals
California Stevedore and Ballast Co.

Synopsis: The proposed agreement provides additional premises to the lease including Berths 1, 2 and 3 along with other structures, offices space and underground storage tanks. Encinal reserves the exclusive right to perform or have its affiliate, Alameda Liquid Bulk Terminal perform all terminal and stevedore work associated with any liquid bulk cargo related to Berths 1, 2, 3 or 5.

Agreement No.: 224-002827-004.

Title: Termination of Encinal Terminals Lease Agreement.

Parties:

Encinal Terminals
Crescent Wharf and Warehouse Company

Synopsis: The proposed terminates the basic Lease Agreement; effective July 30, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 6, 1987.

[FR Doc. 87-18204 Filed 8-10-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 5, 1987.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OBM) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Request For OMB Approval To Revise The Following Report

1. *Report title:* Reports of Condition and Income.

Agency form number: FFIEC 301-034

OMB Docket number: 7100–0036
Frequency: Quarterly
Reporters: State member banks
Annual reporting hours: Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 324] and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and dispotition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes.

Board of Governors of the Federal Reserve System, August 5, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–18139 Filed 8–10–87; 8:45 am]

BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Comerica Inc., et al.

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 of 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 August 31, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to acquire 100 percent of the voting shares of Comerica-Midwest, N.A., Toledo, Ohio.

2. *Shoreline Financial Corportion*, Benton Harbor, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Inter-City Bank, Benton Harbor, Michigan, and Citizens Trust and Savings Bank, South Haven, Michigan.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *J.R. Montgomery Bancorporation*, Lawton, Oklahoma; to acquire an additional 0.5 percent of the voting shares of Fort Sill National Bank, Fort Sill, Oklahoma.

Board of Governors of the Federal Reserve System, August 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–18140 Filed 8–10–87; 8:45 am]

BILLING CODE 6210–01–M

Acquisition of Shares of Banks or Bank Holding Companies; Merlin Zitzner

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merlin Zitzner*; to acquire up to 1,000 shares of The Baraboo Bancorporation, Inc., Baraboo, Wisconsin.

Board of Governors of the Federal Reserve System, August 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–18141 Filed 8–10–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Cooperative Agreement With National Research Council, National Academy of Sciences; Availability of Funds for Fiscal Year 1987

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1987 for a cooperative agreement with the National Research Council, National Academy of Sciences (NRC/NAS) for the purpose of furthering the scientific and technical foundations of environmental sciences and public health. This is not a formal request for applications. Assistance will be provided only to the NRC/NAS for the continued support of this project. No other applications are solicited or will be accepted.

Authority

Section 104(i) (1) and (5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes this cooperative agreement. The Catalog of Federal Domestic Assistance Number has been requested.

Background

Created by a Congressional charter in 1863, the National Academy of Sciences is a private honorary society dedicated to the furtherance of science and the use of science for the general welfare. The Academy established the National Research Council in 1916 as a means for securing the active participation of specialists from universities, the industry, and the government in the Academy's work.

ATSDR is required to maintain both exposure and disease registries, and to determine the relationship between exposure to toxic substances and illness. This cooperative agreement will assist in the identification of research needs, data links and research priorities. This will be done through specific studies dealing with:

- Risk perception and communication,
- Biological bases for neurotoxicology and models for assessing risk,
- Advances in assessing chemical exposure, and

• Natural and *in situ* exposure studies of animals in environmental health research.

Advances in these areas will ensure that the best scientific methods are applied to the evaluation of the public health impact of hazardous wastes and the identification of methods to eliminate or control any resulting adverse effects on public health. The information developed should have a positive impact on the research agenda of the scientific community at large. The NRC/NAS established its Board of Environmental Studies and Toxicology (BEST) to provide advice for the general welfare of the nation on scientific questions affecting the development of environmental toxicology, environmental epidemiology and related fields. Because of the unique abilities of NRC/NAS as a non-biased source of technical and scientific expertise in these areas, it is the only organization capable of carrying out the activities contemplated under this cooperative agreement.

Availability of Funds

Approximately $1,425,000 will be available in Fiscal Year 1987 to fund this cooperative agreement. It is expected that the agreement will begin on or about September 30, 1987, and depending upon the availability of funds, will be funded in 12-month budget periods within a 5-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Other Submissions and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Mr. Luther DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road N.E., Atlanta, GA 30305, telephone (404) 262–6575. Technical assistance may be obtained from Richard I. Gerber, Project Officer, Extramural Program Branch, Office of External Affairs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Atlanta, GA 30333, telephone (404) 454–4630.

Dated: August 4, 1987.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 87–18136 Filed 8–10–87; 8:45 am]

BILLING CODE 4160–70–M

Establishment; Board of Scientific Counselors.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Agency for Toxic Substances and Disease Registry announces the establishment by the Secretary of Health and Human Services, on July 28, 1987, of the following Federal advisory committee:

Designation

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry (ATSDR)

Purpose

This Board will provide advice and guidance to the Administrator, Agency for Toxic Substances and Disease Registry, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board will advise on the adequacy of science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize. Authority for this Committee will expire July 28, 1989, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: August 4, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 87–18137 Filed 8–10–87; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 87N-0254]

FD&C Red No. 3; Availability of Final Report of FD&C Red No. 3 Peer Review Panel

AGENCY: The Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final report of the FD&C Red No. 3 Peer Review Panel (the Panel). FDA convened this panel of expert government scientists to evaluate the available data, information, and views on FD&C Red No. 3 and to determine whether there is any potential risk posed by human exposure to the color. The Panel members were selected from FDA and other agencies in the Public Health Service. The Panel has completed its work and the final report is available to the public on request.

ADDRESS: A copy of the report is available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2390.

SUPPLEMENTARY INFORMATION: FD&C Red No. 3 is a color additive that is permanently listed for use in food and drugs and provisionally listed for use in cosmetics. During 1986, FDA certified 252,543 pounds of FD&C Red No. 3 for all uses. FDA's evaluation of the petition for permanent listing of this additive and other information raised issues concerning the mechanism of carcinogenesis of FD&C Red No. 3 and suggested that the color should be regulated under the general safety requirements, rather than the anticancer clauses, of the Federal Food, Drug, and Cosmetic Act. To address these issues, FDA convened the Panel, which was charged with evaluating the available data, information, and views and providing justified answers to the following questions:

(1) Do the data indicate a secondary mechanism of action with respect to FD&C Red No. 3 and allow determination of any potential risk posed by human exposure to this color?

(2) If not, then what further studies or analyses are necessary to resolve the issues and provide an adequate basis for risk assessment?

(3) In the interim, what concerns relative to human health, if any, would be posed by continued use of this additive while such studies and analyses are conducted and evaluated?

The agency's decision to establish the scientific peer review panel is consistent with the recommendations contained in several recent publications (see, e.g., (1) National Academy of Sciences, "Risk Assessment: Managing the Process," NAS Press, Washington, DC, 1983; (2) Office of Science and Technology

Policy, "Chemical Carcinogens: A Review of the Science and Its Associated Principles," published in the Federal Register of March 14, 1985 (50 FR 10371); (3) Committee to Coordinate Environmental and Related Programs, "Risk Assessment and Risk Management of Toxic Substances, a Report to the Secretary, April, 1985"). The agency has previously used the peer review approach to resolve questions on FD&C Red No. 3 as well as other color additives (see the notice of availability D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, D&C Orange No. 17, and FD&C Red No. 3; Availability of the Final Report of the Color Additive Scientific Review Panel, 51 FR 7856, March 6, 1986).

The Panel has completed its work and has formally submitted its final report to FDA. The report summarizes the available data on FD&C Red No. 3 and presents risk estimates for its current uses. FDA is making the report available to the public on request.

A copy of the report is available for review at, and individual copies of the report may be obtained from, the Dockets Management Branch (address above). Requests for copies should be identified with the docket number found in brackets in the heading of this document.

Dated: August 5, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18208 Filed 8-10-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86A-0513/AP]

Chocolate or Chocolate Flavor Labeling of Food Products; Availability of Advisory Opinion

AGENCY: The Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an advisory opinion concerning the proper labeling of food products containing chocolate or considered to be chocolate flavored.

ADDRESS: Requests for single copies of FDA's letter (Docket No. 86A-0513/AP) may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Raymond E. Newberry, Division of Regulatory Guidance (HFF-314), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0195.

SUPPLEMENTARY INFORMATION: In response to a letter from the Chocolate Manufacturers Association, FDA has provided an advisory opinion on the proper labeling of food products that purport to be "chocolate" or are considered to have a "chocolate flavor." A copy of a letter defining the policy is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. The opinion, though advisory, does not preclude persons from seeking further clarification on specific issues. Failure to abide by the policy established through the advisory opinion may result in regulatory action after consideration of relevant facts. Requests for single copies of the advisory opinion letter should refer to Docket No. 86A-0513/AP and be submitted to the Dockets Management Branch.

Dated: August 5, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18207 Filed 8-10-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-394-PN]

Medicare Program; Proposed Additions to and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces proposed additions and deletions to the current list of surgical procedures for which facility services are covered when the procedures are performed in an ambulatory surgical center (ASC). The proposed additions and deletions contained in this proposed notice result from new data that show that some of the surgical procedures on the current ASC list do not meet the criteria that they be commonly performed on an inpatient basis in hospitals or are not commonly performed in physicians' offices. In this notice, we are also soliciting public comments on additional procedures to be added to the current list of approved ASC procedures.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 13, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-394-PN, 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 Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-394-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, 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: Rita McGrath, (301) 594-6719.

SUPPLEMENTARY INFORMATION:

I. Background

Section 934 of Pub. L. 96-499, the Omnibus Reconciliation Act of 1980, amended sections 1832(a)(2) and 1833 of the Social Security Act (the Act) to authorize Medicare Part B coverage for facility services furnished in connection with certain surgical procedures performed in an ambulatory surgical center (ASC). (42 CFR 416.60 and 416.61). In addition, for those procedures performed in the ambulatory surgical facility or on an outpatient basis in a hospital, 100 percent of the physician's reasonable charge is paid if the physician accepts assignment. (Under the usual procedures, Medicare reimburses 80 percent of the physician's reasonable charge and the beneficiary is responsible for remainder (42 CFR 405.240).

Section 1833(i)(1) of the Act requires the Secretary to specify, in consultation with appropriate medical organizations, surgical procedures that, although appropriately performed in an inpatient hospital setting, may also be performed safely in certain ambulatory settings. The report accompanying the legislation (Report of the Committee on the Budget to Accompany H.R. 7765, H.R. Rep. No. 96-1167, 96th Cong., 2d Sess. 390 (1980)

explained that Congress intended that procedures currently performed on an ambulatory basis, especially in physicians' offices, that do not generally require the more elaborate facilities of an ASC, should not be included in the list of covered procedures.

In line with this Congressional intent, our regulations (42 CFR 416.65) specify the following four requirements regarding the range of covered ASC services.

1. Procedures on the list are to be those commonly performed on an inpatient basis but which also may, consistent with accepted medical practice, be performed in an ambulatory surgical facility.

2. The list is to exclude procedures that are commonly performed, or that may be safely performed, in physicians' offices.

3. Procedures should be limited to those requiring a dedicated operating room and not requiring an overnight stay.

4. The list should not contain procedures excluded from Medicare coverage.

We recognize that for individuals with certain medical conditions, a procedure on the list may be safely performed only on an inpatient basis. The choice of operating site remains a matter for the professional judgement of the patient's physician.

A list of services meeting these criteria was first published on August 5, 1982 (47 FR 34099). An expanded list is being published as a final notice elsewhere in this issue of the **Federal Register**. That list also deletes certain items resulting from comments to the February 16, 1984 notice (49 FR 6023). Section 9343 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) provides that, by July 1, 1987 and annually thereafter, the Secretary must review and update ASC payment rates; in addition, the list of procedures must be reviewed and updated by April 21, 1987 and every 2 years thereafter. In developing the expanded list, we reviewed the usual site of service for all current and planned covered ASC procedures. In the process, we discovered that a number of currently covered procedures are commonly performed on an inpatient basis or are commonly performed in physicians' offices, and thus do not meet the criteria set forth in our regulations. As a result, we are proposing to remove those procedures from the list.

II. Data Base Used to Determine Those Procedures to be Deleted From the ASC List

We evaluated the usual site of service of surgical procedures considered for coverage under the ASC benefit based on the Part B Medicare Data files (BMAD), which are maintained centrally as a component of the Medicare statistical system. These files consist of data sets produced from information maintained by the Medicare carriers in (1) prevailing charge screen files, (2) beneficiary history files, and (3) physician/supplier history files. One of the BMAD files is the procedure file, from which source data are extracted to create an array of every procedure code used by each carrier in processing Medicare claims. The procedure file includes such data elements as frequency, submitted charges, allowed charges, and denied services. These variables can be arrayed for each procedure code by site of service (for example, physician's office, ASC, inpatient hospital, outpatient hospital) and by type of service (for example, surgical service).

The procedure file is constructed from 100 percent of the bills processed annually by carriers reporting procedures using the HCFA Common Procedure Coding System (HCPCS). The source data that we used in assessing site of service are claims processed in calendar year 1984. The 1984 file excludes claims processed by carriers servicing Texas, Utah, Michigan, Georgia and New Jersey because in that year those carriers did not report using HCPCS codes.

When we arrayed currently covered ASC services by site of service, we found that many of them were not commonly furnished on an inpatient basis or were furnished in physicians' offices a majority of the time. Based on these data, it would be contrary to our regulations and program objectives to continue to cover them when performed in an ASC. We decided that if a procedure is performed on an inpatient basis 20 percent of the time or less, or in physicians' offices 50 percent of the time or more, it should not be covered in an ASC. Based on our analysis of available claims payment data, we believe these levels best reflect the legislative objectives of (1) moving procedures from the more expensive hospital setting to the less expensive ASC setting and (2) preventing the migration of procedures from the less expensive physicians' office setting to the ASC. We will monitor our claims experience under the new approved ASC list in order to assure that the 20/50 threshhold rule we have applied continues to achieve these objectives.

We applied these tests to the current list of over 400 individual CPT–4 codes. We identified 48 procedures with an inpatient frequency of 20 percent or less and tentatively deleted them from the list. We then reviewed the remaining procedures and tentatively deleted 27 additional procedures that are performed in physicians' offices 50 percent of the time or more. Before placing them on the list of proposed deletions, we reviewed the list to see if the simple statistical tests, used alone, produced any problems relative to limited consistency. We identified 3 procedures that would have been proposed for deletion on the basis of the data alone, but which we propose to retain on the current ASC list for the following reasons:

11446 Excision-Benign Lesions-Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter over 4.0 cm

11646 Excision-Malignant Lesions-Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter over 4.0 cm

Although Part B data indicate that these procedures were frequently performed in physicians' offices, we decided not to delete them from the list because to do so would lead to inconsistencies in the coverage of excisions of benign and malignant lesions of the skin over 4.0 cm in diameter. The excision of any benign or malignant skin lesion over 4.0 cm in diameter is covered.

28298 Hallux valgus (bunion) correction, with or without sesamoidectomy; by phalanx osteotomy

Although Part B data indicate that this procedure is performed in physicians' offices more than half the time, we decided not to delete it from the list because to do so would lead to inconsistency in the coverage of bunion surgery. All methods of bunion correction (currently described by 8 CPT–4 codes) are covered.

We have identified 72 procedure codes that we propose to delete.

III. Provisions of the Proposed Notice

We propose to delete the following procedure codes from the current ASC list:

Integumentary System

11200 Excision, skin tags, multiple fibrocutaneous tags, any area; up to 15

11201 each additional ten lesions

11401	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.5 to 1.0 cm
11402	lesion diameter 1.0 to 2.0 cm
11403	lesion diameter 2.0 to 3.0 cm
11404	lesion diameter 3.0 to 4.0 cm
11421	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia, lesion diameter 0.5 to 1.0 cm
11422	lesion diameter 1.0 to 2.0 cm
11423	lesion diameter 2.0 to 3.0 cm
11441	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.5 to 1.0 cm
11442	lesion diameter 1.0 to 2.0 cm
11443	lesion diameter 2.0 to 3.0 cm
11444	lesion diameter 3.0 to 4.0 cm
11600	Excision, malignant lesion, trunk, arms, or legs; lesion diameter up to 0.5 cm
11601	lesion diameter 0.5 to 1.0 cm
11602	lesion diameter 1.0 to 2.0 cm
11603	lesion diameter 2.0 to 3.0 cm
11604	lesion diameter 3.0 to 4.0 cm
11620	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter up to 0.5 cm
11621	lesion diameter 0.5 to 1.0 cm
11622	lesion diameter 1.0 to 2.0 cm
11623	lesion diameter 2.0 to 3.0 cm
11624	lesion diameter 3.0 to 4.0 cm
11640	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter up to 0.5 cm
11641	lesion diameter 0.5 to 1.0 cm
11642	lesion diameter 1.0 to 2.0 cm
11643	lesion diameter 2.0 to 3.0 cm
11644	lesion diameter 3.0 to 4.0 cm
11750	Excision of nail and nail matrix, partial or complete (eg, ingrown or deformed nail) for permanent removal)
	Musculoskeletal
21310	Treatment of closed or open nasal fracture without manipulation
26060	Tenotomy, subcutaneous, single, each digit
26460	Tenotomy, extensor, hand or finger, single, open, each
26567	Osteotomy for correction of deformity; phalanx
28008	Fasciotomy, plantar and/or toe, subcutaneous
28010	Tenotomy, subcutaneous, toe; single
28011	multiple
28200	Repair or suture of tendon, foot, flexor, single; primary or secondary, without free graft, each tendon
28230	Tenotomy, open, flexor; foot, single or multiple (separate procedure)
28232	toe, single (separate procedure)
28234	Tenotomy, open, extensor, foot or toe
28240	Tenotomy or release, adductor hallucis muscle
28264	Capsulotomy, midtarsal (Heyman type procedure)
28270	Capsulotomy for contracture; metatarsophalangeal joint, with or without tenorrhaphy, single each joint (separate procedure)
28272	interphalangeal joint, single, each joint (separate procedure)
28285	Hammertoe operation; one toe (e.g., interphalangeal fusion, filleting, phalangectomy) (separate procedure)
28286	for cock-up fifth toe with plastic skin closure, (Ruiz-Mora type procedure)
28306	Osteotomy, metatarsal, base or shaft, single, for shortening or angular correction; first metatarsal
28308	other than first metatarsal
28310	Osteotomy for shortening, angular or rotational correction; proximal phalanx, first toe (separate procedure)
28312	other phalanges, any toe
	Respiratory System
30630	Repair nasal septal perforations
31505	Laryngoscopy, indirect (separate procedure); diagnostic
31510	with biopsy
31525	Laryngoscopy, direct; diagnostic, except newborn
	Digestive System
41100	Biopsy of tongue; anterior two-thirds
45910	Dilation of rectal structure (separate procedure) under anesthesia other than local
	Urinary System
52000	Cystourethroscopy; (separate procedure)
53600	Dilation of urethral stricture by passage of sound, or urethral dilator male; initial
53601	subsequent
53620	Dilation of urethral stricture by passage of filiform and follower, male; initial
53621	
53660	Dilation of female urethra including suppository and/or instillation; initial
53661	subsequent
53665	Dilation of female urethra, general or conduction (spinal) anesthesia
	Female Genital System
57400	Dilation of vagina under anesthesia Culdoscopy, diagnostic
	Eye and Ocular Adnexa
66800	Discission of lens capsule; incisional technique (needling of lens); initial
67801	Excision of chalazion; multiple, same lid
68700	Plastic repair of canaliculi
68830	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent (without general anesthesia)
	Auditory System
69420	Myringotomy including aspiration and/or eustachian tube inflation

IV. Suggested Procedures to be Added to the Current ASC List

After the close of the comment period for the proposed notice published on February 16, 1984 (49 FR 6023), on which we based our recent expansion of the list of covered procedures, we received requests that other new procedures be added to the current ASC list. One in particular is Extracorporeal Shockwave Lithotripsy (ESWL). We are particularly interested in receiving comments regarding the appropriateness of categorizing lithotripsy as a surgical procedure and performing it in a surgical environment. We are soliciting comments on the addition of this procedure and any other new procedures to the current ASC list.

Please send comment and suggestions regarding the addition of ESWL (CPT–4 procedure code 50590) and any other procedures to the address indicated at the beginning of this proposed notice. Comments providing data indicating whether the suggested procedure meets the requirements specified in 42 CFR 416.65 for covered surgical procedures (including whether ESWL is an eligible surgical procedure), and information that could be used to determine an appropriate payment rate, are particularly invited.

V. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed notices that are likely to meet criteria for a "major rule". A major rule is one that would result in:

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

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

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

The great majority of the services billed under these codes in our available claims data were furnished in doctors' offices. We do not expect this notice to result in a significant shift of site of service, or to only a small proportion of all procedures being performed in ASCs. More than 75 percent of the approved claims that were submitted under the codes we propose to delete were for services furnished in physicians' offices, and less than one percent were for

services furnished in ASCs. Although there were fewer ASCs in 1984 than at present, we do not believe that these services are being frequently furnished in them, and do not expect these deletions would affect their revenues significantly.

In view of the large number of procedures being added to the list of covered ASC procedures through a separate notice elsewhere in this issue of the **Federal Register**, we believe that affected ASCs would not experience a significant adverse impact from the proposed deletions. We would continue to cover these procedures when furnished in physicians' offices. Further, if one of the affected services were furnished in an ASC, we would pay the physician's charge under the usual rules, although we would not pay the ASC facility fee.

These deletions would result in some program savings. For the most part, the affected procedures would be furnished in physicians' offices, with the result that no separate payment would be made to the facility. We would also realize some savings through paying 80 percent rather than 100 percent of the reasonable charge when the physician accepts assignment. (For all procedures on the ASC list, if a physician furnished the procedure either in an ASC or in a hospital outpatient department, and accepts assignment, we pay 100 percent of the reasonable charge.) Due to this situation, some beneficiaries may experience an increase in coinsurance liability. However, since the great majority of these services are already furnished in physicians' offices and reimbursed at the 80 percent level, we estimate the aggreagate reduction in Medicare program expenditure to be negligible, and we do not expect the effect on beneficiaries' liability to be significant.

VI. Reporting and Recordkeeping Requirements

This proposed notice contains no information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Response to Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

(Sec. 1833(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(1); 42 CFR 416.65))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-18220 Filed 8-10-87; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Diabetes Advisory Board on September 14, 1987, from 8:30 a.m. to approximately 5 p.m., at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-18197 Filed 8-10-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; National Digestive Disease Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on September 28, 1987, from 8:30 a.m. to approximately 5 p.m., at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan.

Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-18198 Filed 8-10-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; National Kidney and Urologic Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on October 5 and 6, 1987, from 8 a.m. to approximately 5 p.m. on October 5 and from 8 a.m. to approximately 4 p.m. on October 6, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-18199 Filed 8-10-87; 8:45 am]

BILLING CODE 4140-01-M

Office of Child Support Enforcement

Privacy Act of 1974; Revision To Existing System of Records

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that OCSE is amending one of its system of

records, the Federal Parent Locator Service, DHHS/OCSE No. 09-90-0074. This system was last published at 47 FR 45547, October 13, 1982. The notice is being changed to reflect a change in the system name, system location, system manager(s) and address.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Donna Bonar, Location Collection and Services Branch, Office of Child Support Enforcement, 330 C Street, SW., Room 2517, Washington, DC 20201, (202) 245-1757.

The applicable text of the system of records is revised to read as follows:

09-90-0074

SYSTEM NAME:

The Federal Parent Locator Service and Federal Tax Offset System, HHS/OCSE.

* * * * *

SYSTEM LOCATION:

Office of Child Support Enforcement, Department of Health and Human Services, 330 C Street, SW., Room 2518, Washington, DC 20201, (202) 245-1647.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Operations Division, Office of Child Support Enforcement, Department of Health and Human Resources, 330 C Street, SW., Room 2518, Washington, DC 20201.

* * * * *

Approval.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

[FR Doc. 87-18202 Filed 8-10-87; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision and Deletion of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 522a), notice is hereby given that the Department of the Interior is deleting one and revising two systems of records notices maintained by the Office of Personnel in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the publication of the material in the Federal Register on August 21, 1980 (45 FR 55839). The two revised notices are published in their entirety below.

One notice entitled "Arbitrators Evaluation Records—Interior, Office of the Secretary—73", previously published on June 7, 1982 (47 FR 24655), is being deleted from the Department's inventory of Privacy Act systems of records notices. The arbitrators evaluation records are no longer used or maintained by the Office of Personnel.

Both notices published below are revised to streamline references to systems locations, and clarify existing routine disclosures for litigation purposes and to congressional offices. Also, the disposal statements in both notices are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective August 11, 1987. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMA), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: July 28, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Management Analysis.

INTERIOR/OS-77

SYSTEM NAME:

Unfair Labor Practice Charges/Complaints—Interior, Office of the Secretary—77.

SYSTEM LOCATION:

Records for pertinent employees of each bureau and office and maintained at the locations shown for the System Managers listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Interior employees filing unfair labor practices charges/complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal charge and complaint; name, address, and other personal information about complainant, transcript of hearing (if held), and information about other personnel in complainant's work unit, as relevant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11491, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to administer charges or complaints of unfair labor practices. Disclosures outside the Department of the Interior may be made (1) to the Department of Labor and to the Federal Labor Relations Council for settlement of the complaint or appeal; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were complied; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Name and docket or case number.

SAFEGUARDS:

Records are locked in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule No. 1, Item 29.

SYSTEM MANAGER(S) AND ADDRESS:

(a) Chief, Division of Labor Management Relations, Office of the Secretary, Office of Personnel, Division of Labor Management Relations, 19th and C Streets NW., Washington, DC 20240.

(b) Labor Relations Officer, Bureau of Indian Affairs, Division of Personnel

Mamagement, 1951 Constitution Avenue NW., Washington, DC 20245.

(c) Labor Relations Officer, Bureau of Mines, Division of Personnel, Branch of Compensation and Labor Relations, 19th and C Streets NW., Washington, DC 20240.

(d) Personnel Officer, Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(e) Labor Relations Officer, National Park Service, Division of Personnel, Branch of Labor Management Relations, 19th and C Streets NW., Washington, DC 20240.

(f) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 19th and C Streets NW., Washington, DC 20240.

(g) Labor Relations Officer, Bureau of Reclamation, 19th and C Streets NW., Washington, DC 20240.

(h) Labor Relations Officer, Bureau of Land Management, Division of Personnel (530), 19th and C Streets NW., Washington, DC 20240.

(i) Chief, Branch of Employee Relations and Training, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(j) Chief, Branch of Policies and Progams, Office of the Secretary, 19th and C Streets NW., Washington, DC 20240.

(k) Labor Relations Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW., Washington, DC 20245.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the appropriate System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the appropriate System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject to complaint, colleagues and supervisors of complainant and management officials.

INTERIOR/OS-78

SYSTEM NAME:

Negotiated Grievance Procedure Files—Interior, Office of the Secretary–78.

SYSTEM LOCATION:

Records for pertinent employees of each bureau and office are maintained at the locations shown for the System Managers listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Interior employees filing grievances/complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal charge and complaint; name, address, and other personal information about complainant, transcript of hearing (if held) and information about other personnel in complianant's work unit, as relevant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11491, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to administer employee grievances. Disclosures outside the Department of Interior may be made (1) to the Federal Labor Relations Council; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file orders.

RETRIEVABILITY:

Name and Docket or Case number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule No. 1, Item 31.

SYSTEM MANAGER(S) AND ADDRESS:

(a) Chief, Division of Labor Management Relations, Office of the Secretary, Office of Personnel, Division of Labor Management Relations, 19th and C Streets, NW., Washington, DC 20240.

(b) Labor Relations Officer, Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue NW., Washington, DC 20245.

(c) Labor Relations Officer, Bureau of Mines, Division of Personnel, Branch of Compensation and Labor Relations, 19th and C Streets, NW., Washington, DC 20240.

(d) Personnel Officer, Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

(e) Labor Relations Officer, National Park Service, Division of Personnel Branch of Labor Management Relations, 19th and C Streets NW., Washington, DC 20240.

(f) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 19th and C Streets, NW., Washington, DC 20240

(g) Labor Relations Officer, Bureau of Reclamation, 19th and C Streets, NW., Washington, DC 20240.

(h) Labor Relations Officer, Bureau of Land Management, Division of Personnel (530) 19th and C Streets NW., Washington, DC 20240.

(i) Chief, Branch of Employee Relations and Training, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(j) Chief, Branch of Policies and Office Programs, of the Secretary, 19th and C Streets, NW., Washington, DC 20240

(k) Labor Relations Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue, NW., Washington, DC 20245

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the appropriate System Manager. A written, signed request stating that the requester

seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the appropriate System Manager. The request must be in writing and be signed by the requester.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.71. The request must meet the content requirements of 43 CFR 2.63.

RECORD SOURCE CATEGORIES:

Subject complainant, colleagues and supervisors of complainant and management officials.

[FR Doc. 87-18146 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-RJ-M

Bureau of Indian Affairs

Proposed Finding for Federal Acknowledgement of the San Juan Southern Paiute Tribe

August 4, 1987.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary proposes to acknowledge that the San Juan Southern Paiute Tribe, c/o Mrs. Evelyn James, P.O. Box 2956, Tuba City, Arizona 86045, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group satisfies the seven mandatory criteria set forth in 25 CFR 83.7. Therefore, the San Juan Southern Paiute Tribe meets the requirements necessary for a government-to-government relationship with the United States.

Members of the San Juan Southern Paiute Tribe live on lands in north central Arizona which were traditionally and aboriginally Southern Paiute. Today's members are predominantly lineal descendants of the Southern Paiute Indians whose ancestors have inhabited this area since first sustained contact with Euro-Americans around 1850. Both historically and up through the present day, the petitioner has been repeatedly identified by scholars, local non-Indians, Federal officials, other Southern Paiute bands, and members of the Navajo Tribe both as Southern Paiute and as a distinct body of people. This has occurred even in contexts where close interaction with the Navajos and some acculturation to Navajo culture has been evident.

While the San Juan Paiutes once occupied a much larger portion of the land in the region than they do now, the previous broader occupation has diminished to two communities separated by approximately 90 miles—the southern community around Willow Springs, and the northern community around Paiute Canyon/Navajo Mountain. Owing to steady population increases and westward expansion among the Navajos in the late 19th century, San Juan Paiute lands were eventually absorbed and included within the Navajo Reservation. From 1908 to 1922 the San Juan Paiutes had their own reservation, but it too was ultimately annexed to the Navajo Reservation.

Today both San Juan Paiute communities, whose residents form a common kinship group, are located on the Navajo Reservation, but are still explicitly identified as Paiute communities. Extensive economic cooperation in agriculture and grazing exists between family groups in both communities. The primary context in which social distinction occurs is one between San Juan Paiutes and Navajos. Although both are residents of the same geographical area and have social links and interactions between them, the San Juan Paiutes have not been incorporated into the kinship relations which are primary for traditional Navajo social organization. Moreover, separate economic resources for agriculture and grazing have been maintained between the two tribes. While there is some San Juan Paiute acculturation to Navajo ways—more in some families than in others—important social distinctions remain, with little evidence of Paiute acculturation to Navajo kinship patterns, political institutions, or central aspects of Navajo religion.

The San Juan Paiutes have maintained leadership and internal political decision-making processes, exercising tribal political authority since earliest sustained historical contact. This internal governmental process has operated independent of the control of traditional and modern political processes of the Navajo Tribe. While ethnographic data indicate that the San Juan Paiutes were a single socially unified and distinct body in the 1850's which considered of at least two political units with separate leadership, by 1873 the group had become a single political unit, and was so considered by a Government commission. Tribal leaders served as spokesmen for the entire tribe and were concerned with external affairs. The traditional system was based on consensus decision-making and non-coercive leaders who were influential because of their prestige, knowledge of Paiute culture, social maturity, and ability to gain the support of kinsmen for whom they spoke. Meetings were a central and indispensable part of the political structure. A written description of the governing process of the tribe and the formerly unwritten criteria for membership were submitted with the tribe's petition, in fulfillment of 25 CFR 83.7(d). Individuals on the tribe's membership roll met the stated criteria for membership, which include lineal descent from Southern Paiute ancestry and social participation in the tribe.

One-hundred nineteen of the 188 San Juan Paiutes who appear on the roll which the tribe submitted for Federal acknowledgment also appear on the Bureau's updated 1940 reservation-wide census which has been adopted by the Navajo Tribe as the "official roll of the Navajo Tribe." These individuals have been determined not to be members of the Navajo Tribe within the meaning of "member of an Indian tribe" as defined in the acknowledgment regulations (25 CFR 83.1(k)). This is based on a detailed analysis of the circumstances surrounding the creation and maintenance of that roll and the appearance of the names of many of the Paiutes on it. This analysis is described in detail in the Bureau's technical reports accompanying this proposed finding. Accordingly, it has been concluded that the San Juan Southern Paiutes are not composed principally of members of another tribe and therefore meet the requirements of criterion f of the regulations.

No evidence was found to show that the San Juan Southern Paiute Tribe has been the subject of Federal legislation which has expressly terminated or forbidden a relationship with the United States Government.

Based on this preliminary factual determination, we conclude that the San Juan Southern Paiute Tribe meets all of the criteria in 25 CFR 83.7. We therefore conclude that the tribe should be granted Federal acknowledgment under 25 CFR Part 83.

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120 calendar days from the date of publication of this notice.

Under § 83.9(f) of the regulations, a report summarizing the evidence for the proposed decision will be available to the petitioners and interested parties upon written request. Comments and requests for a copy of the report should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue, NW., Mail Stop 32–SIB, Washington, DC 20245, Attention: Branch of Acknowledgment and Research.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 120-day response period, the Assistant Secretary will publish the final determination regarding the petitioner's status in the Federal Register as provided in 25 CFR 83.9(h).

Hazel E. Elbert,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 87–18211 Filed 8–10–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CO–010–07–4322–02]

Craig District Grazing Advisory Board Meeting

Time and Date: September 2, 1987, at 10:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements between 10:00 a.m. and 11:00 a.m., or may file written statements.

Matters to be Considered

1. Proposed grazing regulation changes.

2. Presentation on riparian system management.

3. Area reports including updates on land use and activity planning, and proposed FY '88 range improvement lists.

4. Status report on FY '87 range improvement projects.

5. Expenditure of Grazing Advisory Board Funds.

Contact Person for more Information: John Denker, Craig District Office, 455 Emerson Street, Craig, Colorado, Phone: 303–824–8261.

Dated: August 3, 1987.

David C. Nylander,

Acting District Manager.

[FR Doc. 87–18149 Filed 8–10–87; 8:45 am]

BILLING CODE 4310–JB–M

[MT–020–07–4410–02]

Miles City District Advisory Council, Montana; Meeting

AGENCY: Bureau of Land Management, Miles City District Office.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Miles City District Advisory Council will be held Thursday, September 10, 1987, at 10 a.m. in the conference room at the Miles City District Office, Garryowen Road west of Miles City, Montana 59301

The agenda is as follows:

1. Status of wild horse policy and program.

2. Update on riparian policy and program.

3. Update on grasshopper and weed control programs, including consideration of council resolution on weed control funding.

4. Review of FY 88 District budget.

The meeting is open to the public. The public may make oral statements before the Advisory Council or file written statements for the Council's consideration. Depending upon the number of persons wishing to make oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Telephone: (406) 232–4331.

Darrell G. Pistorius,

Acting District Manager.

[FR Doc. 87–18150 Filed 8–10–87; 8:45 am]

BILLING CODE 4310–DN–M

[AZ–020–41–5410–10–ZADJ; A–22922]

Mineral Interest Application; Arizona

ACTION: Notice of receipt of conveyance of mineral interest application A–22922.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Space Biosphere Ventures has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 14 E.,
Sec. 12, SE¼.
T. 10 S., R. 15 E.,
Sec. 7, lots 1, 2, 3, 4.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, July 17, 1987, whichever occurs first.

Herman L. Kast,

Acting District Manager.

Date: July 27, 1987.

[FR Doc. 87–18151 Filed 8–10–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–41–5410–10–ZADG; A–22525]

Mineral Interest Application, Arizona

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application A–22525.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, William B. Leach has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 8 N., R. 5 W.,
Sec. 26, NW¼NW¼.

Approximately 40 acres, Yavapai County.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application,

December 12, 1986, whichever occurs first.

Date: July 31, 1987.

Herman L. Kast,

Acting District Manager.

[FR Doc. 87-18152 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-32-M

[AA 680 07 4132 02]

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for Approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Surface Management of Public Lands Under the U.S. Mining Laws.

Abstract: Section 302(b) of the Federal Land Policy and Management Act of 1976 requires that "In managing the public lands the Secretary (of the Interior) shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the (Public) lands." The regulations promulgated at 43 CFR Part 3809, are the Secretary's regulations regulating surface disturbance and ensuring reclamation on mining claims and sites located under the mining laws on public land under the Bureau of Land Management's administration.

Bureau Form Number: None.

Frequency: Respondent only files a plan of operation or notice once for any given operation. Additional filings are not required unless the operator proposed to modify the operations.

Description of Respondents: Respondents may range from individuals to multi-national corporations.

Annual Responses: 2300

Annual Burdens Hours: 4600

Bureau Clearance Officer: Richard Iovaine, 202-653-8853

Robert H. Lawton,

Assistant Director, Energy and Mineral Resources.

July 1, 1987.

[FR Doc. 87-18147 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-84-M

[AA-48583-BU]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48583-BU has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 7 W.,

Sec. 30, NW¼NW¼.

(39.25 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from April 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48583-BU as set out in section 31 (d) and (e) of the Mining Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1987, subject to the terms and conditions cited above.

Constance R. Van Horn,

Acting Chief, Branch of Mineral Adjudication.

Dated: August 3, 1987.

[FR Doc. 87-18153 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-JA-M

[CA-940-07-4520-12; C-11-87]

Filing of Plat of Survey; California

July 30, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 5 S., R. 16 E.

2. This supplemental plat of the North ½, of Section 5, Township 5 South, Range 16 East, San Bernardino Meridian, California, was accepted July 8, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-18154 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; Group 923]

Filing of Plat of Survey; California

July 30, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Francisco County

T. 2 S., R. 6 W.

2. This plat representing the dependent resurvey of a portion of the Golden Gate National Recreation Area (GGNRA), and the survey of a 1.90 acre parcel of land, in Block No. 1592 of the City and County of San Francisco, for inclusion within the GGNRA, Township 2 South, Range 6 West, Mount Diablo Meridian, California, under Group No. 923, was accepted July 14, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the National Park Service and the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-18155 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; Group 923]

Filing of Plat of Survey; California

July 30, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Marin County
T. 1 S., R. 5 W.

2. This plat representing the dependent resurvey of a portion of the exterior boundries of the Golden Gate National Recreation Area (GGNRA), and the survey of Aquatic Park within the GGNRA, in Township 1 South, Range 5 West, Mount Diablo Meridian, California, under Group No. 923, was accepted July 14, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the National Park Service and the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.
[FR Doc. 87-18156 Filed 8-10-87; 8:45 am]
BILLING CODE 4310-40-M

[WY-920-07-4111-15; W-96232]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 4, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-96232 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent respectively.

The lessees have paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-96232 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.
[FR Doc. 87-18241 Filed 8-10-87; 8:45 am]
BILLING CODE 4310-22-M

National Park Service

Intention To Negotiate Concession Permit; Gettysburg Tours, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Gettysburg Tours, Inc., authorizing it to continue to provide tram transportation and bicycle rental facilities and services for the public within Everglades National Park for a period of five (5) years from December 1, 1987 through November 30, 1992.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on November 30, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

Robert M. Baker,
Regional Director, Southeast Region.
[FR Doc. 87-18162 Filed 8-10-87; 8:45 am]
BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract; Virginia Peaks of Otter Co.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Virginia Peaks of Otter Company authorizing it to continue to provide food service, lodging, merchandising, service station and transportation facilities and services for the public on the Blue Ridge Parkway for a period of twenty (20) years from December 1, 1988, through November 30, 2008.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the office of the Superintendent, Blue Ridge Parkway.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on November 30, 1988, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secertary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. Interested parties should contact the Regional Director, Southeast Region,75 Spring Street, SW., Atlanta Georgia 30303, for information as to the requirements of the proposed contract.

C. W. Ogle,
Acting Regional Director, Southeast Region.
[FR Doc. 87-18163 Filed 8-10-87; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations; Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 1, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for

evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 26, 1987.

Amy Schlagel,
Acting Chief of Registration, National Register.

ALABAMA

Clark County

Jeffersonville, *Jeffersonville Historic District,* Roughly bounded by Court Ave., Graham St., Ohio River, & I–65

Dallas County

Selma, *Skinner Marcus Meyer, House,* 2612 Summerfield Rd.

Jefferson County

Brimingham, *West End Masonic Temple,* 1346 Tuscaloosa Ave.

Lawrence County

Courtland, *MacMahon, John, House,* Jct. S. Lane & Jefferson St.

Winston County

Double Spring, *Winston County Courthouse,* Addison Rd.

ARIZONA

Maricopa County

Phoenix, *Phoenix Homesteads Historic District,* Roughly bounded by Flower & Twenty-eighth Sts., Pinchot Ave., & Twenty-sixth St.

Yuma County

Martinez Lake Site (Site No. AZ–050–0210)

FLORIDA

Hillsborough County

Tampa, *Curtis, William E., House,* 808 E. Curtis St.

St. Johns County

St Augustine, *Old St. Johns County Jail,* 167 San Marco Ave.

GEORGIA

Candler County

Metter, *South Metter Residential Historic District,* .S. Kennedy, S. Roundtree, S. Lewis & S. Leroy

Chattooga County

Cloudland vicinity, *Camp Juliette Low,* GA 157

Greene County

Greensboro, *Baber, Dr. Calvin M., House (Greensboro MRA),* Penfield Rd.
Greensboro, *Church of the Redeemer (Greensboro MRA),* Jct. of Main & North Sts.
Greensboro, *Commercial Historic District (Greensboro MRA),* Broad & Main Sts.
Greensboro, *(Greensboro Depot (Greensboro MRA),* West St.
Greensboro, *King-Knowles-Gheesling House (Greensboro MRA),* North St.
Greensboro, *Leila, Mary, Cotton Mill and Village (Greensboro MRA),* NE of downtown Greensboro, vicinity of Mill, W. Cherry, N. Laurel, Sycamore, Spring, West, & Richland Sts.
Greensboro, *North Street-East Street Historic District, (Greensboro MRA),* North, East, Greene, & Walnut Sts.
Greensboro, *Poullain, Phillip, House (Greensboro MRA),* Penfield Rd.
Greensboro, *South Street-Broad Street-Main Street-Laurel Street Historic District (Greensboro MRA),* South, Broad, Main, and Laurel Sts.
Greensboro, *South Walnut Street Historic District (Greensboro MRA),* S. Walnut, E. South, & E. Broad Sts.
Greensboro, *Springfield Baptist Church (Greensboro MRA),* Canaan Circle

LOUISIANA

Rapides Parish

Meeker, *Jones, Wade H., House,* Meeker Rd.

MICHIGAN

Grand Traverse

Fife Lake vicinity, *Fife Lake-Union District No. 1 Schoolhouse,* 5020 Fife Lake Rd.

NEW HAMPSHIRE

Cheshire County

Winchester, *Conant Public Library,* Main St.
Winchester, *Winchester Town Hall,* Main St.,

Grafton County

Haverhill, *Haverhill Corner Historic District,* NH 10 from N. Piedmont to bisection of NH 25 & Court St.

Hillsborough County

Nashua, *Nashua Manufacturing Company Historic District,* Factory & Pine Sts.

Merrimack County

Concord, *Downing, Lewis, Jr., House,* 33 Pleasant St.

Stafford County

Dover, *Garrison Hill Park and Tower,* Abbie Sawyer Memorial Dr.

NEW YORK

Allegany County

Wellsville, *Wellsville Erie Depot,* Depot St.

Westchester County

Croton-on-Hudson, *Croton North Railroad Station,* Senasqua Rd.

NORTH CAROLINA

Rockingham County

Eden, *Boone Road Historic District,* Roughly 400 & 500 blks. Boone Rd., 400 blk. Chestnut & 500 blk. Glovenia Sts., & 200 blk. Highland Dr.
Eden, *Leaksville Commerical Historic District,* 622–656 Washington & 634 Monore Sts.

TEXAS

Bexar County

Randolph AFB, *Base Administration Building,* Building 100

VIRGINIA

Fairfax County

Fairfax, *City of Fairfax Historic District,* Jct. of VA 236 & VA 123

WASHINGTON

Clallam County

Port Angeles, *Clallam County Courthouse,* 319 Linclon St.

Lewis County

Pe Ell, *Holy Cross Polish National Catholic Church,* Third & Queen Sts.

San Juan County

Eastsound vicinty, *Crow Valley School,* Crow Valley Rd.

[FR Doc. 87–18164 Filed 8–10–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–287X]

Port Huron and Detroit Railroad Co.; Exemption; Abandonment in St. Clair County, MI; Corrected Notice

AGENCY: Interstate Commerce Commission.

ACTION: Correction to effective date of notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the Port Huron and Detroit Railroad Company (PH&D) from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, to abandon a 4.35-mile line of railroad in St. Clair County, MI, between Valuation Station 600+00 (milepost 14.64) at or near Belle River, and the end of the line at or near Valuation Station 829+55 (milepost 18.99) in Marine City, subject to the employee protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). A prior notice was published at 52 FR 19410 on May 22, 1987 erroneously indicating an effective date of May 2, 1987. This notice corrects that error.

DATE: This exemption was effective on June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

Decided: August 3, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners

Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18175 Filed 8-10-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30044]

Motor Carriers; James River Corp. of Virginia; Transportation Through Woodland, California; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of a petition for declaratory order.

SUMMARY: Upon petition by James River Corporation of Virginia, the Commission has instituted a declaratory order proceeding to determine whether the transportation of paper products from a warehouse at Woodland, CA to customers at other points in California is interstate or intrastate in nature. Superior Transportation Systems, Inc., and Interstate Distributor Company joined in the petition. The majority of the paper products are stored temporarily after an initial movement from out-of-State manufacturing facilities. They are transported from Woodland by I.C.C. authorized motor contract carriers under proportional rate schedules containing storage-in-transit provisions.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by August 26, 1987.

A list of interested parties will then be compiled and served. Petitioners will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of each of their comments. Other parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioners' representatives. Petitioners will have 50 days from the service date of the service list to reply.

ADDRESSES: Send an original and 10 copies to comments referring to No. MC-C-30044 to:

Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

Send one copy of comments to each of petitioners' representatives:

William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210
and
Timothy H. Lee, 25200 Southwest Parkway, Wilsonville, OR 97070
and
Gary R. McLean, P.O. Box 99909, Tacoma, WA 98499-0909

FOR FURTHER INFORMATION CONTACT:

Ronald Thomas (202) 275-7912
or
Andrew L. Lyon (202) 275-7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission decision. Copies are available for purchase from T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357.

Dated: July 27, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley would have entertained a request for oral hearing.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18176 Filed 8-10-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telepone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Consumer Expenditure Diary and Interview Survey Questionnaires and Cover Letters
1220-0050; CE-300, CE-301, CE-302, CE-302 Supp., CE-303 (L1, L2, L5, CE-380, CE-383, CE-880, CE-801, CE-802, CE-803 (L)
Daily, Diary; Quarterly, Interview
Individuals or households
52,700 responses; 90,539 hours; 11 forms

The Consumer Expenditure Surveys gather detailed information on expenditures, income and other related subjects to periodically update the Consumer Price Index. The published data provide a continuing measurement of changes in consumer expenditure patterns for economic analysis.

Employment Standards Administration

Certificate of Medical Necessity
1215-0113; CM-893
Annually
Businesses or other for-profit; small businesses or organizations
10,000 responses; 54,000 hours; 1 form

The CM-893 is completed by the miner's doctor and is used by DCMWC

to determine if the miner beneficiary meets the specific impairment standards to qualify for durable medical equipment, home nursing care and/or pulmonary rehabilitation.

Employment and Training Administration

Experience Rating Report
1205–0164; ETA 204
Annually
State or local governments
53 respondents; 2,120 hours; 1 form

Measures experience rating, permitting calculation of experience rating index (ERI); permits analysis of factors influencing rates, equity, and soundness of the system.

Reinstatement

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 81–8
Other
Businesses and other for-profit
57,675 responses; 9,613 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the investment of plan assets which involve the purchase or other acquisition, holding sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term investments.

Prohibited Transaction Class Exemption 82–63
On occasion
Business and other for-profit
10,800 responses; 1,800 hours

The class exemption allows the payment of compensation under certain conditions for the provision by an employee benefit plan fiduciary of securities lending services to the plan.

Prohibited Transaction Class Exemption 77–8
Other
Business and other for profit; small businesses or organizations
8,580 responses; 1,430 hours

The class exemption exempts from the prohibited transaction restrictions of ERISA the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, or other employee benefit plans which are parties in interest.

ERISA Exemption Procedure 75–1, Exemption Procedure Under Section 408(a) of ERISA
On occasion
Business or other for-profit; non-profit institutions; small business or organizations
525 respondents; 14,938 hours

The ERISA Exemption Procedure provides guidance to the affected public regarding the procedures to be followed and the information to be supplied to the Department when requesting an exemption from the ERISA prohibited transaction provisions.

Final Regulation/Alternative Method of Compliance for Certain Simplified Employer Pensions 2520.104–49
1210–0034
Annually
Businesses or other for profit; Small businesses or organizations
500 responses; 42 hours; 1 form

In keeping with section (408) of the IRC, the regulation provides an alternative type of reporting and disclosure arrangement for Simplified Employee Pensions (SEPs) that is easier to establish and administer than otherwise required under ERISA.

Prohibited Transaction Class Exemption 80–83
Recordkeeping
Business or other for-profit
1 hour

This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions involving an employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

ERISA Advisory Opinion Procedure 76–1
On occasion
Business or other for-profit; small businesses or organizations
121 respondents; 1,815 hours

The procedure is utilized by plan fiduciaries, administrators and other individuals when requesting a legal interpretation from the Department regarding specific facts and circumstances (an Advisory Opinion).

Signed at Washington, DC, this 4th day of August, 1987.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 87–18228 Filed 8–10–87; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–0463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on August 19, 1987, from 1:30 p.m. to 4:00 p.m. at the Washington Hilton Hotel, 1919 Connecticut Avenue, NW, Washington, DC.

The agenda for the meeting on August 19 will include:

1. Swearing in New Members.
2. Welcoming Remarks.
3. Members of the Committee will be given the opportunity to express their views on apprenticeship.
4. Members of the public will be given time to express their thoughts on apprenticeship.

Communications to the Executive Secretary should be addressed as follows: Mrs. M.M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4644, Washington, DC 20210.

Signed at Washington, DC, this 4th day of August 1987.

Roger Semerad,

Assistant Secretary of Labor.

[FR Doc. 87–18230 Filed 8–10–87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; General Motors Corp., et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 3rd day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
AC Spark Plug Div., General Motors (UAW)	Oak Creek, WI	8/3/87	7/22/87	19, 968	Automobiles.
AT&T Information Systems (CWA)	Solon, OH	8/3/87	7/20/87	19, 969	Computers.
AT&T Information Systems (CWA)	Charlotte, NC	8/3/87	7/20/87	19, 970	Telecommunication Products.
American Laquer (Workers)	Miami, FL	8/3/87	7/17/87	19, 971	Furniture.
Baker Metal Products, Inc. (Workers)	Dallas, TX	8/3/87	7/6/87	19, 972	Aluminum.
Big Chief Drilling Co. (Workers)	Oklahoma City, OK	8/3/87	7/22/87	19, 973	Oil and Gas.
Bofors Nobel, Inc. (Workers)	Muskegon, MI	8/3/87	7/21/87	19, 974	Dichlorobenzidine.
C.F. Industries (O.C.A.W.)	Terre Haute, IN	8/3/87	7/28/87	19, 975	Fertilizers.
Cyprus Thompson Creek Mining Co. (Company)	Clayton, ID	8/3/87	7/27/87	19, 976	Molybdemun Oxide.
Energy Exchange (Workers)	Oklahoma City, OK	8/3/87	7/24/87	19, 977	Oil and Gas.
Gates Molded Products (IAMAW)	Houston, TX	8/3/87	7/16/87	19, 978	Molded Products.
J.B. Stuart Plant, Kenney Shoe Corp. (Workers)	Glenville, WV	8/3/87	7/21/87	19, 979	Shoes.
Lamson/Crocker Petroleum Corp. (Company)	Layfayette, LA	8/3/87	7/10/87	19, 980	Oil and Gas.
Manitowoc Shipbuilding, Inc	Manitowoc, WI	8/3/87	7/24/87	19, 981	Cranes, Excavators, Winches and Debarkers.
Motorola/Oak Hill Plant (Workers)	Austin, TX	8/3/87	5/20/87	19, 982	Circuits.
SKF Automotive Products (UAW)	Casey, IL	8/3/87	7/20/87	19, 983	Automotive Products.
Trico Products Corp. (UAW)	Buffalo, NY	8/3/87	7/27/87	19, 984	Windshield Wipers.
Teledyne Continental Motors (UAW)	Muskegon, MI	8/3/87	8/3/87	19, 985	Trucks.
Utica Cutlery Co. (UTICA)	Utica, NY	8/3/87	7/24/87	19, 986	Flatware.

[FR Doc. 87-18229 Filed 8-10-87; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Open Meeting of the Advisory Committee For Design, Manufacturing, and Computer-Integrated Engineering

National Science Foundation announces the following meeting:

Name: Advisory Committee for Design, Manufacturing, and Computer-Integrated Engineering (DMCE)

Date and Time: August 27–28, 1987, 9:00 a.m.–5:00 p.m., August 27; 9:00 a.m.–3:00 p.m., August 28

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, Room 543

Type of Meeting: Open

Contact Person: Dr. Michael Wozny, Division Director, DMCE, Room 1108, National Science Foundation, Telephone: 202/357-7508

Summary Minutes: Dr. Wozny

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Design, Manufacturing, and Computer-Integrated Engineering

Summarized Agenda: Discussions on issues, opportunities and future directions for the Division in Design, Manufacturing, and Computer-Integrated Engineering; discussion of the DMCE budget for FY 1987; discussion of budget issues with the NSF Assistant Director for Engineering, as well as other items.

M. Rebecca Winkler,

Committee Management Officer.

August 6, 1987.

[FR Doc. 87-18247 Filed 8-10-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on August 17, 18 and 19, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, August 17, 1987—8:30 a.m. until the conclusion of business

Tuesday, August 18, 1987—8:30 a.m. until the conclusion of business

Wednesday, August 19, 1987—8:30 a.m. until the conclusion of business

On Monday, August 17, the Subcommittee will review and discuss the Office of Research's HLW and LLW research program plans for FY 1988-FY 1992, the solidification of LLW, and the Subcommittee's July 28, 1987 visit to the University of Arizona and its field test site near Superior, Arizona.

On Tuesday, August 18, the Subcommittee will review and discuss the NMSS Division of High Level Waste Management's program plans for FY 1988-FY 1992, NRC's comments on the DOE Draft Mission Plan Amendment, the Q-List Generic Technical Position (GTP), DHLW's recent QA mini-audit of a portion of the DOE Los Alamos National Laboratory work on geologic repositories, and the Subcommittee's July 29–30, 1987 visit to the DOE Nevada Nuclear Waste Project Office, Yucca Mountain and other Nevada test site facilities.

On Wednesday, August 19, the Subcommittee will review and discuss the NMSS Division of Low Level Waste Management and Decommissioning's program plans for FY 1988–FY 1992, the Environmental Standard Review Plan for LLW sites, and status reports on DOE's uranium recovery program, EPA's LLW Standard, state LLW compacts, greater than Class C wastes, mixed wastes, alternatives to shallow-land burial for DOE low-level wastes, and foreign commercial LLW programs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 a.m and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: August 5, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–18222 Filed 8–10–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (Title 44 U.S. Code Chapter 35), this notice announces a collection of information from the public which has been submitted to OMB for clearance. Standard Form 177, Statement of Physical Ability for Light Duty Work, is used to collect information from applicants for positions in the competitive service about their physical capacity to perform the duties of sedentary and moderately active jobs. The SF 177 is used by agencies in lieu of requesting or requiring medical examinations to determine qualifications for these positions. There are 678 individuals who respond annually for a total burden of 113 hours. For copies of this proposal, call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received on or before August 21, 1987.

ADDRESS: Send or deliver comments to:

William C. Duffy, Agency Clearance Officer, Officer of Personnel Management, 1900 E. Street NW., Room 6410, Washington DC 20415,

and

Richard Eisinger, Information Desk Officer, Office of Information, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Raleigh Neville, (202) 632–6817.

Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–18215 Filed 8–10–87; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Surry and James City Counties, VA

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 Surry and James City Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone: (804) 771–2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to provide an improved crossing of the James River along Route 31 between Surry and James City Counties.

The proposed project will consist of the study of several alternatives to relieve congestion at the existing Jamestown Ferry which crosses the James River from Surry County to James City County.

Various build alternatives within the study area will be analyzed.

There are also three alternatives to the proposed project under consideration:

1. Null or No-Build Condition—to evaluate the traffic impacts of maintaining the existing ferry service.

2. Ferry Service Improvement—to evaluate the ability of an improved ferry service to accommodate the transportation demands in the study area.

3. Mass Transit—to evaluate the ability of mass transit to accommodate the transportation demands in the study area.

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 interest in this proposal. No formal scoping meeting is scheduled at this time. The DEIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

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 DEIS 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 provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: August 4, 1987.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 87–18157 Filed 8–10–87; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

Applications For Renewal or Modification of Exemptions or Applications To Become a Party To An Exemption

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to

expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes August 27, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application	Applicant	Renewal of exemption
4453-X	Laverty Supply, Inc., Indianola, IA.	4453
4453-X	Armstrong Explosives Co., New Galilee, PA.	4453
4453-X	Northern Ohio Explosives, Inc., Forest, OH.	4453
4453-X	Belmont Mine Supply, Company, Inc., Flushing, OH.	4453
4459-X	Allied Healthcare Products, Inc., St. Louis, MO.	4459
5206-X	Kesco, Inc., Kittanning, PA.	5206
5895-X	Explosive Technology, Inc., Fairfield, CA.	5895
6589-X	International Safety Devices, Inc., Hesperia, CA (See footnote [1]).	6589
6861-X	U.S. Department of Defense, Falls Church, VA.	6861
6902-X	Great Lakes Chemical Corp., El Dorado, AR.	6902
7035-X	Owens-Illinois, Inc., Toledo, OH.	7035
7056-X	Henkel Corp., Morristown, NJ.	7056
7544-X	Eastman Kodak Co., Rochester, NY (See footnote [2]).	7544
7616-X	Consolidated Rail Corp. (CONRAIL), Philadelphia, PA.	7616
7835-X	Wilson Oxygen and Supply, Inc., Austin, TX.	7835
8063-X	Taylor-Wharton, Division of Harsco Corp., Indianapolis, IN (See footnote [3]).	8063
8573-X	Alstar Co., Tracy, CA	8573
8640-X	Fruehauf Corp., Omaha, NE.	8640
8651-X	Rockwell International Corp., Canoga Park, CA.	8651
8698-X	Union Carbide Corp., Danbury, CT.	8698
8708-X	Great Lakes Chemical Corp., El Dorado, AR.	8708
8716-X	GTE Products Corp., Waltham, MA.	8716
8723-X	Atlas Powder Co., Dallas, TX (See footnote [4]).	8723
8750-X	Applied Cos., San Francisco, CA.	8750
8757-X	Y-Z Industries, Inc., Snyder, TX (See footnote [5]).	8757
8814-X	Structural Composites Industries, Inc., Pomona, CA.	8814
8888-X	Nalco Chemical Co., Naperville, IL.	8888
9061-X	SSI Group, Ltd., Fairfield, KY.	9061
9130-X	Bio-Lab, Inc., Decatur, GA.	9130
9130-X	Hydrotech Chemical Corp., Marietta, GA.	9130
9140-X	Crown Rotational Molded Products, Inc., Marked Tree, AR (See footnote [6]).	9140
9142-X	EVA Eisenbahn-Verkehrsmittel GmbH, Dusseldorf, West Germany.	9142
9150-X	Hoover Group, Inc., Beatrice, NE.	9150
9174-X	McDonnell Douglas Corp., St. Louis, MO.	9174
9181-X	GTE Products Corp., Waltham, MA.	9181
9340-X	Pioneer Plastics & Services Co. Ltd., Brampton, Ontario, CN (See footnote [7]).	9340
9346-X	Witco Corp., Bradford, PA.	9346
9372-X	Gearhart Industries, Inc., Fort Worth, TX.	9372
9381-X	Pacific Smelting Co., Torrance, CA.	9381
9416-X	Mobay Corp., Kansas City, MO (See footnote [8]).	9416
9436-X	Union Carbide Corp., Danbury, CT.	9436
9456-X	Dow Corning Corp., Midland, MI.	9456
9460-X	Tracor Aerospace (formerly Tracor MBA), East Camden, AR.	9460
9464-X	Broco, Inc., Rialto, CA	9464
9480-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	9480
9480-X	Airco, The BOC Group, Inc., Murray Hill, NJ.	9480
9519-X	Transchem, Inc., South Bend, IN (See footnote [9]).	9519
9528-X	U.S. Department of Defense, Falls Church, VA.	9528
9529-X	Viskaske Corp., Chicago, IL.	9529
9533-X	B.A.G. Corp., Dallas, TX (See footnote [10]).	9533
9666-X	Stauffer Chemical Co., Westport, CT (See footnote [11]).	9666
9692-X	Halliburton Services, Duncan, OK (See footnote [12]).	9692
9697-X	E.I. du Pont de Nemours & Co., Wilmington, DE (See footnote [13]).	9697
9711-X	Konica USA, Inc./ Konica Business Machine USA, Inc., Englewood Cliff, NJ (See footnote [14]).	9711
9732-X	Shell Oil Co., Houston, TX (See footnote [15]).	9732
9748-X	Grief Bros. Corp., Springfield, NJ (See footnote [16]).	9748

[1] Reinstatement of exemption that authorizes the shipment of materials in non-DOT specification cylinders.

[2] To authorize an additional non-DOT specification fiberboard box as overpack for shipment of materials classed as corrosive material.

[3] To authorize alternative packagings for the shipment of refrigerated liquids classed as nonflammable gases.

[4] To authorize MC 306 and MC 307 cargo tanks as alternative packagings for bulk shipments of materials classed as blasting agents.

[5] To authorize natural gas, classed as flammable gas, and crude oil, classed as flammable liquid, for shipment in non-DOT specification stainless steel cylinders.

[6] To authorize an optional stainless steel bottom discharge fitting and value assembly on non-DOT specification polyethylene portable tank for shipment of certain corrosive flammable or oxidizer liquid.

[7] To authorize a flammable liquid as an additional commodity for shipment in non-DOT specification polyethylene portable tanks.

[8] To renew and to authorize rail as an additional mode of transportation.

[9] To authorize an alternative non-DOT specification packaging for shipment of materials classed as corrosive material or flammable liquid or a material classed as oxidizer.

[10] To authorize shipment of a material classed as poison B in non-DOT specification packaging identified as flexible intermediate bulk containers.

[11] Reinstatement of exemption that authorizes materials classed as metal alkyls solution for shipment in DOT 4BA and 4BW cylinders, which are hydrostatically tested every 10 years rather than 5 years.

[12] To authorize an alternative packaging description and an additional material, classed as corrosive material, for shipment in the DOT specification 57 portable tanks.

[13] To authorize shipment of waste antimony pertachloride, corrosive material, in out of test DOT 105A300W and DOT 105A500W tank cars to an additional location.

[14] To authorize rail and air shipments of a corrosive material in a polyethylene bag, packed inside a corrogated fiberboard carton then a maximum of two cartons overpacked in a DOT specification 12B box.

[15] To authorize rail as an additional mode of transportation.

[16] To authorize water as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
4453-P	Viking Explosives & Supply, Inc., Hibbing, MN.	4453
6296-P	Rhone-Poulenc AG Co., Monmouth Junction, NJ.	6296
6434-P	Rhone-Poulenc AG Co., Research Triangle Park, NC.	6434
6686-P	Goss Inc., Glenshaw, PA.	6686
6691-P	Industrial Gas Distributors, Inc., Billings, MT.	6691
7052-P	ECO Energy Conversion, Somerville, MA.	7052
7052-P	Mercury Instruments, Inc., Cincinnati, OH.	7052
7052-P	Computer Components Corp., Dallas, TX.	7052
7595-P	Rhone-Poulenc AG Co., Research Triangle Park, NC.	7595
7607-P	Phoenix Safety Associates, Ltd., Phoenixville, PA.	7607
8335-P	Keegan Technology & Testing Associates, Inc., Newark, NJ.	8335
8426-P	Rich-Sand Service Co., Orcutt, CA.	8426
8445-P	Rhone-Poulenc AG Co., Research Triangle Park, NC.	8445
8451-P	Explosive Technology, Inc., Fairfield, CA.	8451
8518-P	M & G Services, Inc., Rio Vista, CA.	8518
8567-P	ACE Pipe Cleaning, Inc., Kansas City, MO (See Footnote [1]).	8567
8723-P	Austin Powder Co., Cleveland, OH.	8723
9015-P	Olin Chemicals Group, Stamford, CT.	9015
9181-P	U.S. Department of Defense, Falls Church, VA.	9181
9277-P	Rhone-Poulenc AG Co., Research Triangle Park, NC.	9277
9623-P	Quick Supply Co., Des Moines, IA.	9623
9718-P	EUROTAINER, 75008 Paris, France.	9718
9769-P	Safety-Kleen Corp., Elgin, IL.	9769
9769-P	Safety-Kleen Envirosystems Co., Inc., Manati, PR.	9769

[1] To reinstate the exemption that authorizes the shipment of waste masterials, including mixtures, classed as flammable liquid, corrosive material or poison B in non-DOT specification cargo tanks.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1987.

Suzanne Hedgepeth,

Chief, Exemption Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-18238 Filed 8-10-87; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes September 10, 1987.

Address comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9817-N	Hoover Group, Inc., Beatrice, NB	49 CFR Part 173, Subpart F., 173.119, 173.125, 173.266.	To authorize shipment of corrosive liquids, flammable liquids or an oxidizer in a reusable non-DOT specification steel-jacketed polyethylene portable tank of 275 gallon capacity. (modes 1, 2, 3)
9818-N	Olin Corp., Stamford, CT	49 CFR 173.31, Note a	To authorize a one time shipment of chlorine, classed as nonflammable gas and poison, in a DOT Specification 105A500W tank care that is out of test. (mode 2)
9819-N	Halliburton Co., Duncan, OK	49 CFR 173.119, 173.245, 173.249	To authorize shipment of materials classed as corrosive liquids or flammable liquids in non-DOT Specification portable tanks, either manifolded together within a frame mounted on a truck chassis or separated on a flatbed truck. (mode 1)
9820-N	Custom Chemical Packaging Co., Springfield, OH.	49 CFR 172.101, 172.400, 172.404, 172.504, 173.118, 173.119, 173.244, 173.245, 173.345, 173.346, 175.3.	To authorize shipment of materials classed as corrosive materials, flammable liquids and poison B in non-DOT specification packaging of maximum one gallon capacity. (modes 1, 2, 4)
9821-N	Quaker State Corp., Titusville, PA	49 CFR 173.119	To authorize shipment of crude oil, classed as flammable liquid, in non-DOT specification cargo tanks comparable to DOT Specification MC-307 cargo tanks. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9822-N	U.S. Department of Defense, Washington, DC	49 CFR 173.328(a)(2), 175.3	To authorize shipment of poison liquids, n.o.s., classed as Poison A, in packagings provided for in Section 173.331(b)(1). (modes 1, 4)
9823-N	Moog Inc., Carleton Group, East Aurora, NY	49 CFR 173.302, 175.3	To authorize shipment of helium, compressed, classed as non-flammable gas, in a non-refillable non-DOT specification cylinder. (modes 1, 2, 4)
9824-N	Maremont Corp., Nashville, TN	49 CFR 173.306(f)(2)(iii), 173.306(f)(3)(i), 175.3.	To authorize shipment of nitrogen, compressed, classed as nonflammable gas, in an accumulator. (modes 1, 2, 4)
9825-N	Sequoyah Fuels Corp., Oklahoma City, OK	49 CFR 173.403(n)(4), 173.425(c)(2)	To authorize transport of raffinate sludge, classed as radioactive-LSA, with radioactivity concentration greater than the limit established, in DOT Specification MC-312 cargo tanks. (mode 1)
9826-N	Composite Container Corp.—Kentucky, Louisville, KY.	49 CFR 173.60, 173.61, 173.64, 173.93	To authorize the shipment of explosives, classed as Class A or Class B, in non-DOT specification Co-polymer (polyethylene and polypropylene) drums. (modes 1, 2, 3)
9827-N	Mobay Corp., Kansas City, MO	49 CFR 173.359	To authorize shipment of organophosphorus pesticide, mixture, liquid, n.o.s., classed as Poison B, in a DOT Specification 34 polyethylene container. (modes 1, 2)
9828-N	Mobay Corp., Kansas City, MO	49 CFR 173.365	To authorize shipment of azinphos methyl, mixture, solid, classed as Poison B, in water soluble packets inside lined chipboard cartons overpacked in DOT Specification 12B65 fiberboard boxes. (modes 1, 2)
9829-N	Tora Express, Inc., Monroe, LA	49 CFR 172.101, 172.204, 173.27, 175.30(a)(1), 175.320(b), Part 107, Subpart B, Appendix B.	To authorize carriage by cargo-only aircraft those Class A, B and C explosives that are not permitted or are in quantities greater than prescribed for air shipment. (mode 4)
9830-N	Worthington Cylinders, Columbus, OH	49 CFR 175.3, 178.51	To authorize manufacture, mark and sale of non-DOT Specification stainless steel cylinders to transport those materials authorized in DOT specification 4BA cylinders. (modes 1, 2, 3, 4, 5)
9831-N	L'Air Liquide, Sassenage, France	49 CFR 172.101, 173.315(a), 178.338	To authorize manufacture, mark and sell of non-DOT Specification portable tanks, insulated with vacuum plus gas helium shield, for shipping helium refrigerated liquid, classed as nonflammable gas. (modes 1, 3)
9832-N	L'Air Liquide, Sassenage, France	49 CFR 172.101, 173.315(a), 178.338	To authorize manufacture, mark and sell of non-DOT Specification portable tanks, insulated with vacuum plus gas helium shield, for shipping Helium refrigerated liquid, classed as nonflammable gas and hydrogen refrigerated liquid, classed as flammable gas. (modes 1, 3)
9833-N	Wacker Chemicals (USA), Inc., Canaan, CT	49 CFR 173.384	To authorize shipment of monochloroacetone, classed as an irritating material, in DOT Specification 51 portable tanks. (modes 1, 3)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-18239 File 8-10-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Amendment to Department Circular—Public Debt Series—No. 19-87]

7⅝% Treasury Notes, Series AB-1989

Washington, July 29, 1987.

Department of the Treasury Circular, Public Debt Series No. 19-87, dated July 16, 1987, as supplemented, descriptive of 7⅝% Treasury Notes of Series AB-1989, is hereby amended effective July 29, 1987. The notes will be auctioned Thursday, July 30, 1987.

The same numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 19-87, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, July 30, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, July 29, 1987, and received no later than Friday, July 31, 1987.

The foregoing Amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-18177 Filed 8-10-87; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 19-87]

Treasury Notes, Series AB-1989

Washington, July 31, 1987.

The Secretary announced on July 30, 1987, that the interest rate on the notes designated Series AB-1989, described in Department Circular—Public Debt Series—No. 19-87 dated July 16, 1987, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-18178 Filed 8-10-87; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 6, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8613
Type of Review: New Collection
Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies
Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under

section 4982. IRS uses the information to verify that the correct amountof tax has been reported.
Respondents: Businesses or other for-profit
Estimated Burden: 201 hours

OMB Number: 1545–0190
Form Number: 4876A
Type of Review: Extension
Title: Election to be Treated as an Interest Charge DISC
Description: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876A is used to make the election. The form provides IRS with information to determine that the corporation qualifies to be an interest charge DISC, the number of shareholders, and the tax year of the corporation and its principal shareholder.
Respondents: Businesses or other for-profit
Estimated Burden: 1,000 hours

OMB Number: 1545–0191
Form Number: 4952
Type of Review: Revision
Title: Investment Interest Expense Deduction
Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 130,305 hours

OMB Number: 1545–0865
Form Number: 8264
Type of Review: Revision
Title: Application for Tax Shelter Registration Number
Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. (Other persons may have to register the tax shelter if the organizer doesn't.) We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number to investors who report the number on their tax returns.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 138,477 hours

OMB Number: 1545–0901
Form Number: 1098
Type of Review: Revision
Title: Mortgage Interest Statement
Description: Form 1098 is used by mortgagors who in a trade or business receive $600 or more of mortgage interest payments to report the amount of interest paid by an individual.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 6,034,805 hours

Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Alcohol, Tobacco and Firearms

OMB Number: 1512–0115
Form Number: ATF F 5220.4 (2140)
Title: Monthly Report—Export Warehouse Proprietor
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid 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 (2140) is used for product accountability and is examined by regional office personnel.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 2,343 hours

OMB Number: 1512–0156
Form Number: ATF F 2987 (5210.8)
Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes
Description: ATF F 2987 (5210.8) is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the U.S. The form identifies the taxpayer, cigars or cigarettes by tax class and a certification by U.S. Customs official as to the amount of shipment, and that the shipment has been released to the U.S.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 150 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 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 87–18240 Filed 8–10–87; 8:45am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 154
Tuesday, August 11, 1987

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 DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, August 4, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Atico Bank, an operating noninsured institution located at 101 SE. Second Avenue, Miami, Florida, for Federal deposit insurance.

Application of College Savings Bank, a proposed new bank to be located at 5 Vaughn Drive, West Windsor, New Jersey, for Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of recommendations relating to the Corporation's assistance agreements with certain insured banks.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 5, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-18306 Filed 8-7-87; 12:11 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, August 4, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Request of The Wolfeboro Savings Bank (In Organization), Wolfeboro, New Hampshire, for an extension of time of the approval of Federal deposit insurance.

Request of Counting House Bank (In Organization), Warsaw, Indiana, for modification of a condition imposed in granting the Corporation's consent to merge and establish three branches.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver liquidator, or liquidating agent of those assets:

Case No. 47,071-NR
Penn Squre Bank, National Association, Oklahoma City, Oklahoma

By the same majority vote, the Board further determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: August 5, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-18307 Filed 8-7-87; 12:11 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, August 13, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Gateway American Bank of Florida, a proposed new bank to be located at 1451 NW. 62nd Street, Fort Lauderdale, Florida.

Everett Mutual Savings Bank (FSB), an operating noninsured Federal savings bank located at 1502 Wall Street, Everett, Washington.

Application for consent to purchase assets and assume liabilities and establish one branch:

United Jersey Bank/Mid State, Hazlet Township (P.O. Hazlet), New Jersey, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Bey Lea Branch of Jersey Shore Savings and Loan Association, Toms River, New Jersey, a non-FDIC-insured institution, and for consent to establish that branch as a branch of United Jersey Bank/Mid State.

Application for consent to purchase assets and assume liabilities and establish three branches:

The Hocking Valley Bank of Athens Company, Athens, Ohio, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Main Office, the East State Street Branch, and the 18 North Court Street Drive-in Facility of The Security Bank, Athens, Ohio, and for consent to establish the three offices as branches of The Hocking Valley Bank of Athens Company.

Application for consent to purchase assets and assume liabilities:

Citibank (Maryland), National Association, Towson, Maryland, for consent to purchase certain assets of and assume the liability to pay deposits made in the Pikesville Branch of Standard Federal Savings & Loan Association, Gaithersburg, Maryland a non-FDIC-insured institution.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and Resolution re: Amendment to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing," which amendment would eliminate from the data-gathering requirement home-equity loans, as well as home improvement, maintenance, and repair loans.

Memorandum re: Petition requesting the Corporation to issue a regulation establishing criteria for determining when a bank being considered for open bank assistance under section 13(c) of the Federal Deposit Insurance Act has met the "essentiality test" of that statute.

Review of FDIC's financial performance:

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: August 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–18320 Filed 8–7–87; 1:54 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, August 13, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for Federal deposit insurance:

College Savings Bank, a proposed new bank to be located at 5 Vaughn Drive, West Windsor, New Jersey.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisons of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: August 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–18321 Filed 8–7–87; 1:54 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, August 14, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–18360 Filed 8–7–87; 3:29 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, August 17, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–18361 Filed 8–7–87; 3:29 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 10, 17, 24, and 31, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 10

Thursday, August 13

3:30 p.m.

Affirmation/Discussion and Vote (public meeting)

A. Beaver Valley Full Power Operating License (Tentative)

Week of August 17—Tentative

No Commission Meetings

Week of August 24—Tentative

No Commission Meetings

Week of August 31—Tentative

Wednesday, August 2

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Request for Hearing on Denial of Senior Reactor Operator's License at Beaver Valley, Unit 1 was *affirmed* on Thursday, August 6, 1987.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker, (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

August 6, 1987.

[FR Doc. 87–18359 Filed 8–7–87; 3:19 pm]

BILLING CODE 7590–01–M

POSTAL SERVICE BOARD OF GOVERNORS

At its meeting on August 3, 1987, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for August 31, 1987, in Washington, DC. The meeting will concern consideration of a contract for systems engineering and technical assistance support.

The meeting is expected to be attended by the following persons: Governors Griesemer, McConnell, Nevin, Pace, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of which would likely frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 87–18249 Filed 8–11–87; 10:03 am]

BILLING CODE 7710–12–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., August 17, 1987.
9:00 a.m. to 5:00 p.m., August 18, 1987.

PLACE: State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314.

STATUS: The meeting will be closed from 9:00 a.m. until 11:00 a.m. both days to discuss matters exempted from public discussion, pursuant to 5 U.S.C. section 552b(c)

MATTERS TO BE CONSIDERED:

Portions Open to The Public

Consideration of Applications submitted for Institute funding.

Portions Closed to The Public

Discussion of internal personnel practices and procedures.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22312, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 87–18248 Filed 8–7–87; 9:47 am]

BILLING CODE 6820–SC–M

Corrections

Federal Register
Vol. 52, No. 154
Tuesday, August 11, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Redelegations of Authorities to Positions in the Federal Disability Determination Service

Correction

In notice document 87-17022 beginning on page 28196 in the issue of Tuesday, July 28, 1987, make the following correction:

On page 28197, in the first column, in the third line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat Designation for the Inyo Brown Towhee

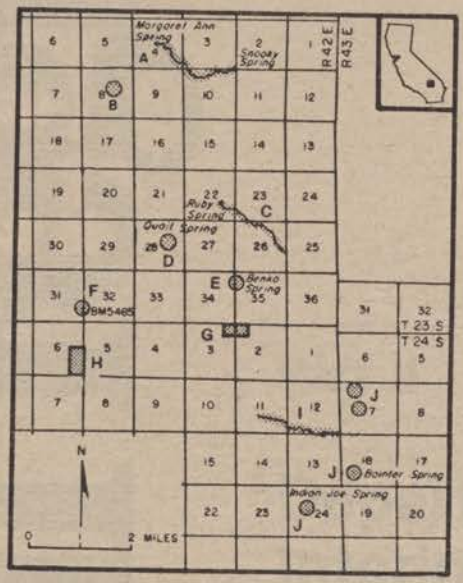
Correction

In rule document 87-17383 beginning on page 28780 in the issue of Monday, August 3, 1987, make the following corrections:

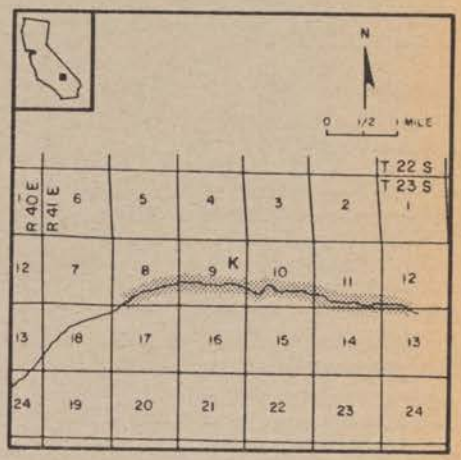
§ 17.95 [Corrected]

On page 28786, in § 17.95(b), the two maps were not legible and are republished below.

1. In § 17.95(b)(10), the map is republished as follows:



21. In § 17.95(b)(11), the map is republished as follows:



BILLING CODE 1505-01-D

federal register

Tuesday
August 11, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of an Experimental Population of Southern Sea Otters; Final Rule and Record of Decision

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of an Experimental Population of Southern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) issues a final rule governing a reintroduction of southern sea otters (*Enhydra lutris nereis*) at, and containment of them in the immediate vicinity of, San Nicolas Island, Ventura County, California for two purposes: (1) To implement a primary recovery action for a federally listed "threatened" species, and (2) to obtain data for assessing translocation and containment techniques, population dynamics, the ecological relationships of sea otters and the nearshore community, and the effects on the donor population of removal of individual otters for translocation. This experimental population will be established and managed under the authorities and guidelines of Pub. L. 99–625, 100 Stat. 3500 (1986).

EFFECTIVE DATE: This rule becomes effective on August 11, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1650, Portland, Oregon 97232, or the Office of Sea Otter Coordination, Room E–1818, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Ladd, U.S. Fish and Wildlife Service, Office of Sea Otter Coordination, Room E–1818, 2800 Cottage Way, Sacramento, California 95825 (916/978–4873) or FTS: 460–4873.

SUPPLEMENTARY INFORMATION:

Background

Species Account

The Secretary of the Interior determined in 1977 (42 FR 2968, January 14, 1977) that the southern sea otter (*Enhydra lutris nereis*) was a threatened species for purposes of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 *et seq*). Contributing to this determination was the fact that the historic sea otter population was reduced to near extinction due to commercial fur harvesting in the 1700's and 1800's. The southern sea otter (also referred to as California sea otter) presently numbers 1,300–1,400 animals and ranges from Año Nuevo, Santa Cruz County, to the Santa Maria River, San Luis Obispo County, California. Although the California population and its range has significantly increased since Federal and State bans on commercial and other hunting in 1911 and 1913, respectively, the still small population size and range, about 10 percent of historical California levels, and the otter's vulnerability to oil contamination warrant a threatened classification.

The sea otter, unlike most marine mammals, does not have blubber to provide insulation from the chilling effect of the ocean. The otter's dense pelage provides insulation and, if matted by oil or some other contaminant, the insulation is effectively eliminated and animals may die from hypothermia. The 1977 listing recognized that substantial quantities of petroleum products are shipped along the California coast, moving near the southern sea otter range, and are also transferred at marine terminals near the northern and southern ends of the range. Oil tanker traffic was and still is believed to pose the greatest oil spill risk to sea otters, although offshore outer continental shelf (OCS) oil development is currently increasing the oil spill risks. This latter risk was not a consideration when the species was listed as threatened in 1977.

In 1976, the California Department of Fish and Game (CDFG) estimated that the population numbered close to 1,800 and was increasing annually at about 5 percent. Recent information, however, indicates that the population has not grown significantly at least since the mid-1970's and may have declined somewhat over the past 10 to 15 years. As determined through studies started in 1982, this lack of growth is most likely attributable to sea otters becoming accidentally entangled and drowning in large-mesh gill and trammel nets set in nearshore waters by the local halibut fishery. CDFG biologists estimated that an average of 80 sea otters drowned annually between 1982 and 1984 and that losses ranged from 49 to 168 per year between 1973 and 1984. This threat to the population was neither recognized nor considered in the 1977 determination. The State of California has twice recently enacted legislation designed to substantially reduce or eliminate the accidental drowning of sea otters in large-mesh gill and trammel nets.

The status of southern sea otters was reviewed in the Service's 5-year review (May 1984). The review recognized the deteriorated state of the population (i.e., no growth and possibly a decline over the past 10 to 15 years, and activities in the area that can influence the population including OCS oil and gas development and incidental drowning in gill and trammel set nets) and the importance of moving rapidly forward with the major recovery tasks, including establishment of at least one additional population.

Pursuant to the ESA and Marine Mammal Protection Act (MMPA), the Service must utilize its authorities to recover the southern sea otter. The Service developed a recovery plan for the southern sea otter that was approved in 1982. This plan addresses the Service's responsibilities specifically under ESA and more generally under the MMPA. It examines possible means to protect and restore the southern sea otter and concludes that, along with completing the other recovery plan tasks, the most effective means of recovering the population is to establish at least one new colony sufficiently removed from the present range such that a large-scale oil spill could not contact both the new colony and existing population simultaneously.

For purposes of ESA the Service believes present population growth characteristics are inadequate for natural recolonization of historical, albeit not all, habitat within a reasonable period. Therefore, the Service is planning to establish at least one colony within historical range, in an area that is abundant with prey, kelp, and other habitat requirements, relatively free of toxic pollution, and sufficiently distant from the existing range so that a catastrophic oil spill will not likely contact both the existing population and the new colony of southern sea otters.

The Service contracted with James Dobbin Associates, Inc. in 1981 to map the location of and compile ecological and socioeconomic data for potential translocation zones along the Pacific coast of Washington, Oregon and California. Based on a variety of criteria, four coastal zones were delineated as having the highest potential for successful translocations: Northern Washington; southern Oregon; northern California; and San Nicolas-Santa Barbara Islands, southern California. For reasons discussed more fully herein, San Nicolas Island is considered the preferred site.

Summary of Major Issues, Comments and Recommendations

The Proposed Rule was submitted for public review concurrently with a Draft

Environmental Impact Statement (DEIS) on the proposed translocation. The Proposed Rule was published in the Federal Register on August 15, 1986, at which time all interested parties were invited to comment on the proposal during the comment period that extended through November 17, 1986. Commentors were advised that two separate documents were being made available for their review and that comments should be submitted on each of them. Only a few agencies, individuals and organizations identified comments as being specific to the Proposed Rule; however, many comments were received on certain aspects of the DEIS, such as the translocation plan (Appendix B), that were also pertinent to the Proposed Rule. This summary of comments has, therefore, been developed to address the major issues and concerns raised and recommendations made during the comment period, regardless if the comments were identified as being specific to the Rule, as long as the concern was pertinent to the Rule as well as to the DEIS. There were numerous comments received that were not considered to be major that are not discussed in the major issues below. Readers are referred to the Final EIS (FEIS) for specific responses to all comments received on the DEIS, including comments that are pertinent to both the Rule and DEIS but were not specifically directed to the Proposed Rule itself. A typed and signed copy of the Proposed Rule was incorporated into the DEIS as Appendix C, and was also distributed under separate cover after being published in the Federal Register on August 15, 1986.

Appropriate State and Federal agencies, County governments, representatives of scientific organizations and institutions and other interested parties were provided copies of the DEIS and Proposed Rule and requested to comment. A paid notice was published once during the week of August 24, 1986, in newspapers of general circulation in the areas potentially affected by the proposal; these included the following:

Coos Bay–North Bend World; Coos Bay, OR
Eugene Register–Guard; Eugene, OR
Eureka Times Standard; Eureka, CA
Ukiah Journal; Ukiah, CA
San Luis Obispo Telegram-Tribune; San Luis Obispo, CA
San Francisco Chronicle; San Francisco, CA
Monterey Peninsula Herald; Monterey, CA
Santa Cruz Sentinel; Santa Cruz, CA
The Press-Courier; Oxnard, CA
Los Angeles Times; Los Angeles, CA
Star Free Press; Ventura, CA

In addition to the paid advertisements, the Service sent a general news release on the proposal, the availability of the DEIS and Rule, and information on public hearings to approximately 500 other newspapers, radio stations, television stations and organizations in California and Oregon to further ensure that the public was aware of the Service's proposal. Three public hearings were conducted to provide additional opportunity for public comments on the proposal. The hearings were held in Ventura (September 24, 1986) and Monterey, California (September 22, 1986); and Brookings, Oregon (September 17, 1986). Approximately 435 people attended the hearings, and 97 provided testimony. Fifty-four of the 97 individuals who testified did not submit written comments (tallied below).

During the 94-day comment period, 953 (written) comment letters were received on the DEIS and Proposed Rule. Few commentors identified their comments as being specific to the Proposed Rule, but many comments on the DEIS were also applicable to the Rule and, thus, were considered in preparing both the FEIS and Final Rule. Of the 1,007 individuals and organizations that submitted oral or written comments on the proposal, 821 (81.5 percent) were in support, 140 (13.9 percent) opposed and 46 (4.6 percent) were neutral. We received one petition with 2,169 signatures that expressed concern that translocation to San Nicolas Island would jeopardize the diversity of the shellfish ecosystem throughout the Channel Islands and urged immediate zonal management. Of the 15 Federal and State agencies that commented on the proposal, two expressed support, including the Marine Mammal Commission which strongly supported the proposal and urged implementation in 1987, and 13 neither supported nor opposed the proposal, but offered comments and recommendations for consideration in preparing the Final Rule and FEIS. One elected California official expressed concern about the economic impact of the proposal on fisheries, and concluded that the potential adverse impact on the southern California sport and commercial fisheries resulting from a translocation to San Nicolas Island far outweighs the benefits to the southern sea otter. The California Resources Agency (Department of Fish and Game) in general supports recovery actions for the southern sea otter but indicated that before the Department could support this specific plan for translocation, the management zone boundary would have to be moved from Point Conception north to Point Sal or at least a "buffer" would have to be established between Point Sal and Point Conception where otter numbers could be kept low to facilitate restricting southward range expansion of the existing population beyond Point Conception.

After analysis of the comments received, the FEIS, with an attached draft final rule; was published on May 8, 1987. The rule has been widely publicized and the public is well aware of the narrow window of opportunity, beginning in mid-August, during which field activities must take place. If activities cannot begin near the outset of this narrow window, the entire project is likely to be delayed for 1 year, thus adversely affecting southern sea otter recovery.

Comment 1: Management of the existing population of California sea otters is not addressed in the translocation plan.

Service Response: The translocation plan has been prepared to comply with requirements set forth in Public Law (Pub. L.) 99–625, special legislation enacted in November 1986 which specifically authorizes and establishes requirements for translocating California sea otters. Legislative history of Pub. L. 99–625 states that the translocation plan is to provide for implementation of an important component of the Recovery Plan and that, while addressing a number of general issues related to the long-term management of California sea otters, it is primarily a planning mechanism for the translocation itself. It further states that specifications concerning long-term management of the California sea otter, including establishment of recovery goals and future translocation needs should be addressed in its next update of the Recovery Plan. The translocation plan, according to Congress, is not intended to replace the Recovery Plan as the primary long-term management document. The Service has committed to initiating a long-term management plan for the existing population immediately following the decisionmaking process on translocation. Implementation of the translocation plan will, however, constitute a form of "zonal management" involving the existing population. This will occur as a result of designating the entire Southern California Bight, from Point Conception south to Mexico including all offshore islands except San Nicolas, Begg Rock, and the translocation zone as a "no-

otter" zone. This designation will result in preventing the existing population from reoccupying historical habitat south of Point Conception through natural range expansion. In the absence of the translocation to San Nicolas Island, no such "no-otter" zone or other population management scheme is contemplated in the foreseeable future for the existing population, which is expected to expand into the Southern California Bight within the next 10–20 years without such a program.

Comment 2: The translocation plan contains insufficient detail regarding the relationship of the translocation to ESA section 7 determinations, including criteria for an "established population", as required by Pub. L. 99–625.

Service Response: The translocation plan adequately addresses all of the requirements and the intent of Pub. L. 99–625. The plan provides detailed guidelines, criteria, milestones and assumptions the Secretary will utilize in making jeopardy or non-jeopardy determinations under section 7 of the ESA. It specifically addresses how the experimental population will be factored into the section 7 analysis at various growth stages after the initial translocation of otters is undertaken. The description points out, however, that the status of the parent population will be a major factor considered in the outcome of any section 7 consultation involving either the parent or experimental population. The translocation plan also contains a specific definition for an "established experimental population" that takes into account its size, productivity, dispersal tendency, sex composition and general health. The plan describes how this definition relates to consideration of projects through the section 7 process.

Comment 3: The translocation plan contains insufficient detail regarding relationship of translocation to the overall status and recovery of the sea otter, as required by Pub. L. 99–625, and insufficient discussion of other delisting criteria.

Service Response: The translocation plan, section on the Relationship of Translocation to the Overall Status of the Southern Sea Otter, provides clarification of recovery criteria, including an example of a scenario that would represent a recovered population. It addresses future translocation needs for recovery purposes by indicating that the initial translocation could be sufficient if it resulted in a successfully established population (based on specific criteria), the parent population is showing sustained growth in size and range and the other Recovery Plan criteria were met. The example presented further defines an approach to achieving recovery goals. To go beyond what is now contained in the translocation plan would be inconsistent with the statements in the Congressional Record (131 Cong. Rec. H6468, July 29, 1985) that "The translocation plan is to provide for the implementation of an important component of the Recovery Plan. While addressing a number of general issues related to the long-term management of California sea otters, it is primarily a planning mechanism for the translocation itself. Specifications with respect to long-term management of the California sea otter, including establishment of recovery goals and future translocation needs, should also be contained in the Recovery Plan for the California sea otter. The Fish and Wildlife Service is expected to address these aspects in its next update of the Recovery Plan. The translocation plan itself, while discussing these issues, is not intended to replace the Recovery Plan as the primary long-term management document." This interpretation was reaffirmed by Senator Cranston in remarks made during Senate consideration of H.R. 4531 which was enacted as Pub. L. 99–625. *See* 132 Cong. Rec. Section 17322 (October 18, 1986).

The plan also specifies that a delisting review would be initiated upon the new population meeting the criteria for "establishment." The plan has been modified to reiterate the additional recovery criteria that must be achieved in order to consider delisting, and the five factors that must be evaluated during any consideration of delisting.

Comment 4: The translocation plan suggests that additional translocations may be needed to remove excess otters from the San Nicolas translocation or management zones or from the existing population for recovery purposes. The Service has not identified the locations of these additional translocation sites or under what circumstances additional translocations would be needed, nor has it evaluated the environmental and socioeconomic consequences of subsequent translocations.

Service Response: The translocation plan suggests that moving excess otters from the translocation or management zone to other unoccupied sites as the experimental population approaches carrying capacity would be one of several possible options to prevent significant dispersal from the zone, which could increase the problem of maintaining the management zone free of otters. Public Law 99–625 requires that otters removed from the management zone be placed either in the range of the existing population or into the translocation zone. If additional translocation sites are needed in the future, any proposal for additional translocations would have to comply with National Environmental Policy Act procedures. It is too speculative to consider at this time the sites that may be considered in the future because environmental and socioeconomic conditions may change significantly in the future. With regard to additional translocations from the existing population for recovery purposes, the Congressional Records of July 29, 1985, and October 18, 1986, respectively, state that the translocation plan is primarily a planning mechanism for the translocation itself and that future translocation needs should be addressed in the next update of the Recovery Plan.

Comment 5: The size of the translocation zone is too large; it should only include waters out to the 15-fathom isobath, which includes the normal habitat of otters. Furthermore, the size of the zone should be reduced or eliminated in the future if oil spill response capability is established in the immediate vicinity of San Nicolas Island.

Service Response: Public Law 99–625 requires that the translocation zone be defined to include the normal habitat of the sea otter plus a buffer area to insulate the experimental population from the adverse effects of activities that may occur outside of the translocation zone. In delineating the buffer area, Congress has indicated the Service should take into account factors such as wind and wave patterns, offshore currents and other oceanographic variables, as well as the type and magnitude of the activities that may adversely affect the experimental population. The translocation plan and Rule define normal sea otter habitat as all nearshore waters surrounding San Nicolas Island and Begg Rock out to a depth of 15 fathoms. The types of activities identified that may adversely affect the experimental population included incidental entanglement in large-mesh gill and trammel set nets and activities that could result in accidental oil spills, e.g., OCS oil development and tankship accidents. The buffer area was then delineated based on the estimated time it would take to respond, with existing response equipment that is based on Santa Barbara, and to control or divert an oil spill occurring at the perimeter of the zone before it moved into 15-fathoms or shallower waters where otters would be expected to be affected. Such a buffer would also include the area where incidental

entanglement in fishing nets might occur. The translocation zone thus defined extends some 10 to 19 nautical miles seaward from the 15 fathom isobath around San Nicolas Island, depending on the offshore wind and current patterns in the area. The Service believes this is a reasonable approach that fully complies with the requirements and intent of Pub. L. 99–625. The major variable is the location of significant at-sea oil spill containment and clean-up equipment. Currently, such equipment is based in Santa Barbara, with additional capability stationed offshore near Point Conception. Public Law 99–625 provides authority to modify the translocation or management zone boundaries, as well as other aspects of the plan, to accommodate new information such as significant improvements in oil spill response capability. Such modifications would, however, need to follow rulemaking and public review procedures.

Comment 6: Public Law 99–625 was enacted by Congress to authorize translocation, management and containment of an experimental population of California sea otters. The Rule must be revised to comply with this as the sole authority for conducting the proposed translocation.

Service Response: The Rule has been modified throughout to comply with requirements of Pub. L. 99–625 (formerly H.R. 1027 and H.R. 4531). The Proposed Rule anticipated enactment of Pub. L. 99–625 and was developed to comply with such legislation in the event it did become law.

Comment 7: The Service has not demonstrated ability to contain the experimental population using non-lethal methods, and the containment strategy does not provide a rapid enough response to effectively maintain the management zone free of otters.

Service Response: The Service has selected San Nicolas Island in part because it is believed to offer the greatest potential for self-containment due to the wide, deep, food-barren ocean channels surrounding it. As described in the Translocation Plan (Appendix B of the EIS), sea otter capture techniques are well developed. Further research and development is underway by the California Department of Fish and Game (CDFG) to refine and improve the existing techniques by utilizing an underwater re-breather device which CDFG believes could be a major breakthrough in decreasing the time it takes to capture specific otters. Research currently getting started in Alaska, funded by the Service, is designed to evaluate and develop techniques to influence fecundity of sea otters, and may prove useful in the future to decrease population pressures in certain situations (such as an island-based population) that otherwise may result in an increase in dispersal tendencies. The Minerals Management Service is currently contracting for studies on techniques to influence sea otter movements. All of these studies will, collectively, add to and enhance our ability to capture and remove otters from the management zone or otherwise assist the Service in containment of the translocated otters. However, even without these, the existing methods have demonstrated repeatedly that with sufficient effort otters can be captured under a variety of conditions. The very process of capturing specific numbers, ages and sexes of otters from specific locations in the present range for translocation purposes should further verify our ability to capture and move a relatively large number (up to 70 over 1–2 months) of specified individuals. Provided weather and sea conditions permit, the number of otters that can be captured in any period of time is directly dependent on the number of crews available to conduct capture operations. To accomplish containment in the future, the number of crews may have to be increased, either permanently or temporarily in order to remove otters from the management zone as required by Pub. L. 99–625. In view of the state of the art in capture techniques, the commitment of the Service to have a crew available at all times to respond to reports of otters in the management zone, and the research and development of new and improved techniques now underway or expected to be carried out in the future, the Service believes that effective containment can be carried out to the extent required in this Rule and Pub. L. 99–625.

The containment strategy has been modified to provide a more responsive posture for capturing and removing otters from the management zone. Instead of requiring repeated and verified sightings of otters in the management zone for a week or more, as in the Proposed Rule, the Final Rule indicates that capture crews will be mobilized after receiving verified sightings of one or more otters in the management zone, as soon as weather and sea conditions permit. This response procedure is expected to provide greater likelihood that otters will not cause significant damage to fisheries or otherwise affect other legitimate uses of the management zone. It will also result in a greater likelihood that otters dispersing into the management zone, where they are less protected, will be safely captured and placed into the range of the parent population or into the translocation zone before they are harmed as a result of incidental take from otherwise lawful activities, such as entanglement in fishing nets, in the management zone.

Comment 8: As an alternative to translocating otters to San Nicolas Island, the Service should consider translocating them to the northern Washington coast or consider transporting Alaskan otters to California in the event the existing California population is decimated. The Service's genetic and taxonomic arguments in the DEIS for not considering these alternatives are not convincing.

Service Response: The reasons for not considering the alternative of translocating sea otters to Washington are discussed in detail in Section III.C.2., Alternatives That Will Not Be Addressed in the EIS, of the Draft and Final EIS. To summarize the discussion in Section III.C.2., a small population of otters of Alaskan origin has been reestablished along the northern Washington Coast. The issue of whether or not California otters are taxonomically or genetically different has been debated in the literature for years and remains unresolved. In the 1977 listing of the California sea otter as threatened, the Service acknowledged the unresolved taxonomic issues, and noted that resolution of the issue was not pertinent to the decision of whether or not the California otter should be listed because the Endangered Species Act provided for listing of geographically separate populations as well as taxonomically distinct species and subspecies. In preparing the final listing rule, the Service took a conservative view that, ultimately, the taxonomic issue could be resolved in favor of separate subspecies, so the listing utilized the subspecific designation, *Enhydra lutris nereis*. In accordance with the subspecific listing status of the southern sea otter in the list of threatened and endangered species, the Service finds that mixing two subspecies, as would occur if California otters were translocated to Washington, could result in hybrid offspring which would not be protected under the Endangered Species Act. Thus, such mixing would not only fail to promote recovery of the listed California sea otter, but could actually adversely affect the listed subspecies by tainting the gene pool sought to be conserved. Section III.C.2. of the EIS has been modified to address the suggested possibility of removing the Alaskan otters now found in Washington and replacing them with California otters. It

also acknowledges that, if the entire California population was destroyed, consideration would be given to using Alaskan otters to try and establish a new sea otter population in California as a last resort measure, but this could not be considered an affirmative recovery action. The Section also discusses other factors, such as lack of significant natural barriers, that contribute to the Washington site not being acceptable as a viable alternative.

Comment 9: There are no guarantees that funding for containment will continue to be available into the future.

Service Response: No guarantees can be made about budgets in future years; however, the Congressional directive contained in Pub. L. 99–625 that the management zone must be maintained free of otters is clear evidence of what Congress expects of the Service. Congress has indicated that it intends to monitor the effectiveness of the Service's containment effort. The Draft and Final EIS and this Rule address the possibility of loss of future Federal funding. The section entitled Criteria for a Failed Translocation describes actions that would be taken, in consultation with the State and Marine Mammal Commission, if containment becomes impossible due to decreases in funding. The section entitled Funding Mechanisms describes the potential for State and private funding to assist with translocation and containment efforts.

Comment 10: The northern boundary of the management zone should be placed at Point Sal instead of Point Conception to protect fisheries between these two points, to enhance the safety of field crews working to remove otters from the management zone, and to increase the likelihood that otters from the existing population will not spread into the important fisheries of the Southern California Bight south of Point Conception. If this is not possible, establish the area between Point Conception and Point Sal as a buffer zone (now referred to as population thinning zone).

Service Response: The management zone boundary was proposed to be established at Point Conception, which, as required by Pub. L. 99–625, means that any otter, regardless of whether it originates at San Nicolas Island or the mainland parent population, must be removed from any location south of Point Conception except the San Nicolas Island translocation zone. In a letter dated April 5, 1985, to the Chairman of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, the Director of California Department of Fish and Game indicated that establishment of a no-otter zone at Point Conception would meet the State's desire that sea otters not be allowed to reoccupy historical habitat in the Southern California Bight south of Point Conception, where important shellfisheries developed during the absence of otters.

Despite discussions involving interested parties and Congressional representatives, Pub. L. 99–625 was enacted without provision for such a thinning zone. Therefore, the Service declined to include it as part of the translocation plan. The Service acknowledges, however, that such a thinning zone, using non-lethal capture and removal methods, may be a feasible way of alleviating a problem, should it arise, of population buildup and pressures in the immediate vicinity of the management zone boundary. Use of any such thinning technique should, however, be approached cautiously through a scientific research protocol. While this approach is mentioned in the translocation plan and this Final Rule as one possible way of alleviating serious problems of maintaining the management zone free of otters, authority for such an action would have to be secured prior to its use, either through legislative amendments, scientific research permits or through the Marine Mammal Protection Act process for waiving the moratorium on taking (if delisting occurs and an optimum sustainable population (OSP) is achieved).

With regard to the recommendation that the management zone boundary be placed at Point Sal instead of Point Conception, the Service believes this, too, would not be consistent with the provisions or intent of Pub. L. 99–625. Section 1(b)(4) of Pub. L. 99–625 requires specification of a management zone that, (A) surrounds the translocation zone, and (B) does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species. The Congressional intent of this provision is described in House Report 99–124 and Congressional Records for H.R. 1027 and H.R. 4531.

Specifically, the House Report states, "The reference to 'adjacent range where expansion is necessary for the recovery of the species' * * * is intended to make it clear that in establishing the management zone the Secretary shall not establish a boundary of the management zone that is coterminous with the existing range of the population, which presently extends to the Pismo Beach-Santa Maria River area on the south. Thus, for example, in the event that San Nicolas Island is chosen as the translocation site, the management zone should not include all of the area up to the southern end of the existing range. On the other hand, in the event the Secretary establishes a boundary line for the management zone at Point Conception, such a line would allow for expansion of the range of the sea otter beyond its present range and would fully comply with the requirements of this provision. This provision does not require the Service to make a formal determination of the ultimate extent of the range that is necessary for the overall recovery of the species." H.R. Rep. No. 99–124, 99th Cong., 1st Sess. at 16 (1985).

The Congressional Record of July 29, 1985, further discusses the intent of the management zone. It states, "The management zone is that area surrounding the translocation zone from which the translocated animals are to be excluded. The management zone is intended to minimize potential conflicts, within that zone, between fisheries and other resource uses and the translocated sea otters." 131 Cong. Rec. H6467 (July 29, 1985). Point Sal is only 5 miles from the present range of California sea otters. This stretch of 5 miles is characterized by sandy bottoms and generally poor quality sea otter habitat. Thus, for all intents and purposes, these 5 miles would not provide any additional habitat "needed for recovery of the species" as required by Pub. L. 99–625. Therefore, placing the management zone boundary at Point Sal would not meet the requirements of Pub. L. 99–625.

Comment 11: If the Service perceives that activities such as oil spills occurring outside of the translocation zone as defined in the Proposed Rule could adversely impact the experimental population, then the translocation zone boundary should be enlarged to prevent any activity in the management zone from affecting otters in the translocation zone.

Service Response: The translocation zone has been delineated based on the requirements of Pub. L. 99–625, i.e., that it must have appropriate characteristics for furthering the conservation of the species, and on reasonable assumptions as to the time it would probably take to respond to and control an oil spill occurring outside the zone boundary. It also takes into account the potential for incidental entanglement of otters in fishing set-nets. It should be recognized that, in accordance with Pub. L. 99–625, the protection afforded to otters in the translocation zone is through prohibitions on incidental take, directed takings, and Endangered Species Act section 7 consultations for Federal

activities. The Service has reassessed the boundaries as delineated in the Proposed Rule and finds them to be appropriate for this intended purpose. The Service interprets Pub. L. 99–625 to provide the authority to promulgate changes in the regulation whereby the boundaries of the translocation or management zone could be modified to reflect new information or significantly could be modified to reflect new information or significantly changed conditions.

Comment 12: The preferred site (San Nicolas Island) is the nearest of all sites to current Outer Continental Shelf (OCS) activities and is in an area of moderate potential for discovery of hydrocarbons. Clarification is needed why this site was selected in view of its proximity to OCS development.

Service Response: It is correct that the San Nicolas Island site is the closest of all sites considered to ongoing OCS activity, which is extensive in much of southern California. No OCS development activity has been initiated in the two alternative sites, northern California and southern Oregon, although they are listed in the Secretary's proposed 5-year plan for future OCS lease sales. There are, however, no leased tracts in the San Nicolas Island translocation zone and the closest are at least 35 miles away from the Island. The major ongoing OCS activity occurs in the Santa Barbara Channel area, which is 60 miles or more to the north of San Nicolas. Ongoing activity is not expected to affect or be affected by the presence of the experimental population. An oil spill-sea otter risk analysis was conducted to determine the relative risk of oil spills affecting San Nicolas Island, the present range, and the alternative translocation sites considered. The results indicated that San Nicolas Island is a relatively safe site compared to the present range, with the probability of sea otter mortality due to an oil spill contacting the present range being about 2.4 times greater than for oil spills to cause mortality of otters at San Nicolas. Tankship accidents, rather than OCS activity, were determined to be the likely cause of such mortality at San Nicolas. The results of the risk analysis are included in the Final EIS, Section VI.B.2., and Technical Support Document 3. The risk of spills causing sea otter mortality in the northern California zone was about twice as great as for San Nicolas Island, and the risk in the southern Oregon zone was less than half the risk at San Nicolas. With regard to effects on future OCS development, the area around San Nicolas has been deleted from previous sales due to potential conflicts with Navy activities which are conducted by Pacific Missile Test Center personnel based on San Nicolas Island. Since Navy activities around the Island are not expected to decrease, and their importance is expected to increase in the future, it may be reasonable to assume that future sales in southern California will also consider deletion of the waters around San Nicolas. The State has indicated it has no plans to develop oil within State waters around San Nicolas and the Governor has recommended to the Secretary that waters to at least 6 miles seaward of the Island be deleted from the 5-year leasing plan. According to information provided to the Service by Minerals Management Service, the OCS lands within the translocation zone may contain a mean net economic value of oil and gas resources amounting to $142–284 million, and Minerals Management Service estimates a 1 percent chance of finding economically recoverable oil and gas resources within the translocation zone. The risked mean resource value of those resources, then, would be only $1.4–2.8 million, less than any of the alternative sites.

Comment 13: The economic effects of translocation on sport and commercial fisheries are greatly underestimated and an Economic Regulatory Impact Analysis should be completed.

Service Response: Data to evaluate socioeconomic effects of the translocation on fisheries were obtained from the California Department of Fish and Game (CDFG), Statistical Branch, and National Marine Fisheries Service. There seemed to be general consensus, based on public testimony and communications with representatives of the California Department of Fish and Game, that fishermen have over the years under-reported their catches at San Nicolas Island, partly due to the system used by CDFG for reporting catches and partly due to fishermen not wanting to make public the lucrative fishing around San Nicolas. The Service has updated its data to incorporate into the Final EIS the latest two additional years of landings (1984, 1985) and has noted the values now estimated by affected fishermen of their recent landings around San Nicolas. Even with the updated data, the economic impact does not meet the criteria for the Rule to be considered a "major" Rule as defined in Executive Order 12291 and, thus, no Regulatory Impact Analysis is required. The reader is referred to Volume III (Comments and Responses) of the Final EIS for further discussion on economic impacts and changes made to improve and update estimates of fishery values affected by the improve and update estimates of fishery values affected by the translocation.

Comment 14: There is no guarantee that translocation will lead to delisting or zonal management of the existing population. These must be guaranteed.

Service Response: The Service cannot guarantee that the translocation will ensure recovery and delisting because there are other recovery objectives and delisting criteria that must also be met. The status of the parent population would also have to be factored into any consideration of delisting. The section of the Rule, Relationship of the Translocation to the Status of the Southern Sea Otter, describes in some detail how the translocation fits into the overall recovery requirements for the species. Without translocation it is very unlikely that the species would be recovered or delisted or that any form of zonal management would occur anytime in the foreseeable future. The translocation plan will implement a significant form of long-term zonal management in that it establishes an otter (translocation) zone where the experimental population will be substantially protected, and a no-otter (management) zone wherein otters will be prevented, via non-lethal means, from becoming established. The management zone encompasses the entire Southern California Bight south of Point Conception, including U.S. waters around all offshore islands (except San Nicolas, Begg Rock and the translocation zone) and the mainland coast. This would result in the *de facto* prevention of the existing population from expanding its range into southern California (which is otherwise expected to occur within the next 10–20 years) thus implementing a zonal management program involving the existing population.

Comment 15: The translocation plan does not address the total number of otters that will be needed to achieve the species' optimum sustainable population (OSP) level in California. This must be addressed.

Service Response: The Service agrees that the Draft EIS and Rule do not provide an estimate of the southern sea otters' OSP. Producing an OSP estimate is irrelevant to the purposes of the translocation, i.e., (1) to eliminate the possibility that more than a small proportion of the existing population will be decimated by any single natural or man-caused catastrophe, and (2) to gather data for assessing translocation and containment techniques, population

status, and the influence of sea otters on the nearshore marine ecosystem in order to understand better the characteristics of a population within its OSP range. The first purpose is directed toward recovery of the species pursuant to the Endangered Species Act (ESA), and the second is to better understand OSP for the sea otter, pursuant to the requirements of the Marine Mammal Protection Act (MMPA). By definition, a species listed as threatened or endangered under the ESA is automatically classified as "depleted," or below its OSP, under the MMPA. The OSP question will be dealt with in a separate long-term management planning process described in the Introduction of the Draft and Final EIS. This position is supported by statements in the Congressional Records of July 29, 1985 (House) and October 18, 1986 (Senate) when considering legislation to authorize the translocation.

Comment 16: Carrying capacity of San Nicolas Island is too small to achieve the desired recovery and research purposes. It could also result in another genetic bottleneck.

Service Response: The estimated minimum carrying capacity of San Nicolas Island is 280, and a more likely estiamte is 400–500. Although a site that had a higher carrying capacity may help the population reach its optimum sustainable population (OSP) under the MMPA more rapidly, San Nicolas Island is expected to meet the minimum requirements for a reserve colony for recovery purposes pursuant to the ESA, as described in the sections on Relationship of the Translocation to the Overall Status of the Southern Sea Otter, and Definition of an Established Experimental Population. In addition to meeting the minimum requirements for a reserve colony, San Nicolas has the added advantage over other sites of comparatively lower economic impact to fisheries and a better physical situation for minimizing dispersal and enhancing our ability to contain the experimental population. With regard to the possibility of having another genetic bottleneck, this is unlikely because the Service intends to periodically move a small number of otters (up to five per year) from the parent population to San Nicolas Island specifically to maintain the genetic exchange between the parent and translocated sea otter populations.

Comment 17: Potential adverse impacts of Navy activities on the experimental population make San Nicolas Island a poor choice.

Service Response: The potential impacts of Navy activities at San Nicolas have been evaluated in Section VI.B.2.c. of the Final EIS. The impacts of Navy activities on sea otters around the Island are expected to be insignificant. Pinnipeds are common in the same nearshore waters that would be used by sea otters. There is no evidence that members of these species have been adversely affected by any of the Navy's activities. The threatened Guadalupe fur seal is also an historical occupant of the Island and is now beginning to reestablish itself there in small numbers. There is no evidence that Navy activities will adversely affect the use of the Island by that listed species. Furthermore, while Pub. L. 99–625 specifically exempts defense-related actions from the formal section 7 consultation requirements for actions that may affect the experimental population, they are required to informally confer with the Service on any activities that are likely to jeopardize the southern sea otter. A Memorandum of Understanding will be prepared with the Navy to provide greater assurance that the Navy's activities will not adversely affect the experimental sea otter population.

Comment 18: The translocation plan should define habitat of sea otters to include all waters to a depth of 20 fathoms, not 15 fathoms, as indicated by gill net fishing closures in the present range out to 20 fathoms.

Service Response: It is important to distinguish between sea otter habitat (i.e., the area normally used by sea otters for foraging, rafting, resting, etc.) and the limit required for a gill net closure. In some parts of the pesent range sea otters forage or raft in waters deeper than 15 fathoms; however, this appears to be atypical—most foraging and resting occurs in shallower waters. At the translocation site, there is an abundance of food resources and kelp in waters less than 15 fathoms so otters would not normally be expected to be found in waters deeper than 15 fathoms. Thus, in calculating the translocation zone, the 15-fathom contour is used to define the habitat of the otters. In the unique situation along the current range where a number of otters have been observed drowned in fishing nets set outside the 15-fathom State fishing closure, all have been observed caught in nets set at 15 or 16 fathoms. Of the 220 miles of coastline now occupied, less than 10 percent has been closed to this type of fishing as far out as 20 fathoms. The unique bathymetry that has necessitated these closures in the present range does not appear to occur around San Nicolas. Public Law 99–625 also requires a buffer area to be included in the translocation zone, in addition to the normal habitat of the otter. In the Service's view, the area between 15 and 20 fathoms would be considered a buffer for purposes of fishing restrictions to prevent incidental entanglement of otters. Thus, statements are included in the Final EIS and this Rule that the Service expects the State to close the area out to 20 fathoms around San Nicolas to large mesh gill and trammel set-net fishing. Even if no such closure is invoked by the State, the incidental taking of sea otters in fishing nets would still be a violation of the Endangered Species Act and Marine Mammal Protection Act anywhere in the translocation zone which extends 10–19 nautical miles seaward of the 15-fathom isobath, far beyond the 20-fathom depth curve.

Comment 19: All oil development should be prohibited anywhere within the translocation zone, as implied by definition in Public Law 99–625 that this zone should have appropriate characteristics for furthering conservation of the species.

Service Response: Public Law 99–625 establishes the requirements as to the protections afforded the experimental population within the translocation zone. It requires that the formal Endangered Species Act section 7 consultation process be used to consider federally permitted activities within the zone such as oil resource development. Congress imposed this process rather than a total prohibition on any particular activity. Proposals for oil development within the translocation zone would necessarily be viewed as the Service currently views such activities in the section 7 process, that is, to determine if the action is likely to jeopardize the continued existence of the southern sea otter population as a whole, and, if a jeopardy situation exists, attempt to identify reasonable and prudent alternatives, and to identify reasonable and prudent measures to minimize the impacts of incidental take if such take is anticipated. Once the sea otter has recovered to the point where the species is delisted, the section 7 process would no longer be required, but the protections of the Marine Mammal Protection Act and the prohibitions of Pub. L. 99–625 on incidental and directed take would still apply with regard to the otters within the translocation zone.

Comment 20: Successful establishment of one new population would not, by itself, significantly dilute the impacts of a major oil spill nor would it be sufficient to allow delisting More than one new colony may be needed and other recovery plan objectives must be met.

Service Response: The Service agrees that one successful translocation in itself is not sufficient for delisting the sea otter. All the tasks identified under Objective 1 of the Recovery Plan Outline must be accomplished prior to the Service proposing to delist the sea otter. Delisting the sea otter will require evaluating all the factors put forth under section 4(a) of the Endangered Species Act. However, as stated in the Rule, section on Relationship of the Translocation to the Overall Status of the Southern Sea Otter, the successful establishment of one additional independent colony could achieve one of the three delisting criteria. The decision as to whether or not more than one translocation is needed will depend on the status of the parent population at the time and the degree to which the other two delisting criteria had been met. The translocation plan and Rule, in the section entitled Relationship of the Translocation to the Overall Status of the Southern Sea Otter, contain an example of a scenario in which a single translocation would be sufficient for recovery if the other delisting criteria had been adequately addressed and the status of the parent population is improving. This section has also been revised to clarify that the status of the parent population would also have a bearing on whether or not one additional colony would be sufficient to meet this delisting criteria, and to describe the factors that would have to be evaluated and satisfactorily addressed prior to delisting. In view of the purposes of establishing the reserve colony, i.e., to replenish a damaged parent population and establish a viable, self-sustaining entity that would be distant enough from the parent population that a single catastrophic oil spill would not impact both populations, the Service feels that the establishment of a colony that met the criteria described for "an established population" would substantially contribute to the overall recovery of the population. The idea of establishing a second colony was not intended simply to dilute the threat of an oil spill, but also to ensure that there would be a viable part of the population that could never be affected by the same serious spill that may impact the existing population. A colony meeting the establishment criteria in this Rule would not only accomplish that objective but would also serve the added function of providing a certain number of replacement animals on a sustained basis to repair the parent population if it ever became necessary to do so.

Comment 21: In view of the numerous threats made about harming the otters if translocation proceeds to San Nicolas Island, the Service should maintain a strong law enforcement presence at the Island for at least 5 years.

Service Response: The Rule has been modified to provide that at least two enforcement officers will be assigned specifically to protect the experimental population for at least 3–5 years, and longer if a hostile environment still exists. Before reducing the enforcement effort, the situation would be analyzed to determine if such reductions would be likely to result in harm to the new population. In addition, the long-term presence of Navy and Service Research personnel should serve to deter illegal harassment of the colony. If serious enforcement problems arise, Service Special Agents from other areas would be brought into the investigation to supplement the on-site enforcement officers.

Comment 22: Discussion of birth control or lethal culling as methods of controlling growth and dispersal of the experimental population, a threatened species, is inappropriate and should be deleted from the translocation plan and Rule.

Service Response: Public Law 99–625 requires the Service to maintain the management zone otter-free using non-lethal techniques. The Service's preferred course is to allow natural factors to drive population growth and maintain equilibrium density with little or no dispersal. However, non-lethal management techniques, in addition to capture and removal, will be considered if necessary to maintain the management zone. The Rule, under Containment Strategy, has been revised to clarify that additional authority would be required if lethal taking were to ever be considered. Although not authorized at present, the Service believes that limited use of lethal controls may at some point need to be considered as a last resort option for maintaining the management zone free of otters. Thus, it is only prudent to mention in this section that such taking may eventually require legislative consideration, although it is not authorized at present. Consideration of any additional authority to allow such taking would require extensive public involvement. Zonal management of sea otters will likely be an important part of the Service's long-term program to manage and protect sea otters throughout the range of the species. The Service has been urged to consider zonal management of sea otters by the Marine Mammal Commission as well as the State. The Service also recognizes that zonal management of sea otters in California, by culling or other lethal means, probably will never be an acceptable procedure to most people. Thus, the only option for limiting population growth, once all areas designated as "otter zones" are full, may be through the reduction of fecundity. The Service recognizes that its principal responsibility at present is to help improve the status of the California population. However, if efforts to recover the population are successful, population limitation may be necessary at some time in the future. Since non-lethal techniques to limit sea otter population growth are not yet available, the Service has proposed a sequence of activities, outlined in the translocation plan and Rule, to develop such techniques. Field tests will be done in Alaska. The Service has no intention of using any such limiting techniques on the California population until it is fully recovered, and then only after thorough consultation with the California Department of Fish and Game, the Marine Mammal Commission, and the interested public.

Comment 23: The proposed action has no long-term management plan for the existing sea otter population. There must be a long-term plan before translocation can be agreed to.

Service Response: The Service acknowledges that the translocation plan and Rule do not address the full range of management issues associated with the existing population, but it does go far in addressing both recovery and zonal management issues in that it establishes the entire Southern California Bight, except for the San Nicolas Island translocation zone, as a "no-otter" zone. The question of OSP for sea otters is highly complex, far more than simply deciding where otters should be and where they should not. It may require years, and additional studies, to develop a final OSP figure for southern sea otters. Because of the complexity and likely extended period needed to address the OSP questions, we do not agree that accomplishing the principal recovery objective of establishing a reserve colony should have to wait until the OSP issue is resolved. The Service has committed to initiating a process to develop a long-term management plan immediately after the decisionmaking process on translocation is completed. This view is supported by the House and Senate Congressional Records on H.R. 1027 and H.R. 4531, which state that long-term management, recovery goals, and future translocation needs should be

addressed in the next update of the recovery plan and that the translocation plan itself is not intended to replace the recovery plan as the primary long-term management document. They also clearly state that the translocation plan is primarily a planning mechanism for the translocation itself.

Comment 24: The translocation plan (Appendix B of the Draft and Final EIS) should be incorporated in its entirety into the Final Rule in order to fully comply with H.R. 4531.

Service Response: The Final Rule has been prepared to meet the specific requirements set forth in Pub. L. 99–625 and its legislative history for development of a plan. The Rule as now written contains all the elements required by Pub. L. 99–625. The translocation plan contained in Appendix B of the Draft and Final EIS is merely an expanded discussion of elements contained in the Rule and its content was developed through the rulemaking and National Environmental Policy Act process. The elements of the Appendix B translocation plan that are legally required by Pub. L. 99–625 have been incorporated into the Final Rule.

Comment 25: The Criteria for a Failed Translocation are not responsive enough. The timeframe for deciding whether or not the translocation has failed is too long. The State should be able to request immediate termination action by the Service. If funding for containment is not adequate at any time, the translocation should be declared a failure.

Service Response: The Service disagrees. There must be flexibility to deal with problems, if they arise. The State is a cooperator and will be fully involved in the monitoring of any problem and fully consulted in any decision to declare the translocation a failure. Furthermore, it would require another rulemaking procedure to propose the initial relocation. The Service and State, in consultation with the Marine Mammal Commission, need adequate time and flexibility to evaluate and seek solutions to problems before terminating the project and removing the experimental population.

Comment 26: In the Service's definition of an "established experimental population", one commentor disagrees with including a recruitment figure along with a total number or, if the recruitment figure is essential, the definition should be broadened to include other options including (1) a total experimental population of 170 or carrying capacity, whichever is the lower number, and (2) a total experimental population of 150 males and females with a positive growth rate over a 3-year period. Under one definition of "recruitment", the 20-recruit criterion may never be reached, or the criterion would not continue to be met as the population approaches carrying capacity. The commentor disagrees also with the Service's assumption that the reserve colony must serve as a source of otters to repair a damaged parent population. Its only purpose should be to exist as a viable, self-sustaining population. Anything beyond that is a bonus and should be considered as a "harvestable surplus" for replenishing the parent population, but should not be a requirement for the reserve colony.

Service Response: The Service believes these alternative criteria are not needed for the following reasons: (1) The definition of recruitment has been clarified in the Final Rule; it does not mean population growth, rather it means the number of pups that survive and become independent juveniles (subadults); (2) recruitment as defined and clarified in the text is vital for the purposes of recovery of the sea otters; (3) the definition of an established population has been broadened and now takes into consideration the situation where recruitment may diminish below 20 otters per year as the population approaches carrying capacity; and (4) should the sex and age ratios shift to be similar to those found in the existing population, even at a colony size less than the expected minimum carrying capacity (i.e., 280 otters), the recruitment criteria should still be met. For example, with a population size of 150 sea otters, approximately 75 would likely be females (50 percent) of which about 56 (75 percent of 75) would be of breeding age, from which about 42 (75 percent) would pup annually. Assuming a 50 percent pup mortality, approximately 21 pups would be recruited from that colony. With a population of 280 otters, there may be nearly twice that number of pups recruited. The Service also disagrees with the recommendation to delete the criterion for an "established population" of 20 recruits. The purpose of the second population is more than simply serving as a viable, self-sustaining entity; it must have the additional utilitarian purpose of restoring the population as a whole should the parent population be decimated. In order to accomplish this, the experimental population must be of sufficient size and reproductive viability to withstand the sustained removal of at least 25 animals per year in order to reestablish a population or repair a seriously damaged parent population should it be necessary to do so. The implication of not having this utilitarian purpose is that, even if the parent population were decimated, the surviving experimental population would be sufficient to perpetuate the species with no need to use it to restore a population elsewhere. If that were the case, which the Service does not accept, a much larger second population would be needed than what San Nicolas Island is expected to support or, alternatively, several other populations would be needed at other sites. The available information on habitat quality and carrying capacity at San Nicolas Island, combined with the numbers and sex composition of the animals to be translocated (primarily females), strongly suggests that the recruitment of at least 20 young into the experimental population for 3 to 5 years should be readily achieved, possibly by the end of the first 5 years. To clear up confusion that may exist on the term "recruitment", the term is meant, for purposes of defining an established population and protection and recovery needs for the sea otter, as the number of young-of-the-year that successfully enter the population during the year as weaned, independent subadults (juveniles). Recruitment is not synonymous with net increase or growth of the population for this purpose. This clarification has been added to the translocation plan and Rule, section on Relationship of the Translocation to the Overall Status of the Southern Sea Otter, Definition of an Established Experimental Population. The definition of an established experimental population has also been revised and clarified to take into consideration the situation that, as the population approaches or reaches carrying capacity (equilibrium density), recruitment may be slowed considerably due to density-dependent factors such as lower reproductive rate or high pup mortality.

Comment 27: The amended listing table for the experimental population should be modified to correct information on the existing population concerning the scientific and common name, to delete reference to the subspecies name, and to modify the historical range to include all of Alaska and Canada.

Service Response: This Final Rule does not amend the original listing, except to add a section to establish an experimental population. To modify the original listing would require a separate rulemaking procedure under section 4 of the Endangered Species Act. The suggested change, were it to be made, would indicate that the Alaskan population is also listed as threatened,

which is not supported by available data.

Comment 28: The proposed management zone would preclude sea otters from ever being restored to historical habitat now incorporated into the Channel Islands National Park. Since it is the policy of the National Park Service to restore native species where possible and practical, the Service should at least include Santa Barbara Island in the translocation zone.

Service Response: The Service notes that the plan, if successful, will result in prevention of sea otters from reoccupying historical habitat under National Park Service jurisdiction in coastal southern California, unless San Nicolas Island were to be added to the National Park System in the future. Limiting the new colony to San Nicolas Island would achieve the recovery plan objective of establishing a reserve breeding colony, while mitigating and minimizing the impacts to fisheries and other concerns. The Service is committed to initiating a long-term management plan for the existing mainland population in which recommendations will be made for future distribution and population objectives. The restoration of southern sea otters to other areas in the National Park System (outside of the management zone) that have historical sea otter habitat should be considered in the long-term management plan. Please also refer to Section II.A.4. of the Final EIS which summarizes the criteria used in the three-year mapping and evaluation project conducted by James Dobbin Associates, Inc. None of the Islands of the Channel Islands National Park, with the exception of Santa Barbara Island, were deemed suitable as a translocation zone for recovery purposes. Because of their proximity to tanker transportation routes and of significant conflicts with fisheries, these islands were deemed less suitable. Thus, none of the other islands of the Channel Islands National Park were included in the areas given final consideration in the Environmental Impact Statement. The Service agrees that the inclusion of Santa Barbara Island would lend itself well to a joint Fish and Wildlife Service–National Park Service effort to protect the new colony, as well as enhance the enjoyment and education of Park visitors to Santa Barbara Island. The inclusion of Santa Barbara Island in the translocation zone would, however, result in additional impacts by sea otters at the site and could make containment more difficult to achieve. Because of its close proximity to the mainland and other islands, translocation of sea otters to Santa Barbara Island would increase the potential for dispersal of sea otters to other islands and the mainland where fisheries and other activities could be adversely affected.

Comment 29: The research activities associated with translocation could have a significant adverse impact on pinniped populations and the threatened Guadalupe fur seal at San Nicolas Island.

Service Response: The Service has been in contact with National Marine Fisheries Service (NMFS) regarding the potential impact of the activity on the Guadalupe fur seal, and on November 12, 1985, in a letter from the Regional Director, Southwest Region, National Marine Fisheries Service to the Acting Regional Director, Region 1, U.S. Fish and Wildlife Service, NMFS indicated that translocation of sea otters to San Nicolas Island will not adversely affect the Guadalupe fur seal. The Service has been conducting studies at San Nicolas since 1980. There is no evidence that these activities along the shores of San Nicolas Island have been any more disruptive to marine bird and mammal populations than other research activities, and probably less disruptive than many. All research activities on the Island have been closely coordinated with Pacific Missile Test Center Senior Biologist Mr. Ron Dow, with the intent of minimizing possible detrimental effects of human presence on the Island's wildlife. It should be noted that none of the baseline sites in littoral habitats are in areas where pinnipeds typically haul out. One site at which Service biologists are studying the dynamics of black abalone population is near a California sea lion *(Zalophus)* haul-out area; however, this site is visited only during winter when disturbance to *Zalophus* is probably minimal and these visits are coordinated with Mr. Dow's office. There is no indication that sampling of the subtidal sites, or any of the other diving activities being or planned to be undertaken by the Service at San Nicolas Island, have adversely affected pinnipeds other than to attract sea lions. All possible care will be taken to minimize disturbance to presently occurring populations of marine birds and mammals at San Nicolas Island. All activities on the Island are presently, and will continue to be, coordinated with Mr. Dow's office. In addition, the Service will consult with the Southwest Fisheries Center, NMFS, to assure that the increased activities of Service researchers on the Island pose no threat to existing pinniped populations. Radio tracking and observational studies will generally be done from vantage points offering some elevation above sea level that are away from shore. It is highly unlikely that these activities will disturb pinnipeds any more than those resulting from ongoing research activities, including hands-on tagging of adult and newborn pinnipeds, surveys, behavioral and physiological studies, etc. Sea otter surveys are most effectively done by flying offshore and looking downward and inshore toward the animals. It is anticipated that the survey aircraft will remain at least several hundred meters offshore during the surveys, usually much farther. In order to be certain that these activities do not disturb hauled-out pinnipeds (by stampeding them into the water), test flights will be made to determine the altitude and distance from shore that can be flown without disturbing the animals. Surveys will be done using methods determined to be least disruptive to other species of birds and mammals already living on the Island. These preliminary studies and activities will also be coordinated closely with NMFS and Mr. Ron Dow, or their designated representatives.

Comment 30: The Service should shift much of the preamble discussions of the Rule relative to the Relationship of Translocation to the Status of the Species and to Future Endangered Species Act section 7 Determinations into the Regulation Promulgation which amends § 17.84 of Part 17, Code of Federal Regulations, in order to comply with Pub. L. 99–625.

Service Response: Public Law 99–625 requires the translocation plan to be developed through rulemaking procedures for public review and comment which has been done through the issuance of a Proposed and this Final Rule. Public Law 99–625 does not, in the Service's view, require every detail of the translocation plan or preamble discussions to be codified as part of the final regulation. Congress, in enacting Pub. L. 99–625 several months after the Proposed Rule had been published, did not indicate that the Service had misinterpreted the intent of the law, and did not provide additional direction.

Comment 31: The suggestion was made that a new definition be added to the regulation for a "stabilized population" and that the definition of "carrying capacity" be included in the regulation as well as the preamble.

Service Response: Both definitions have been added to the regulation because they have very important meanings in terms of how the translocation relates to future Endangered Species Act section 7

determinations. These definitions help clarify the growth stages of the experimental population on which section 7 analyses will be based.

Comment 32: The suggestion was made that additional background information, taken from the Recovery Plan, should be added to the regulation to help place the importance of translocation to the overall recovery effort into better perspective.

Service Response: The passages have been added to the regulation as suggested since they are taken directly from the Recovery Plan and do add perspective on the role of translocation. Statements have been added that the successful establishment of this experimental population could fully satisfy the first of three criteria (i.e., establishment of at least one additional colony) described in the Recovery Plan. This is qualified, however, by pointing out that the parent population must also be increasing and expanding its range from its present size and distribution in order to meet the broader criterion that the overall population must be increasing at a sustainable rate in a large enough area of its original habitat that only a small proportion of the population could be decimated by any single natural or man-caused catastrophe. This is consistent with the discussion in the preamble and the example given of a scenario that would represent a "recovered population."

Comment 33: The Service was requested to include definitions and discussion of the growth stages of the experimental population in the regulation as well as the preamble and translocation plan, including transplant stage, initial growth and reestablishment stage and post-establishment and growth stage.

Service Response: The Service declines. These stages are all discussed in the preamble of this Rule. The key milestones of the growth stages—stabilized population, established population, and carrying capacity—are defined in the regulation. The Service sees no utility in including the additional, lengthy descriptions of each growth stage in the regulation since the milestones, which are defined in the regulation, are the critical factors in determining how each growth stage influences section 7 (ESA) analyses and possible delisting actions.

Comment 34: In several places of the Proposed Rule, several commentors suggested that the terms "the primary criterion" be used rather than terms such as "a key criterion" when referring to the relationship of translocation to overall recovery of the species.

Service Response: The importance and relevance of the translocation to recovery is explained throughout the Rule. To utilize the suggested phrase "the primary criterion" diminishes the importance of the other recovery criteria as well as the status of the parent population. The Service believes that meeting the other criteria, as well as having a healthy, expanding and growing parent population, are of equal importance to the translocation. Therefore, the suggested changes have not been made.

Comment 35: One commentor suggested that a procedure be included in the regulation whereby the Service would publish notice in the **Federal Register** of the population estimate, if the Service estimates the size to be either 70 or 150 animals, and to invite public comment concerning whether the population is "stabilized" or "established." It was also suggested that the regulation include a process whereby a person may petition the Service to determine that the translocated population is "established" or "stabilized" and require the Service to make findings and publish notice in the **Federal Register** within 180 days of the estimated size and status of the translocated population.

Service Response: The commentor provides no justification or rationale for why this lengthy, expensive and time consuming process is needed, or why existing procedures would not accomplish their objective. Since the definitions of "stabilized" and "established" are generally relevant only from the standpoint of conducting section 7 analyses or initiating a delisting review, there are already formal procedures in place to describe the status of the experimental population. The Biological Opinion issued for any section 7 consultation would contain appropriate data and conclusions on the status of both the experimental and parent populations. Once the Service determines that the experimental population meets the "established" criteria, it will conduct what is comparable to a 5-year status review as well as a delisting review, the results of which would be made available to the public. Additionally, section 4 (b) and (c) of the ESA already provide for petitioning the Service for a reclassification of a listed species and for publication of the results of 5-year reviews, respectively. Thus, the Service declines to incorporate the additional formal public notice and review procedures suggested.

Comment 36: The suggestion was made that the Criteria for a Failed Translocation be included in the regulation as well as in the preamble of the Rule.

Service Response: The Criteria for a Failed Translocation are critical to whether or not the experimental population will achieve its intended purposes or have to be terminated, which would involve Service evaluation and informal rulemaking procedures. Because they hold such importance to the future continuation of the experimental population as well as to future conflicts with fisheries and other uses in the translocation and management zones, the Service agrees with the suggestion and has incorporated the Criteria for a Failed Translocation into the final regulation.

Comment 37: The suggestion was made that a particular quote from a recent Jeopardy Biological Opinion rendered by the Service on full development of oil and gas resources in the northern Santa Maria Basin be included in the regulation. The quote, taken from the Conservation Recommendation section of the Opinion, describes the linkage between a successful translocation to future section 7 determinations and the overall recovery of the species. It indicates that future conflicts between OCS oil and gas development and sea otters can be significantly diminished or avoided if the recovery effort is accelerated and a second colony can be established over the next 5–10 years.

Service Response: The quote in the Opinion was actually in reference to the discussion in the Proposed Rule and translocation plan for this translocation which already contains substantial discussion of the relationship of translocation to future section 7 determinations and recovery of the species. The Service does not believe the quote adds to what is already discussed in the translocation plan and Rule, so the suggested addition has not been adopted.

Comment 38: One commentor suggested that, in addition to considering the existence of a translocated population both qualitatively and quantitatively for section 7 purposes during the initial growth and reestablishment stage, the translocated otters should be viewed as having greater value to the population as a whole than an equal number of otters in the parent population. The rationale given for this suggestion is that otters at the new site are exposed to a lower risk than the parent population and because, even during this stage, the translocated otters could possibly be used to re-populate a damaged parent population.

Service Response: The Service disagrees with the rationale for the suggestion. To say that the translocated otters have a greater worth than otters in the parent population during the initial growth and reestablishment stage because they are subject to a lower degree of risk would be a superficial and arbitrary weighting of the worth of an individual. During this stage in particular, the experimental population would not be expected to be able to supply animals in the numbers needed (25 or more per year) to restore a damaged parent population and still remain a viable, self-sustaining breeding colony. Furthermore, even after the experimental population has "stabilized" and is showing positive signs of eventually becoming an established population, its ultimate fate is still uncertain. Its status is precarious and its numbers during this stage may not even be any greater than the original number translocated. The experimental population at this stage may or may not be able to survive on its own as a self-sustaining entity, and a translocation back to the mainland, should the parent population be decimated, would add to the stress of the original relocation to a new environment. Thus, a case might even be made that, during this stage, the value of a member of the experimental population could be less than that of an otter in the parent population. Thus, the Service sees no justifiable reason to view otters in the experimental population during this stage as having greater value than the same number in the parent population. Thus, the change has not been made in the Rule.

Comment 39: One commentor suggested that language be added to the regulation that "once the population is established, the Service shall assume that the primary goal of the Recovery Plan has been accomplished and, therefore, that the risk to the sea otter from a major oil spill has been reduced to an acceptable level."

Service Response: The Service disagrees with the suggestion because, as discussed under previous comments, such a statement would diminish, even ignore, the importance of the other criteria and objectives in the Recovery Plan as well as the status of the parent population. As already described in the Rule, establishment would trigger a delisting review, but the status of the other recovery criteria and parent population would be important factors in determining if the risk of oil spills to the sea otter had been reduced to an acceptable level. No change has been made in the regulation or preamble to reflect this suggestion.

Description of Action

The Service will establish through translocation a colony of southern sea otters at San Nicolas Island, Ventura County, California. As required by Pub. L. 99–625, two zones, a "translocation zone" and an otter-free "management zone," will be established. The colony will be protected, studied and contained within the specified translocation zone (see IDENTIFICATION OF ZONES segment of the Preamble, infra). Surrounding the translocation zone is the management zone wherein sea otters will be removed if they are found there to minimize potential conflicts with other uses of the resources, to protect those otters because the management zone has less stringent protection measures for sea otters, and to evaluate existing, and, as necessary, develop additional techniques for containing sea otters.

This rule, once implemented, will simultaneously aim for the achievement of these primary objectives: (1) Meeting one essential criterion for recovery and potential delisting of the southern sea otter population under the Endangered Species Act (ESA), and (2) obtaining information and furthering research objectives necessary for present and future management decisions and better understanding and defining the optimum sustainable population (OSP) for this population under the Marine Mammal Protection Act (MMPA). The proposed rule was written in a format that addressed three possible legislative authorities that the Service believed could exist at the time a final rule was published. Since the publication of the proposed rule, Congress passed H.R. 4531 on October 18, 1986, and the President signed into effect Pub. L. 99–625 on November 7, 1986, which parallels one of the legislative scenarios described in the proposed rule. Appropriate modifications have been made in this Final Rule to reflect this legislative authority which is described under the LEGISLATIVE AUTHORITY section of the Preamble.

Pre-Translocation Phase

Activities during this phase emphasize: (1) Assessment of the existing population and the acquisition and analysis of behavioral data, (2) development of a plan for capturing and holding sea otters for translocation, including determination of the optimum size, age, and sex composition of the translocated colony, (3) collection of baseline data on the ecosystem at the translocation site, and (4) completing the public notice and review requirements of the National Environmental Policy Act and Administrative Procedures Act.

1. Assessment of the Existing Population

Insofar as possible, it is necessary to evaluate the possible impacts of removing animals from the existing population for the purpose of translocation, and to develop a monitoring program to test hypotheses concerning expected impacts and to detect and measure unforeseen impacts. Present monitoring programs are done mainly by the Service and California Department of Fish and Game (CDFG). Population surveys are, at present, conducted twice annually by using the following techniques.

Most of the coastline within the range of the population, being accessible by road, is surveyed from shore by teams of two observers each. The remaining areas are surveyed from aircraft. Behavioral studies are being done by observing tagged (flipper-tagged and radio-implanted) and untagged individual sea otters in some portions of the range. The principal emphasis of these studies is to obtain better information on population trend, distribution, movement, diet, and activity patterns.

An increased effort will be devoted to obtaining behavior and movement information from individuals marked with flipper tags and implanted radio transmitters prior to the translocation. During the year prior to the translocation, up to 30 individuals from the parent population will be instrumented with radios that have a predicted battery life of about 2 years. About half of the radioed animals will be among the translocated individuals. The use of radio telemetry according to this design will allow documentation of 24-hour time budgets, foraging behavior, social interactions, and movement patterns before and after the animals are translocated. These data will be used to compare behaviors and movements of individuals before and after the translocation, at both the mainland capture site and the translocation site, as well as to understand better the effects of translocation on the parent population.

2. Removal of Animals From the Existing Population

Limited information is presently available from which to make a judgment on the optimum number, and the age and sex composition of animals to be translocated. Jameson et al.'s (1982) review of previous translocations of sea otters in the eastern North Pacific Ocean indicates a correlation between

success rate and size of the translocated population. However, there are limits to the practicality of this correlation. Logistics, effects of removal on the donor population, and the potential for rapidly achieving and exceeding the minimum estimated carrying capacity (280) for the San Nicolas Island translocation zone, which could conceivably result in a population crash and ultimately a lower equilibrium density for some time period, are factors that must be considered. Based on these findings, and considering that the future welfare of the existing population probably would be best served by minimizing the number of animals taken from it while maximizing the likelihood of success, up to 70 animals will be moved from the existing population to the translocation site in the first year. The limit of 70 animals is set so that the removal will not exceed the expected population growth rate of 5 percent, assuming the current population numbers about 1,400. The estimated long-term growth rate for the population prior to the recently experienced entanglement mortality was about 5 percent per year (CDFG 1976).

No more than 250 animals will be moved in total from the existing population for translocation purposes. Strategies for years 2, 3, 4, 5 and beyond will be governed by the success of preceding effort. Translocation of additional animals will be terminated once a relatively stable group of 70 animals at San Nicolas Island, including both males and females, has been achieved. If, as expected, most of the translocated animals remain within the translocation zone, there will be no supplemental translocation in subsequent years except for genetic enhancement (if necessary) from the parent population involving up to 5 otters per year. However, if a substantial decline is seen in the population or serious imbalance in the sex ratio, additional animals may be moved to ensure success of the translocation.

Most, but not all, of the translocated animals will be sexually immature (i.e., independent, up to about 2 years of age). By selecting young animals for the translocated population, it is expected that post-release dispersal will be minimized and that the future growth rate of the population will be maximized (Kenyon 1969). A further advantage of mainly using juveniles is that they are less likely to interact aggressively while in captivity or following release. The sex ratio of the immature animals selected for translocation will be approximately 4 females to 1 male, although a range of from 3.5:1 to 6:1 will be considered acceptable.

Of the animals translocated each year, up to 20 will be adults. The purpose of moving adults will be to compare movement patterns, particularly dispersal tendencies away from the translocation site, between adult and juvenile sea otters as well as to provide a small number of sexually mature animals that could begin reproducing almost immediately. In selecting animals for translocation, an adult sex ratio of 3 females to 1 male, or 15 females to 5 males will be sought.

3. Studies at the Translocation Site

Since 1980 the Service has been conducting a monitoring program of the intertidal and shallow subtidal ecosystems at San Nicolas Island. The purposes of this program are: (1) To determine the dynamics of nearshore communities relatively free of human influence, in order to contribute to the eventual determination or refinement of an OSP level for sea otters in California pursuant to the MMPA; and (2) to establish baseline ecological information in order to document the range of influences that sea otters, should they be restored there, would have on various components of nearshore communities by comparing changes which occur following translocation with a pre-translocation data base. Densities of abalone, sea urchins, other invertebrates, fish, and kelps, and percent cover of the benthic algal association, are surveyed twice annually at each sample site. Lobster populations are also being surveyed twice annually in late spring and late summer. Kelp canopies are photographed twice annually using aerial infrared techniques, once during the summer maximum extent of the canopy and once during its late winter minimum extent. Data from this program should adequately document spatial and temporal patterns of the sea otter's influence on the coastal ecosystem.

Translocation Phase

Activities during this phase will consist of capture, transport, and release of sea otters. These activities could last 5 years or more, depending on their success, although it is expected that most of this phase will be completed in the first year.

All capture, transport, and release activities will be done if possible between mid-August and mid-October. Earlier in the summer, strong northwesterly winds blow along the coast of California. These winds create heavy seas that would be a detriment to capture operations, although the release site itself is well protected from prevailing weather. After mid-October, the probability of winter storms from the North Pacific Ocean greatly increases. Although capture operations could be halted during such periods with no serious consequences, an inopportune storm could have catastrophic effects at the holding and release sites by increasing work hazards, as well as posing and release sites by increasing work hazards, as well as posing dangers to the otters.

1. Capture, Holding and Tagging

Capture locations will be selected preferably from about the southern one-third of the current range, primarily on the basis of logistical convenience, availability of desired age and sex groups, and welfare of the animals. Techniques proven to be effective and safe in previous translocations and other research on sea otters will be used. Simultaneous capture operations will be centered at Point Piedras Blancas and Morro Bay because both locations offer adequate harboring facilities for small boats.

Point Piedras Blancas is the only location well within the existing sea otter range that is logistically suitable for capturing sea otters. All sex and age classes are present and available for capture near Point Piedras Blancas. At least two sites in the vicinity of Piedras Blancas contain small concentrations of immature male and female sea otters. The primary capture area will extend from Cambria in the south to Salmon Creek in the north. After capture, sea otters will be shuttled to temporary holding facilities. In most cases, individuals will be in transit for no longer than 4 hours.

In the event that the desired number and composition of animals cannot be obtained from the areas described above, it is possible that additional individuals will be taken from the north end of the population's range near Monterey and Santa Cruz. These individuals will be captured from the area between Yankee Point and Point Santa Cruz.

Animals will be captured by: (1) Diver held devices (as developed by CDFG), (2) dip nets used from a small boat (as currently used by Service research personnel at Point Piedras Blancas for catching newly independent otters) or, (3) surface entangling nets (as used by the Service in California and Alaska, and by the Alaska Department of Fish and Game in Alaska). The dip net technique will probably be used extensively since it has been used very successfully in previous research

projects for capturing immature sea otters. Most of the translocated animals will be sexually immature, and most of the pups born in any year are weaned and become independent from their mothers by fall, which is judged to be the most suitable time of year for the translocation.

Each captured animal will be placed in a holding box (approximately 20" wide, 36" long, 24" deep) similar to those developed by the Departments of Fish and Game in Alaska and California. These boxes have proven to be safe and effective for transporting sea otters short distances. Each individual will be taken to the docking facility and carried, or transported by truck, to the holding facilities and then, for translocation to San Nicolas Island, the sea otters will be trucked to the respective local airports.

Under optimum conditions, all animals to be translocated in a given year will be held at the capture sites or holding facilities prior to their movement to San Nicolas Island. All animals are expected to be captured within three weeks. If logistic or weather-related difficulties are encountered, it may be necessary to spread the translocation effort over a period of up to 60 days. Under these circumstances, smaller groups of otters will be maintained at holding facilities, with two or more separate transport and release operations. At least 24 otters will be moved to San Nicolas Island during the first transport. All animals will be examined at the holding facility by a veterinarian (with experience treating marine mammals) before they are moved to the Island. The animals will be fed fish fillets and squid (*ad libitum*), supplemented by other shellfish species as available. Males and females will be held in separate tanks, and isolated from public view or disturbance to the greatest extent practicable. Twenty-four hour security and observation will be provided at all times when otters are in captivity. Handling of otters in captivity will be kept to a minimum.

All individuals will be tagged with color-coded temple tags on the interdigital webbing of the rear flippers, in varying combinations of color and position which allow identification of individuals from a distance. A permanent mark or tag, such as a small ear tag (as used by CDFG, Ames et al. 1983) and miniature transponders (implanted subdermally) will also be used to help assure "in hand" recognition of individuals in case flipper tags are lost. As previously described under "Assessment of the Existing Population," up to 30 individuals will be captured up to one year before each transplant period and implanted with radio transmitters. Approximately half of these animals will be recaptured and translocated.

Animals will be weighed and their sex determined at the time of capture. Blood samples from some of the animals will be taken for genetic and veterinary studies. Teeth will be examined for general condition at the time of capture. Each animal will be injected with tetracycline, if safe and effective doses can first be determined by the Service or veterinary community, in order to provide a potential marker for future age and growth studies. Only animals judged to be in good health by the veterinarian will be moved to the translocation site. Sick animals will be released or treated by the veterinarian and then released in the capture area upon recovery.

2. Transport

The animals will be transported from the holding facilities to San Nicolas Island by aircraft. If necessary, the cargo area will be air conditioned to 65 °F or less to prevent the animals from overheating. Animals will be accompanied and kept under surveillance while in flight. During transport, the animals will be held in individual cages. The animals will not be fed during transport. They will be sprinkled with cold water or ice if there are indications of overheating.

Under optimum conditions of weather with high capture rate, animals will be flown in several groups to San Nicolas Island. The flight will take place once all animals are in hand and judged to be in good condition. The animal will be offloaded from the aircraft at San Nicolas onto trucks, and driven immediately to the release site.

3. Release

Animals will be held in floating pens which will be securely anchored in the sand bottom at Daytona Beach, San Nicolas Island. This site is protected from onshore winds and heavy seas, which normally are from the northwest during summer and fall. It is the most suitable anchorage at San Nicolas Island and there is road access to the area.

A series of 8 to 10 floating holding pens will be used and there will be no more than 15 individuals in any pen. Males and females will be held separately. Unusually aggressive animals will be isolated from the others. The holding pens will be approximately 12' long by 12' wide by 6" deep, and constructed of a frame of aluminum tubing covered by 2" stretch nylon net. The pens will be buoyed with styrofoam blocks attached to the outside such that about two-thirds of the pens' depth is submerged. A haul-out platform for the otters will be provided on the interior of each pen. This pen design has been used successfully in previous sea otter research.

A charter vessel, with large freezer capacity to store food, will anchor and standby at Daytona Beach during the entire period that animals are being held in the floating pens. This vessel will provide a platform for 24-hour surveillance of the animals while they are in captivity at San Nicolas Island. In addition, it will serve as a food storage facility. While in captivity at San Nicolas Island, the animals' diet will be supplemented with locally common food resources. If necessary, additional food could be air freighted from Point Mugu Naval Air Station to San Nicolas Island, and put aboard the vessel.

The animals will be held from two to five days in floating pens at the release site. It is thought that this interval will allow the animals to recover from the stress of transit and to become more accustomed to the area. The animals will be released passively by opening the floating pens and allowing them to leave at will. To encourage feeding in their new environment, the otters will not be fed during the last 6 hours in captivity. The release will take place shortly after dawn in order to allow maximum time during daylight for the animals to visually orient to their new environment, and to allow shore-based of southern California that are not now occupied by sea otters. If dispersal from San Nicolas Island were to result in return to the existing population, no further effort will be made to capture the dispersing animals and return them to the translocation site except as described under Containment Efforts. If dispersal were from San Nicolas Island to some other location, the animals will be captured, and depending on the circumstances, returned and released to either the donor population or the translocation site, with return to the donor population being preferred.

Ecosystem level studies at San Nicolas Island primarily will involve monitoring littoral and sublittoral baseline stations (this includes populations of abalone, sea urchins, and fishes), kelp canopy distribution and abundance, and lobster populations. These studies will continue at the present level of effort with adjustments as needed to improve design or sampling sufficiency. This information, in conjunction with the pre-translocation data base and the population level

studies, will provide documentation of changes in the structure of the nearshore ecosystem as the sea otter population increases from low to high densities. Additional studies will be done on: (1) The population biology of red and black abalones, (2) lobster populations, (3) plant-herbivore interactions, (4) reef fish populations, and (5) socioeconomic issues, such as the effects on kelp harvesting, shellfish and finfish harvest, and recreational activities. These studies will be necessary to understand the nature and causes of change brought about by the sea otters, and the potential effects of such changes on recreational and socioeconomic activities as well as effects on the experimental population itself and its optimum sustainable population level.

2. Containment Efforts

Because it is an island with abundant prey in surrounding waters and is separated from other shallow water areas where food is available by long distances of deep open ocean, dispersal away from San Nicolas Island is expected to be negligible, at least prior to attainment of carrying capacity. As the animals approach carrying capacity, an increase in dispersal to nearby islands and perhaps the southern California coast might occur. It would be possible to limit the population at or below carrying capacity and thus prevent large-scale dispersal away from the island, by one of the following techniques: (1) Selective removal of animals from the translocation zone using non-lethal methods and relocation to the parent population; or (2) imposing birth control measures on some of the individuals within the translocation zone.

The Service and CDFG will jointly manage an effort to locate otters that may disperse from the translocation zone into the management zone. This effort will rely heavily on public participation/reporting. A "hot line" number will be established and publicized so that individuals who observe otters in the management zone could report the number and location of sea otters observed. The Service will seek appropriate agreements with other Federal and State agencies that have jurisdiction within the management zone (e.g., CDFG, Navy, National Marine Fisheries Service and National Park Service) to assist in reporting, verifying and capture of otters and protection of other resources in the areas where capture and removal operations will be conducted. Aerial reconnaissance by CDFG and/or the Service will be initiated if studies at the translocation site indicate that a significant proportion (e.g., 10–20 percent) of the animals may have dispersed from the translocation zone. Radio-implanted otters that leave the translocation zone will be tracked to the extent possible. If verified sightings of one or more sea otters are made at any location within the management zone, field crews will be mobilized as soon as weather and sea conditions permit to capture and remove the otter(s) from the zone.

Capture will be done by experienced State and/or Federal personnel using one or more of the same techniques used in the translocation effort, such as: (1) Diver-held devices; (2) surface entangling nets; or (3) dip nets. Additional techniques, such as injection of immobilizing drugs with darts, will be developed in the future, if deemed necessary. Captured otters will be returned to either the translocation zone or to the existing range. Most will either be returned to the original capture site in the existing range or released in the vicinity of Monterey Bay where their behavior will be compared with those returned to the original capture site. Animals either will be flown or moved by air-conditioned van to the release site. If not already implanted, captured animals will, to the extent possible, be implanted with a radio transmitter in order to obtain detailed information on their behavior following their release.

Capture and relocation will serve as an effective containment technique as long as there is available habitat where sea otters are desired. Public Law 99–625 requires that otters captured in the management zone must be returned either to the translocation zone or the range of the parent population. Eventually, after all such areas are occupied, population stabilization may require an artificial balancing of overall births and deaths (Hofman 1985). Therefore, research will be initiated to identify and evaluate techniques for limiting population growth by reducing fecundity. This work will be done in three stages, including a thorough review of literature on birth control in other wild mammal populations, laboratory experiments to test the most promising techniques if any are identified, and then field experiments in Alaska with Alaskan sea otters. Other techniques such as culling, or non-lethal thinning of the donor population, to minimize dispersal into the management zone would require additional authority.

3. Protection of Translocated Population

At least two enforcement officers will be integrated into the translocation effort. The officers will establish regular contacts with the other parties involved in the translocation process, develop a working knowledge of the sea otter recovery and research program and potential law enforcement problems, and develop a cooperative enforcement arrangement with other agencies with jurisdictional responsibilities, e.g., U.S. Coast Guard, National Marine Fisheries Service, California Department of Fish and Game, U.S. Navy, and National Park Service to assist with protecting the experimental population in the most effective and efficient manner possible. The officers will be equipped with a sea-going vessel and equipment to carry out frequent enforcement patrol and surveillance to minimize the chance of harassment or other illegal activities affecting the translocated sea otters. Both the on-site officers and the translocation research team will be monitoring the new colony, therefore, any illegal activities will likely be observed and enforcement actions taken. At a minimum, the officers will be needed for the duration of the actual translocation and for at least 3–5 years thereafter, after which their continued full-time need will be evaluated.

Legislative Authority

Public Law 99–625 enacted on November 7, 1986 is the primary Federal legislative authority under which this translocation plan will be implemented. In enacting Pub. L. 99–625 Congress has provided the authority and established the requirements for translocating, establishing and managing a second colony of California sea otters. This special legislative authority, similar to section 10(j) of the ESA, provides for the establishment, containment, and management of an experimental population of California sea otters pursuant to a translocation plan which must be developed by regulation and administered by the Service in cooperation with the appropriate agency of the State of California. Pub. L. 99–625. Section 1(b) 100 Stat. 3500 (1986). Pursuant to the requirements of section 1(b) of Pub. L. 99–625, this translocation plan must include the following:

(1) The number, age, and sex of sea otters that will be relocated.

(2) The manner in which the sea otters will be captured, translocated, released, monitored, and protected.

(3) The specification of a zone (herein referred to as the "translocation zone") to which the experimental population will be relocated. This translocation zone must have appropriate characteristics for furthering the conservation of southern sea otters.

(4) The specification of a zone (herein referred to as the "management zone") that— (A) Surrounds the translocation

zone; and (B) does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species.

The purpose of the management zone is to: (i) Facilitate the management of sea otters and the containment of the experimental population within the translocation zone, and (ii) to prevent, to the maximum extent feasible, conflict with other fishery resources within the management zone by the experimental population. Any sea otter found within the management zone must be treated as a member of the experimental population. The Service will use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or the range of the parent population.

(5) Measures, including an adequate funding mechanism, to isolate and contain the experimental population.

(6) A description of the relationship of the implementation of the translocation plan to the status of the species under the [Endangered Species] Act and to determinations of the Secretary under section 7 of the Act.

While the experimental population of sea otters generally is to be treated as a threatened species for purposes of the ESA, section 1(f) of Pub. L. 99–625 provides that, for purposes of implementing the translocation plan, no act by authorized Service or State officials that is necessary to effect the relocation or management of any sea otter under the plan may be treated as a violation of either the ESA or the MMPA.

Identification of Zones

Section 1(b) of Pub. L. 99–625 requires the translocation plan to specify two zones for the experimental population, a translocation zone and a management zone. Public Law 99–625, Section 1(b) 100 Stat. 3500 (1986). The translocation zone is the area in which California sea otters are to be relocated, and it must have appropriate characteristics for furthering the conservation of the species, including occupiable habitat and a buffer to insulate the experimental population from adverse effects of activities that may occur outside the translocation zone. The management zone is to surround the translocation zone, but cannot include the existing range of the parent population or adjacent range where expansion of the parent stock is necessary for recovery of the species. The purposes of the management zone are to facilitate management and containment of the experimental population and to minimize to the maximum extent feasible conflict between the experimental population and fishery resources and oil and gas exploration and development activities. Any sea otter found within the management zone is to be returned to either the translocation zone or to the range of the parent population. Public Law 99–625, Section 1(b)(4) 100 Stat. 3500 (1986).

This rule establishes a translocation zone for the experimental population at San Nicolas Island, the nearby islet of Begg Rock, and surrounding waters within the following coordinates:

North Latitude/West Longitude

33°27.8′/119°34.3′
33°20.5′/119°15.5′
33°13.5′/119°11.8′
33°06.5′/119°15.3′
33°02.8′/119°26.8′
33°08.8′/119°46.3′
33°17.2′/119°56.9′
33°30.9′/119°54.2′

The translocation zone boundary is drawn taking into account the availability of food resources, rafting sites and kelp beds as well as wind and wave patterns, offshore currents and other oceanographic variables and the types and magnitude of activities that may adversely affect the experimental population. 131 Cong. Rec. H6467 (July 29, 1985). Waters surrounding San Nicolas Island out to at least the 15-fathom contour within these coordinates provide highly suitable habitat for California sea otters. Hstorically, sea otters were present at San Nicolas Island in considerable numbers. Kelp forests flourish near the island and prey species such as abalone, sea urchins, crabs, clams and mussels are abundant. A buffer area is added to that area identified as sea otter habitat (i.e., coastal waters within the 15-fathom contour). This buffer area is based on wind and sea conditions, projected movement of oil from hypothetical oil spills and response time required to contain or divert those spills using one or more of the existing oil spill response vessels. The area delineated by the coordinates of the translocation zone provides sufficient response time to intercept and divert or possibly contain an oil spill occurring anywhere outside the translocation zone before it could reach sea otter habitat within the 15-fathom contour around the Island, provided weather and sea conditions permit effective deployment of containment equipment. The translocation zone is also large enough to provide a buffer between sea otter habitat and fishing activities in the management zone that may result in incidental entanglement.

The management zone set forth in this rule consists of all waters, islands, islets, and land areas seaward of mean high tide subject to the jurisdiction of the United States, including State tidelands, located south of Point Conception, California (34°26.9′ N. Latitude), except for any area within the translocation zone. The management zone surrounds the translocation zone and begins approximately 50 miles to the south of the southern limit of the existing range of the parent population which is at the Santa Maria River. Thus, as required by Pub. L. 99–625, the management zone surrounds the translocation zone and does not include any of the existing range of the parent population or any adjacent range where natural expansion may be necessary for recovery of the species. As discussed later in this preamble, the Service will use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or to the range of the parent population. Capture and relocation of sea otters found in the management zone will serve to contain the experimental population, to minimize conflicts between sea otters and fishing and oil and gas exploration and development activities in the management zone, and to protect those otters because the management zone has less stringent protection for otters.

Protective Regulations

Pub. L. 99–625 generally provides that any member of the experimental population of California sea otters shall be treated as a threatened species. Pub. L. 99–625, section 1(c), 100 Stat. 3500 (1986). Section 9(a)(1)(G) of the ESA prohibits any violation of a regulation pertaining to a threatened species promulgated by the Secretary pursuant to authority provided by the ESA. 16 U.S.C. 1538(a)(1)(G). Section 4(d) of the ESA authorizes the Secretary to issue protective regulations for threatened species. 16 U.S.C. 1533(d).

Pub. L. 99–625 provides several exceptions to otherwise enforceable restrictions for California sea otters belonging to the experimental population. Regardless of the zone, no act by an authorized Service or State official that is necessary to effect the relocation or management of a California sea otter under the translocation plan may be treated as a violation of the ESA or the MMPA. Pub. L. 99–625, section 1(f), 100 Stat. 3500 (1986). Within the translocation zone,

Pub. L. 99–625 provides an exception to sections 7(a)(2) and the incidental taking provisions of the ESA for "defense-related agency actions" which the law defines as agency action carried out directly by a military department. However, section 7(a)(4) of the ESA (the informal conference process) will apply to defense-related actions occurring within the translocation zone. Within the management zone, Pub. L. 99–625 provides an exception from taking prohibitions of the ESA and MMPA for incidental taking during the course of an otherwise lawful activity.

Within both the translocation zone and the management zone, this rule will, with some exceptions, impose all of the prohibitions provided for endangered species by 50 CFR 17.21(a)–(f). Section 4(d) of the ESA authorizes the Secretary to impose with respect to a threatened species any or all prohibitions applicable to endangered species. 16 U.S.C. 1533(d). For both zones, this rule provides an exception to the prohibitions for actions by authorized Service or California Department of Fish and Game officials or their designated agents that are necessary to effect relocation or management of a California sea otter under the translocation plan. For both zones, this rule provides an exception to the prohibitions for any action authorized by a threatened species permit pursuant to 50 CFR 17.32 (for example, a permit authorizing research involving an experimental population sea otter to be carried out by a university or college).

With regard to the translocation zone, this rule provides an exception to the prohibitions for incidental taking during the course of a defense-related agency action carried out directly by a military department. The term "military department" does not include the Coast Guard. See H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 18 (1985). As discussed previously, this exception is required by Pub. L. 99–625, section 1(c). Because the Service will be conferring with the Navy through the ESA section 7(a)(4) process on any action that is likely to jeopardize the continued existence of the listed sea otters, and will develop a Memorandum of Understanding with the Navy, the Service does not anticipate that Navy operations on the island or its surrounding waters will adversely affect an experimental population of California sea otters.

Within the management zone, this rule provides an exception to the prohibitions for incidental taking that occurs during the course of an otherwise lawful activity. As discussed previously, this exception is required by Pub. L. 99–625 to avoid conflicts between sea otters and fishing activities, oil and gas exploration and development, and other resource-related activities. See H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 3, 16–17 (1985); 131 Cong. Rec. H6468 (July 29, 1985). For the reasons given above, the Service finds that the protective regulations contained in this rule are necessary and advisable for the conservation of the experimental population of sea otters.

Applicability of Section 7(a)(2) Within the Translocation and Management Zones

Under section 7(a)(2) of the ESA, Federal agencies must ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of an endangered species or a threatened species or result in the destruction or adverse modification of designated critical habitat. Any Federal action that "may affect" an endangered or threatened species or critical habitat must be evaluated through formal consultation under section 7. The southern sea otter, a threatened species, is generally protected by this interagency consultation requirement.

Pub. L. 99–625 establishes precise limits on the applicability of section 7(a)(2) to an experimental sea otter population. Under Pub. L. 99–625 the location of the Federal action is controlling: If the proposed Federal action is to be implemented within the translocation zone (except for defense-related agency actions and actions initiated prior to the enactment of Pub. L. 99–625), then the requirements of section 7(a)(2) would apply; if the proposed action is to be implemented within the management zone (although adverse effects could spill over into the translocation zone), then section 7(a)(2) does not apply, unless the proposed action "may affect" the parent population of southern sea otters. Pub. L. 99–625 further provides that the informal conference requirement of section 7(a)(4) of the ESA applies to Federal activities within the management zone and to defense-related activities (*i.e.*, actions directly implemented by a military department) in either zone.

Containment

Pub. L. 99–625 requires, as a component of the translocation plan, that the Service describe measures, including an adequate funding mechanism, to isolate and contain the experimental population. The legislation emphasizes the importance of maintaining an otter-free management zone in order to prevent, to the maximum extent feasible, conflict with fishery and other resources within the management zone by the experimental population. Pub. L. 99–625 delegates broad authority to capture and remove, by non-lethal means, otters from any location within the management zone, including units of the National Park System or marine sanctuaries. *See* 131 Cong. Rec. H6467 (July 29, 1985). The legislative history for Pub. L. 99–625 specifically acknowledges that members of the parent population may occur within the management zone and requires their removal in order to maintain that zone free of otters. 131 Cong. Rec. H6467 (July 29, 1985) states that successful implementation of a "zonal management" concept could greatly improve the recovery of the sea otter by reducing threats to the species and by reducing conflicts with other resources. Containment of the experimental population at San Nicolas Island by maintaining the surrounding management zone as otter-free will result in implementation of zonal management for southern California south of Point Conception since maintenance of the otter-free zone associated with the experimental population will also result in prevention of natural expansion of the parent population into any area of the management zone south of Point Conception in southern California.

The methodology for conducting the containment effort was described previously under "Post-Translocation Phase, 2. Containment Efforts." If verified sightings of one or more sea otters are made at any location within the management zone where they could impact fisheries or be in danger from incompatible activities, field crews will be mobilized to capture and remove the otter(s) from the zone as soon as weather and sea conditions permit.

With regard to containment, it will be desirable to determine when the population is approaching carrying capacity of the habitat within the translocation zone. This should be evident from information that would be obtained in the monitoring program. The following changes are expected as the population approaches carrying capacity: (i) The growth of the population is expected to decline; (ii) juvenile mortality rate is expected to increase to about 70 percent or higher; (iii) the time spent foraging is expected to increase from 20–30 to over 50 percent of the total time budget; and (iv) the diet is expected to diversify to include less nutritious prey and prey that requires more energy to obtain.

As discussed earlier in this document, a minimum of about 10 years is expected for the population to reach carrying capacity. Dispersal away from San Nicolas Island is expected to be negligible, at least prior to attainment of carrying capacity. As the animals approach carrying capacity, dispersal to nearby islands and perhaps the southern California coast may occur. It would be possible to limit the population at or below carrying capacity, and thus prevent large-scale dispersal away from the Island and possibly maintain a higher reproductive rate, by one of the following three techniques: (i) Capturing animals from the population for translocation elsewhere, (ii) imposing birth control measures on some of the individuals; or (iii) selective or random culling of the population which would require changes in statutory authority if lethal means were to be considered. A permanent Sea Otter Management and Coordination Office will be established and maintained at a field location near the "management zone." The Office will coordinate the containment effort, verify and respond to reports of otters in the management zone, maintain public relations and interagency coordination and cooperation, serve as a contact point and source of information for the public and other agencies, continue to coordinate the overall recovery program for the California sea otter, and take the lead in working with the State(s) on a long-term management plan for the southern sea otter. The Office will work closely with State biologists to remove otters from the management zone.

Funding Mechanisms

Successful implementation of this plan depends on an adequate commitment of funding and personnel. The Service will seek funding through its normal Congressional appropriations process. Contributions from other Federal sources and non-Federal sources may also be obtained. Federal funding will be administered through the U.S. Fish and Wildlife Service. Although the Service cannot obligate funds for which it has not received an appropriation, the Service has funding in the FY-87 budget for translocation, research, protection, and containment of the experimental population.

The Service can also enter into interagency agreements for the transfer of Federal funds from another agency to the Service. Such an agreement will be sought when interagency cooperation would facilitate achieving mutual program policies, requirements, or goals. Also, unexpended balances of Federal funds may be available for grants for specific activities and can be granted by the Service to States that have entered into cooperative agreements under section 6 of the ESA. Research, management, protection and containment of the translocated population will be considered an appropriate use of such funds while the species is listed under the ESA. The State of California may also request grants in Wildlife Restoration (Pittman-Robertson) Act, or, under section 110 of the MMPA for these purposes, subject to the availability of funds.

Non-Federal funding could be received through donations, and such donations will be administered through the National Fish and Wildlife Foundation.

Effects on Recovery and Section 7 Determinations

Pub. L. 99–625 requires that the translocation plan contain a description of the relationship of implementation of the plan to the status of the species under the ESA and to determinations of the Secretary under section 7 of the ESA. The following section describes those relationships. Terminology used reflects the language contained in Pub. L. 99–625, as well as in the ESA. Throughout this discussion, the terms new population, experimental population, and colony are used interchangeably when referring to the translocated otters.

Relationship to the Status of the Species

The recovery plan for the southern sea otter contains five goals and numerous objectives that must be accomplished for the species to be considered for removal from the Federal list of endangered and threatened species. The five broad goals are to: (1) Minimize the risk of oil spills; (2) minimize the possible effects of oil spills; (3) minimize vandalism, harassment, and incidental take of sea otters; (4) monitor recovery progress of the existing population and any new colonies; and (5) integrate recovery plans into development and management plans of local coastal governments. This translocation is intended to address primarily the goal of minimizing the possible effects of oil spills. Specifically, the recovery plan states the following in regard to delisting, which is directly relevant to the relationship of a translocation to the overall status of the species:

> Delisting should be considered when the southern sea otter population is stable or increasing at sustainable rates in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe. To reach this point: (1) at least one additional population of sea otters must be established outside the current population range, (2) the existing population of sea otters and its habitat must be protected, and (3) the threat from oil spills or other major environmental changes must be minimized.

The recovery plan specifically describes the importance of translocation to recovery and delisting where it states the following:

> Sea otter translocation, if properly designed and implemented, should provide the necessary foundation for ultimately obtaining the Recovery Plan's objective and restoring the southern sea otter to a non-threatened status and maintaining OSP by: (i) Establishing a second colony (or colonies) sufficiently distant from the present population such that a smaller portion of southern sea otters will be jeopardized in the event of a large-scale oil spill, and (ii) establishing a data base for identifying the optimal sustainable population level for the sea otter. Subsequently the number and location of additional translocations that may be necessary to obtain the optimal level should be determined.

The successful establishment of the experimental population to be carried out pursuant to this rule should fully satisfy the first criterion specified above from the Recovery Plan, provided that the parent population is showing sustained growth and expanding its range from its present size and distribution. However, if such growth and expansion is not occurring, the establishment of a single new population may not be sufficient to satisfy the broader criterion that the population must be increasing at a sustainable rate in a large enough area of its original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe.

In order to consider whether recovery is attained, the other criteria, as well as the status of the parent population, would need to be evaluated in depth to determine whether or not oil spill and other major environmental or population threats are minimized to the maximum extent practicable. Although progress toward achievement of all five recovery plan goals would have to be evaluated and each goal met before delisting could occur, the establishment of at least one additional colony would be a prerequisite to consideration of delisting in order to meet the recovery plan requirements.

The relationship of translocation to the status of the California sea otter population, from an ESA standpoint, would change sequentially through distinct stages. The critical element in the sequence is the point at which the experimental population would be

determined by the Service to be "established," based on specific scientific criteria. The Service defines "established experimental population" as one which meets the following criteria: (1) An estimated minimum of 150 healthy male and female sea otters residing within the translocation zone, little or no emigration into the management zone occurring, and a minimum annual recruitment of 20 sea otters into the experimental population occurs within the translocation zone for at least 3 years of the latest five-year period; or (2) replacement yield is sufficient to maintain the experimental population at or near carrying capacity during the post-establishment and growth phase or the carrying capacity phase of the experimental population. Recruitment, for this purpose, means young-of-the-year that are weaned, independent from their mothers, and are entered into the population as subadults (juveniles).

The population estimate would be derived by the Service from periodic ground and aerial counts conducted by the Service and/or California Department of Fish and Game, or designated agents thereof, with appropriate adjustment factors to account for visibility or other counting technique biases. Annual recruitment would be derived by the Service using a combination of factors such as known pup production and mortality and annual growth of the experimental population as a whole as evidenced by results from periodic counts and population estimates.

The minimum of 150 otters estimated to be residing within the translocation zone and minimum annual recruitment of 20 are based on the expectation that this combination should be sufficient to be self-sustaining and to supply at least 25 primarily immature otters per year for 1 to 3 years if it became necessary for replenishing the parent population in the event of a catastrophic event such as a large oil spill. A minimum of 25 immatures is believed necessary based on empirical evidence from previous translocation efforts in which sea otters from Alaska have been used to attempt to reestablish populations in other areas of historic habitat (Jameson et al. 1982). The figure of 25 is believed to be a reasonable minimum number that, if translocated, for the most part would remain in an area and form a breeding nucleus from which repopulation through natural reproduction might occur. Carrying capacity, a threshold that would be determined through research, would not necessarily have to be reached in order for the new population to be considered established.

In addition to defining when the experimental population would be considered established, criteria are also needed to describe the circumstances in which the Service would consider the translocation to have failed. The translocation would generally be considered to have failed if one or more of the following conditions exist:

(1) If, after the first year following initiation of translocation or any subsequent year, no translocated otters remain within the translocation zone and the reasons for emigration or mortality cannot be identified and/or remedied;

(2) If, within three years from the initial transplant, fewer than 25 otters remain and the reasons for emigration or mortality cannot be identified and/or remedied;

(3) If, after two years following the completion of the transplant phase, the experimental population is declining at a significant rate and the translocated otters are not showing signs of successful reproduction (i.e., no pupping is observed); however, termination of the project under this and the previous criterion may be delayed if reproduction is occurring and the degree of dispersal into the management zone is small enough that the effort to continue to remove otters from the management or no-otter zone would be acceptable to the Service and the California Department of Fish and Game (CDFG).

(4) If the Service determines, in consultation with CDFG and the Marine Mammal Commission, that otters are dispersing from the translocation zone and are becoming established within the management zone in sufficient numbers to demonstrate that containment cannot be successfully accomplished. This standard is not intended to apply to situations in which individuals or small numbers of otters are sighted within the management zone or temporarily manage to elude capture. Instead, it is meant to be applied when it becomes apparent that, over time (one year or more), otters are relocating from the translocation zone to the management zone in such numbers that: (1) An independent breeding colony is likely to become established within the management zone, or (2) they could cause economic damage to fishery resources within the management zone. It is expected that the Service could make this determination within a year provided Service could make this determination within a year provided sufficient information is available;

(5) If the health and well-being of the experimental population should become threatened to the point that the colony's continued survival is unlikely, despite the protections given to it by the Service, State, and applicable laws and regulations. An example would be if an overriding military action for national security were proposed that would threaten to devastate the colony and removal of the otters was determined to be the only viable way of preventing the loss of the individuals.

If, based on any one of these criteria, the Service concludes, after consultation with CDFG and Marine Mammal Commission, that the translocation has failed to produce a viable, contained experimental population, this rulemaking will be amended to terminate the experimental population, and all otters remaining within the translocation zone will be captured and placed back into the range of the parent population. Efforts to maintain the management zone free of otters would then be curtailed after all reasonable efforts had been made to remove all otters that were still within the management zone at the time of the decision to terminate the experimental population. Reasonable efforts would include efforts up to the point that the Service and CDFG jointly determine that further efforts would be futile.

Prior to declaring the translocation a failure, a full evaluation would be conducted into the probable causes of the failure. If the causes could be determined and legal, reasonable remedial measures identified and implemented, consideration would be given to continuing to maintain the experimental population. If such reasonable measures could not be identified and implemented, the results of the evaluation would be published in the **Federal Register** with a proposed rulemaking to terminate the experimental population.

The following is a general description of the stages of growth and establishment of the experimental population, and how they will relate to the status of the California sea otter population as a whole. Figure C.1 is a schematic illustration of the stages of growth and establishment of an experimental sea otter population.

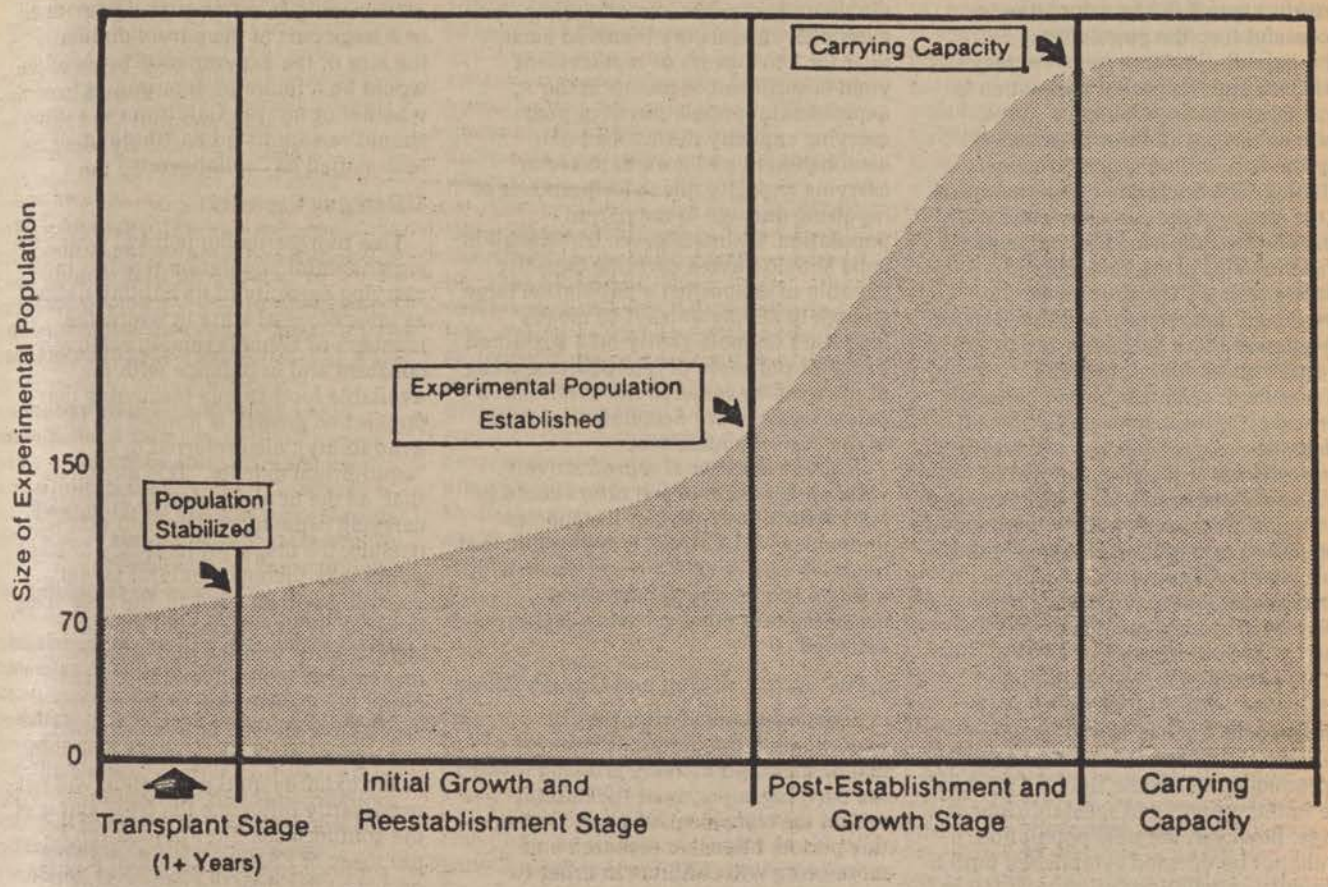


Figure C.1. Stages of establishment and growth of an experimental population of sea otters.

1. Transplant Stage

This constitutes the approximately one-year period during which sea otters from the parent population will be actively captured and relocated to the translocation site. Up to 70 otters will be moved to the site during the first year, supplemented as necessary with no more than 70 individuals in any subsequent year, although numbers in subsequent years are expected to be much less than 70. If, as expected, most of the translocated otters remain within the translocation zone until population growth due to natural reproduction can be demonstrated, there will be no supplemental translocation to the site in subsequent years except for occasional small numbers (up to five per year) to provide for genetic exchange with the parent population. However, if a substantial decline is seen in the population or a serious imbalance in the sex ratio occurs, additional otters may be moved to the site in subsequent years. Translocation will not exceed an annual maximum of 70 or a total of 250 sea otters. Based on this strategy, and if a sufficient mix of healthy male and female otters (equal to or greater than the number of otters that were released from the holding pens, or 70 otters, whichever is less) exists within the translocation zone and are apparently sedentary and showing little or no sign of dispersing from the zone, the transplant period will end. The population would thus be considered "stabilized" and is expected to enter into the initial growth and reestablishment stage. This could occur after the first year or perhaps later if supplements are necessary. A status review of the parent population, comparable to the five-year reviews required by the ESA, will be conducted near the beginning of translocation to serve as a baseline for evaluating recovery progress.

2. Initial Growth and Reestablishment Stage

This comprises the period between the end of the transplant stage (i.e., the population is stabilized) and the point at which the criteria for establishment of the experimental population are met. It is a period of intense observation of both the experimental population and the parent population. The primary focus will be to evaluate how well the new population is adapting to its new environment and, in particular, its reproduction and dispersal tendencies. It is also a period for evaluating the effects of translocation on the parent populaton, including effects on growth, range expansion or range recession. The initial growth and reestablishment period will likely be at least 5–6 years, depending on how long it takes for the nucleus of the new population to achieve the "established state" recruitment criteria and to reach a minimum estimated size of 150.

After the new population is deemed to be established, the Service will evaluate the overall success of the translocation and relate it to the recovery plan goals and criteria and the previous five-year and annual status reviews of the

population as a whole. The southern sea otter will be eligible for delisting consideration if the translocation is successful (i.e., the population established), the other recovery tasks satisfied, and the parent population is increasing and expanding its range. Upon achieving all three criteria the Service will initiate procedures for delisting. The Secretary's determination of the status of the sea otter must consider the following factors pursuant to section 4(a) of the Endangered Species Act: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Research on the experimental population and related changes in the ecosystem will continue, as will containment and maintenance of the designated management zone as otter-free by the Service and/or CDFG.

It is conceivable that, under ideal conditions, nearly all of the 15 adult females and some of the 40 females translocated as immatures could be reproducing within the first 2–3 years of the initial growth and reestablishment stage; however, the new population could not be deemed established until a minimum population estimate of 150 in combination with a minimum annual recruitment of 20 for at least 3 of the last 5 years had been achieved. If recruitment and population growth did not occur at this rate initially, the period of initial growth and reestablishment would continue until the criteria for establishment were met, or until it was determined that the experimental population had failed. The translocation is designed to maximize the chance of success, thus, it is likely that the experimental population will become established relatively quickly after completion of the transplant phase.

The Service does not consider the mere presence of sea otters in the translocation zone as an indication that a new population is established. If a catastrophic event were to decimate a portion of the parent population, it is possible that the relocated otters could be used to restore the damaged portion of the parent population; however, it would also likely eliminate the value of the new population to serve as a reserve colony for providing stock to restore subsequently damaged areas and it could eliminate the reproductive viability of the colony such that the remaining animals could not be self-sustaining. Therefore, to be considered established it must be a reproductively viable unit, capable of maintaining itself even if 25 animals are removed each year for 1 to 3 years or replacement yield is sufficient to maintain the experimental population at or near carrying capacity during the post-establishment and growth phase or carrying capacity phase for purposes of repairing damage to the parent population. Ultimately, the translocation zone should have a carrying capacity capable of supporting a population large enough to supply at least 25 mostly immature animals yearly on a sustained basis for purposes of repopulating areas of the existing range in the event that a catastrophic event decimates a portion of the parent population.

A single additional reproductively viable population of sea otters could be sufficient for recovery of the species pursuant to ESA. Thus, it is possible that recovery and delisting could occur with a single successful translocation, assuming that other recovery tasks are satisfied.

3. Post-Establishment and Growth Phase

This is the period after the experimental population is deemed established and actively growing toward the carrying capacity of the habitat within the translocation zone. During this period, intensive research and monitoring will continue in order to document changes in the nearshore ecosystem of the translocation zone, and the behavior, reproduction, and dispersal tendencies of otters in the experimental population.

During the post-establishment and growth stage, the experimental population will contribute to the total size of the California sea otter population and its numbers and location will be added to those of the parent population when describing the population size and distribution of the California sea otter for any purpose.

Under the current approved recovery plan, recovery criteria are not defined in terms of specific population goals, but, rather, by the need to establish at least one additional colony and protect the existing mainland population in California. Because establishment of the experimental population, along with achievement of other recovery plan goals, could be sufficient to consider delisting from the threatened species list, the addition of otters during the post-establishment and growth stage of the experimental population normally would not influence the overall status of the California sea otter for ESA purposes since this component of the recovery plan would have been satisfied upon the experimental population becoming established. However, if a catastrophic event were to decimate all or a large part of the parent population, the size of the experimental population would be a factor in determining whether or not the California sea otter should remain listed as "threatened" or reclassified as "endangered."

4. Carrying Capacity

This represents the point at which the experimental population reaches the carrying capacity of its habitat, defined as an ecological state in which the numbers of animals remain relatively constant and in balance with the available food supply (assuming that population growth is limited by food availability), also referred to as "equilibrium density." It is expected that, as the new population approaches carrying capacity, the growth rate will decline, the dispersal tendency of some otters may increase, natural juvenile mortality will accelerate, the time spent foraging by the otters will increase significantly, and the diet will become measurably more diversified. At this point, the growth rate of the colony might have slowed or even stopped.

Attainment of an equilibrium density in the experimental population will not necessarily influence the legal status of the southern sea otter population for purposes of ESA, beyond that which occurs at the time the new colony is deemed established. This is because the initial establishment of the experimental population will be sufficient to consider delisting if the other recovery tasks have been met.

To summarize the relationship of translocation to the status of the California sea otter pursuant to ESA, this relationship will be time-phased and will vary with the stages of growth of the translocated population. The recovery plan states that in order for recovery and delisting from the Federal list of endangered and threatened species to occur, a number of criteria must be met. A key one is that at least one additional population must be established outside the current range but separated from the existing population such that it would not be possible for a large oil spill to contact and decimate both the new colony (or colonies) and the existing population. The definition of "established" is pivotal to a description of the relationship to the population as a whole. The experimental population will not be sufficient to meet one of the criteria for delisting under ESA until the Service deems the new population to be established. The minimum time required will probably be

five years after the actual translocation begins, and it may be longer, depending primarily on the recruitment and mortality rates and the degree to which the experimental otters remain within the translocation zone. Both the transplant and initial growth and reestablishment stages must occur before the new population can be judged to be established. During these two stages, the experimental population will have no influence on, nor help to improve, the legal status of the southern sea otter under ESA, although during the initial growth and reestablishment stage the number of otters within the translocation zone will be added to those in the donor population for purposes of conducting ESA section 7 consultations if there are at least as many otters in the zone as were moved there during the transplant stage and if successful reproduction is occurring in the translocation zone.

Once the new population is deemed established, removal of the southern sea otter from the threatened list could be considered, although delisting will depend on the degree to which other recovery criteria have also been met. The Service will conduct a formal status review relative to the donor population near the beginning of translocation, and again at the time the experimental population is deemed established. This would provide the basis for evaluating the requisite factors to be considered prior to delisting the species.

An example of the conditions that may constitute meeting the recovery objectives is if: (1) The donor population has for the most part been consistently increasing in range and number (above the 1982 baseline); (2) the level of oil spill and related risks is minimized; (3) an oil spill response plan has been implemented and does afford measurable protection (i.e., good likelihood of capturing, cleaning, and rehabilitating oiled sea otters, and a good likelihood of containing and cleaning up an oil spill); (4) incidental take, vandalism, and harassment have been minimized; (5) habitat quality and biological parameters are not adversely changing to the detriment of the population; and (6) the experimental colony is determined to be established. This should achieve the desired goal for sea otter recovery, i.e., that the California sea otter population is naturally capable of withstanding perturbations of an environmental or man-caused nature.

Subsequent to the population becoming established as a viable breeding colony, it is anticipated that it would enter a growth stage, during which it would grow toward carrying capacity. During the post-establishment and growth stage, and at carrying capacity, the experimental population normally will influence the legal status (pursuant to ESA) of the overall California population no more than when it was initially deemed to be established, but the size and health of the experimental population will be a significant factor in evaluating whether the level of threat to the species continues to warrant listing under the ESA. One potential deviation from this would be if the parent population were to be substantially diminished; should that occur, the size of the experimental population at that point would have a bearing on whether the remaining sea otters remain classified as threatened or should be reclassified as endangered, or relisted if a delisting action had previously been completed.

Relationship to Future ESA Section 7 Determinations

The discussion, terms, and conclusions described under the previous section are directly applicable to this section. Pursuant to Pub. L. 99–625 formal section 7 consultations will be generally required relative to the experimental population (prior to delisting), regardless of its size or growth stage for all Federal actions that are proposed to be undertaken within the translocation zone that are not defense-related and that may affect the experimental population. Within the management zone, no formal consultations will be required for actions that may affect the experimental population (unless the action may affect the donor population), but pursuant to section 7(a)(4) the Federal agency proposing the action will be required to informally confer with the Service on projects that are likely to jeopardize the continued existence of the southern sea otter.

During the transplant and initial growth and reestablishment stages, it will not be known if the experimental population will eventually take hold and become a viable, self-perpetuating unit. Therefore, it cannot be considered as available for restoring a damaged parent population, and thus will not contribute significantly to recovery. However, for section 7 purposes, after the translocated population has stabilized and then during the growth and reestablishment stage, the numbers associated with the experimental population will be added to those of the parent population if they are at least equal to the number originally translocated to the translocation zone and successful reproduction is occurring. For example, if there are 100 sea otters in the translocation zone, at least some of which are reproducing successfully, and 1,400 in the parent population, the total population of California sea otters will be considered to equal 1,500 for purposes of evaluating a Federal project through section 7 consultation. Once the translocated otters become stabilized and enter into the initial growth and reestablishment stage, but before meeting the criteria for an established population, the experimental population will have an existence value that will be taken into consideration for section 7 purposes, both quantitatively and qualitatively. Its numbers will be added to those of the parent population in order to analyze impacts of a Federal action on the southern sea otter population as a whole. Moreover, as part of the analysis of the impacts on the population as a whole, the impacts of proposed Federal actions will be analyzed in a manner to clearly determine the relative risk to each of the two populations (parent population and experimental population). It is assumed, based on the oil spill risk analysis that was conducted for the translocation, that no single oil spill or similar event could affect both the parent population and experimental population, and it is expected that the otters present in the translocation zone will be relatively healthy, productive and well adjusted to their new environment during the initial growth and reestablishment stage.

Although the estimated size of both the parent population and experimental population will be combined for section 7 purposes, the reduction in the likelihood of a jeopardy opinion will probably be only a small fraction and probably not quantifiable. When considering adverse effects and incidental take associated with a proposed project and cumulative effects that may affect the donor population, the number of otters removed from the donor population for translocation purposes will have to be taken into consideration for projects proposed during the transplant stage. However, since only a maximum of 70 will be translocated the first year, and probably only small supplements taken if needed during subsequent years, there will not likely be any measurable effect on section 7 opinions relative to the parent population after the first year of the translocation.

Once the experimental population becomes established, but prior to the formal delisting of the southern sea otter, the existence of the experimental population will affirmatively influence

determinations of non-jeopardy, and it will be considered part of the overall southern sea otter population for section 7 purposes in direct proportion to its size. For example, if the experimental population numbered 150 and the donor population 1,300, for section 7 purposes the southern sea otter population would number 1,450, and the projected impacts from the project would be based on the proportion of the 1,450 that could be affected. In addition to simply adding the sizes of both the donor and experimental populations together, the experimental population will also be available to annually contribute at least 25 mostly immature otters for restoring a damaged donor population. This potential contribution will be factored into a section 7 biological opinion in its assessment of impacts of the proposed Federal project and the time required for the donor population to recover itself from the expected impacts of the Federal project. The fact that two viable, geographically separate populations exist at that point will reduce the likely extent of impacts from the proposed Federal action on the species as a whole and, thus, affect determinations of jeopardy and non-jeopardy pursuant to section 7.

With regard to determinations of jeopardy or non-jeopardy, as the experimental population grows toward the maximum number that its habitat can support, i.e., carrying capacity, the likelihood of jeopardy determinations for Federal actions will decrease proportionally for comparable projects with comparable types of impacts. Thus, there will be an inverse relationship between the size of the experimental population (after establishment occurs) and the likelihood of jeopardy determinations associated with section 7 consultations on projects affecting either the parent or the experimental population. Figure C.2. graphically describes this hypothetical relationship. However, the status of the experimental population is not the only factor that will be considered in section 7 evaluations. The status of the donor population, as well as the baseline environmental or population threats at the time and cumulative impacts of future non-Federal actions expected to occur and affect either population at the time of the consultation, will also be taken into account. Once the experimental population becomes established and the southern sea otter delisted, no further section 7 consultations will be required relative to either the parent or experimental populations. If a catastrophic event were to completely decimate the parent population subsequent to the species being delisted, the experimental population could be considered for re-listing as threatened or endangered, but such re-listing would follow the normal listing procedures prescribed under section 4(a) of the Endangered Species Act, including a rulemaking process and opportunity for public review and comment.

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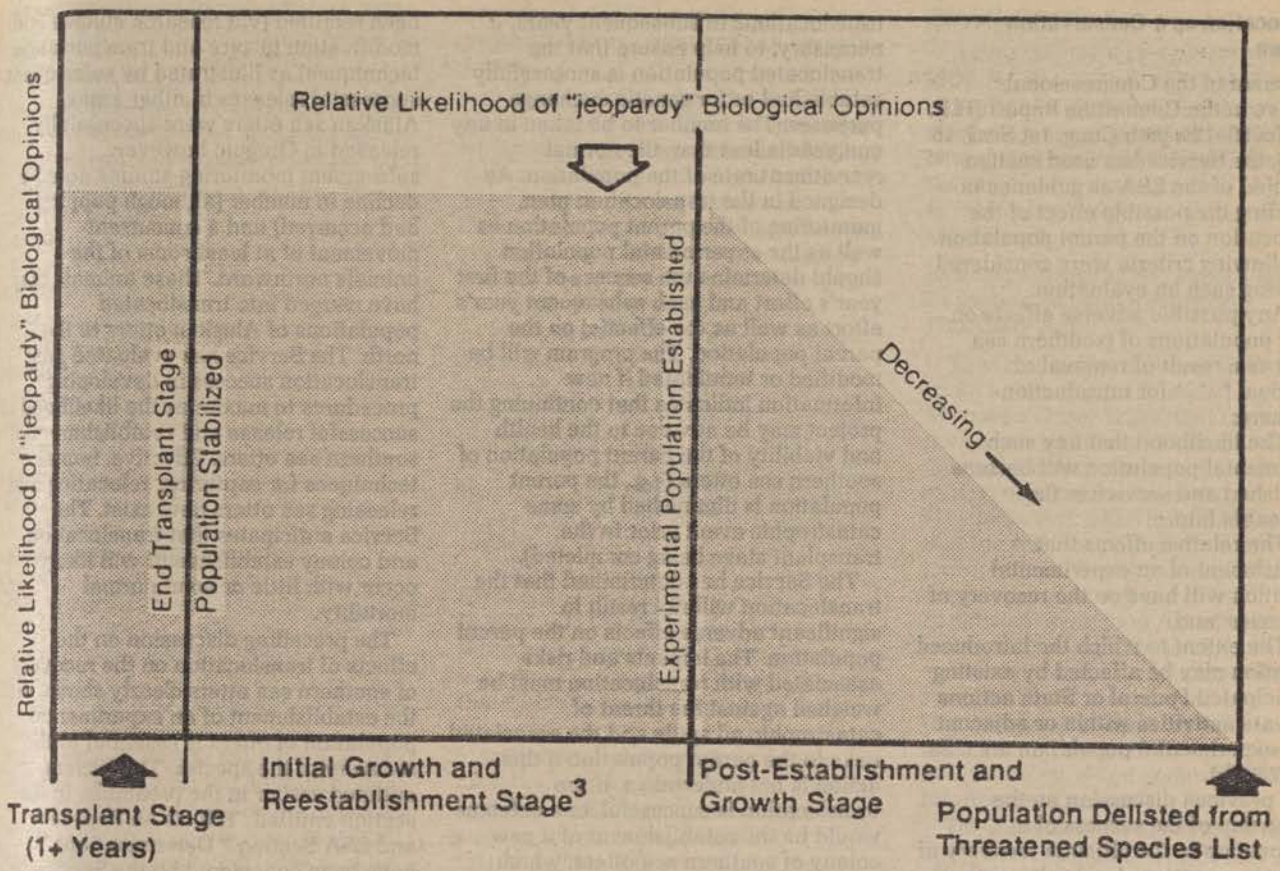

Figure C.2.
Hypothetical relationship between establishment and growth of an experimental population of southern sea otters and the relative likelihood of "jeopardy" Biological Opinions being rendered under the Endangered Species Act Section 7 consultation process.[1,2]

[1]Length of each stage on the horizontal axis does not necessarily represent real time.

[2]Actual Biological Opinions rendered would be contingent upon the magnitude of impacts expected to result from the specific project and the current status and trend of the parent (donor) population, as well as the size and status of the experimental population.

[3]During the Initial Growth and Reestablishment Stage, a measurable decrease in the likelihood of a "jeopardy" Biological Opinion is possible, depending on the the actual size and status of the experimental population, but not likely. The existence of a reproducing aggregation of otters separate from the parent population that would not be affected by impacts to parent population would be taken into consideration in Biological Opinions rendered during the Initial Growth and Reestablishment stage.

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Translocation as a Conservation Measure

Pursuant to the Congressional directive in the Committee Report (H.R. Rep. No. 99–124, 99th Cong. 1st Sess. 16 (1985)), the Service has used section 10(j)(2)(A) of the ESA as guidance in evaluating the possible effect of the translocation on the parent population. The following criteria were considered in making such an evaluation:

(1) Any possible adverse effects on extant populations of (southern sea otters) as a result of removal of individual * * * for introduction elsewhere;

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future;

(3) The relative effects that establishment of an experimental population will have on the recovery of the species; and

(4) The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area. 50 CFR 17.81(b).

The previous discussion on the relationship of the success of a translocation to the ultimate recovery of southern sea otters clearly shows that the successful establishment of an experimental population will further the conservation of the southern sea otter; the following discussion explains the basis for the Service's finding in accordance with the four criteria.

Although a short-term reduction in the size of the parent population of southern sea otters will result as a consequence of translocation, any adverse effects of removal of no more than 70 mostly immature otters the first year and only supplemental removals in subsequent years if needed should be temporary and diminished by natural growth and expansion of the parent population, and will be outweighed by the achievement of a primary recovery criterion that can result from a successful translocation. The short-term reduction in size of the existing (parent) population will be proportionate to or less than the numbers translocated depending on the degree to which the removal of animals compensates for some level of natural mortality in the parent population. However, the numbers, sex and age of otters removed will be carefully selected to avoid any lasting effects on the parent population. Otters will be individually caught, removed and then translocated in small groups. Up to 70 animals will be translocated the first year, with only minor supplemental translocations in subsequent years, if necessary, to help ensure that the translocated population is successfully established or for genetic exchange purposes. The number to be taken in any one year is less than the normal recruitment rate of the population. As designed in the translocation plan, monitoring of the parent population as well as the experimental population should determine the success of the first year's effort and each subsequent year's effort as well as the effect(s) on the parent population. The program will be modified or terminated if new information indicates that continuing the project may be adverse to the health and viability of the parent population of southern sea otters (e.g., the parent population is diminished by some catastrophic event prior to the transplant stage being completed).

The Service has determined that the translocation will not result in significant adverse effects on the parent population. The impacts and risks associated with translocation must be weighed against the threat of catastrophic oil spills and the associated risks to the parent population if this action is not undertaken. If the translocation is successful, one outcome would be the establishment of a new colony of southern sea otters, which would ameliorate the species' present vulnerability to oil spills that, if they occurred, could jeopardize the continued existence of the southern sea otter.

There is a strong likelihood that an experimental population of southern sea otters released at San Nicolas Island will become established within 10 years after translocation is begun, and possibly in as few as 5 years. Current information indicates that necessary habitat requirements exist around San Nicolas Island to support a viable breeding colony of sea otters, and, although further field research would be of benefit in assessing particular habitat needs and population dynamics of a translocated population, the Service believes that the prospects for a successful translocation are excellent.

Since 1965, translocation of Alaskan sea otters has been successfully used for restoration purposes in southeast Alaska, northern Washington, and the Canadian Province of British Columbia. Although early efforts to translocate Alaskan otters to St. George Island (Pribilof Islands) failed, their failure is attributed mainly to inexperience in transportation, care, and limited knowledge of physiological requirements of sea otters and the harsh ice conditions that occurred around the Island after translocation was carried out. The procedural problems have since been rectified (via research studies and modification in care and transportation techniques) as illustrated by subsequent, successful releases in other areas. Alaskan sea otters were successfully released in Oregon; however, subsequent monitoring studies noted a decline in number (although pupping had occurred) and a concurrent movement of at least some of the animals northward. These animals may have merged into translocated populations of Alaskan otters to the north. The Service has evaluated past translocation success in developing procedures to maximize the likelihood of successful release and establishment of southern sea otters. Effective, humane techniques for capturing, relocating and releasing sea otters now exist. The Service anticipates that translocation and colony establishment will likely occur with little or no abnormal mortality.

The preceding discussion on the effects of translocation on the recovery of southern sea otters clearly shows that the establishment of an experimental population of otters is essential to the recovery of the species. The factors outlined earlier in the preamble, in the section entitled "Effects on Recovery and ESA Section 7 Determinations," have been considered by the Service in reaching the conclusion that the establishment of a new sea otter colony—one that is not subject to the same risk of loss faced by the parent population from a catastrophic oil spill—will improve the recovery potential for the southern sea otter.

Lastly, although some Federal, State, and private activities on and near San Nicolas Island could affect the experimental population, these impacts are expected to be minor, if they occur at all. Appropriate measures are proposed to protect the translocated otters from more serious threats. Despite the fact that the experimental population will not be risk-free, the Service finds that, after balancing all relevant factors, the translocation will further the conservation of southern sea otters.

San Nicolas Island is within the boundary of the Southern California oil and gas outer continental shelf (OCS) lease offering area (Point Buchon to the California-Mexico border). The Department of the Interior, Minerals Management Service has offered lease sales for tracts in this general area in 1966, 1968, 1975, 1979, 1982, and 1984. The next proposed sale that could include the San Nicolas Island area is scheduled for 1989. If tracts around the Island were leased, it is unlikely that

development would occur before 1992 since an exploratory program would be conducted first to determine if any recoverable reserves are present. The oil and gas industry has expressed some interest in the general area (i.e., the outer banks and basins); however, tracts offshore San Nicolas Island have been regularly deleted from previous sales to avoid potential military (Navy) conflicts. Naval activities on and around San Nicolas Island include automated tracking of missiles and submarines with some infrequent nearshore field exercises that involve firing of live ammunition in limited areas. To date, such activities have not adversely affected the sizeable populations of other marine mammals that inhabit waters near the island. Because the Service will coordinate with the Navy in developing a Memorandum of Understanding for operations on the Island, and if Naval activities are likely to jeopardize the southern sea otter the Service will enter into informal conferral on Navy activities pursuant to section 7(a)(4) of the ESA, the Service believes military activities will not pose significant threats to the reintroduced colony. The closest blocks with active oil and gas leases are located about 30 miles northwest of San Nicolas Island. Deletions are made on a lease sale-by-lease sale basis and, therefore, withdrawal of tracts around the Island from future sales is not a certainty. Oil development in waters immediately surrounding San Nicolas Island could significantly affect the introduced colony if an oil spill were to occur, but in view of the conflict between OCS development and military activities in the area and the outcomes of previous lease sales around San Nicolas, it is doubtful that development in the immediate vicinity will occur in the foreseeable future. Furthermore, proposed oil development plans within the translocation zone would be subject to formal ESA section 7(a)(2) consultation with the Service, a requirement that would likely ensure that the development would not jeopardize the continued existence of the species and would minimize any possible incidental take. To date, there has been no interest expressed by the State to lease tidelands around San Nicolas Island for oil development. The State has designated the waters surrounding San Nicolas Island an Area of Special Biological Significance (ASBS). The State and Regional Water Resources Control Boards prohibit the direct discharge of wastes into an ASBS or its immediate vicinity, petroleum discharges included. This designation provides an added measure of protection to sea otters at San Nicolas Island.

A State-controlled action that may affect southern sea otters is the setting of commercial gill and trammel fishing nets in sea otter habitat. Sea otters have been incidentally entangled and drowned in large-mesh set nets that are typically used to catch halibut in their present range. Mortality in these nets has, until recently, resulted in the average annual loss of about 6 percent of the population (an average of 80 otters per year, 1982–84). The effect this activity would have on a reintroduced colony is expected to be minimal because the State has taken a position that areas where such incidental taking of sea otters might occur will be closed to fishing with this type of gear. In view of previous actions by the CDFG and State Legislature, it is reasonable to believe that the State will close any area where sea otters are translocated out to a depth of at least 15 fathoms (the depth that SSO's normally inhabit) or farther if necessary to eliminate sea otter entanglement. Enforcement of such closures would be carried out by State agents, and Service agents would enforce the prohibition against incidentally taking sea otters around San Nicolas Island. If the State did not close the portion of the translocation zone that otters would inhabit to such fishing activities, the prohibition against incidental take under Pub. L. 99–625 would still be enforceable by the Service.

It also is important to recognize that an unknown number of southern sea otters in their present mainland range are illegally shot annually. Sea otters off San Nicolas Island will be vulnerable to this malicious act if specific measures are not taken to prevent it. Although no individuals have yet been convicted for shooting otters in the currently occupied range, the relatively small size, isolation, and difficult access to San Nicolas Island, and the intense research, monitoring and law enforcement effort designed to protect this experimental population should minimize or eliminate the likelihood that otters will be illegally taken there.

National Environmental Policy Act (NEPA)

A Final Environmental Impact Statement pursuant to NEPA is now available to the public at the Regional Office and Office of Sea Otter Coordination, U.S. Fish and Wildlife Service, at the address listed above.

Formal Consultation

As required by section 7(a)(2) of the ESA, the Service has concluded formal consultation on translocation of southern sea otters to San Nicolas Island. The biological opinion states that the proposed translocation is not likely to jeopardize the continued existence of southern sea otters.

Executive Order 12291, Paperwork Reduction Act and Regulatory Flexibility Act

The Service has determined that this is not a major rule as defined by Executive Order 12291, that the rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and that the rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These conclusions were reached after conducting an analysis that is documented in a Determination of Effects of Rules, which is on file and available for public review at the address listed under "For Further Information Contact."

The translocation of southern sea otters to San Nicolas Island, may cause economic impacts to commercial and sport fisheries; oil and gas exploration, development and production; mariculture; and commercial kelp harvest. However, the total economic impacts of this action, on an annual basis, will be substantially less than $100 million, and there will not be a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions as a result of implementation of this Rulemaking. Lastly, the rule does not generate significant adverse effects to competition, employment, investment, productivity, innovation, or to the ability of domestic enterprises to compete with foreign enterprises in domestic or international markets.

Literature Cited

Ames, J.A., R.H. Hardy, and F.E. Wendell. 1983. Tagging materials and methods for sea otters, *Enhydra lutris* Calif Fish and Game 69:243–252.

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Hofman, R.J. (Ed.). 1985. Workshop to assess possible methods for regulating the distribution and movements of sea otters. U.S. Marine Mammal Commission. Rept. No. MMC–84/05. Washington, DC.

Jameson, R.J., K.W. Kenyon, A.M. Johnson, and H.M. Wight. 1982. History and status of translocated sea otter populations in North America. Wildl. Soc. Bull. 10(2):100–107.
Kenyon, K.W. 1969. The sea otter in the eastern Pacific Ocean. N. Amer. Fauna 68:1–352.

Authors

The primary authors of this rule are Wilbur Ladd and Carl Benz, Office of Sea Otter Coordination, U.S. Fish and Wildlife Service, Room E–1818, 2800 Cottage Way, Sacramento, California 95825 (916/978–4873, FTS 460–4873).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Marine mammals, Fish, Plants (agriculture).

Regulation(s) Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 is revised to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. § 17.11(h) is amended by revising the entry for "Otter, southern sea" under MAMMALS in the list of endangered and threatened wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Otter, southern sea	*Enhydra lutris nereis*	West Coast, USA (WA, OR, CA) south to Mexico (Baja, California).	Entire, except where listed below	T	21, 284	NA	NA
Do	do	do	All areas subject to U.S. jurisdiction south of Pt. Conception, CA (34°26.9' N. Lat.) [Note: status governed by Pub. L. 99–625, 100 Stat. 3500.].	[See 17.84(d)]	21, 284	NA	17.84(d)

3. Section 17.84 is amended by adding paragraph (d) as set forth below:

§ 17.84 Special rules—Vertebrates.

* * * * *

(d) Southern sea otter (*Enhydra lutris nereis*).

(1) *Definitions.* The definitions set out in § 17.3 apply to this paragraph (d). For purposes of this paragraph—

(i) The term "defense-related agency action" means an agency action proposed to be carried out directly by a military department, which does not have as its intended purpose the taking of southern sea otters. For purposes of this definition, the United States Coast Guard is not a military department.

(ii) The term "management zone" means that area delineated in paragraph (d)(5)(i) of this section which surrounds the translocation zone and separates the translocation zone from the existing range of the parent population and adjacent range where expansion of the parent population is necessary for the recovery of southern sea otters.

(iii) The term "member of the experimental population of southern sea otters" includes any southern sea otter, alive or dead, found within the translocation zone or the management zone, and any part or product of any such southern sea otter.

(iv) The term "parent population" means the population of southern sea otters existing along the central California coast north of the management zone.

(v) The term "translocation zone" means the area delineated in paragraph (d)(4)(i) of this section within which an experimental population of southern sea otters is released and contained.

(vi) The term "established experimental population of southern sea otters" means a translocated population that meets the following criteria: An estimated combined minimum of 150 healthy male and female sea otters residing within the translocation zone, little or no emigration into the management zone occurring, and a minimum annual recruitment to the experimental population in the translocation zone of 20 sea otters for at least 3 years of the latest 5-year period, or replacement yield sufficient to maintain the experimental population at or near carrying capacity during the post-establishment and growth phase or carrying capacity phase of the experimental population.

(vii) The term "stabilized population" is a population of sea otters within the translocation zone at the conclusion of the movement of animals from the parent population, except for purposes of genetic enhancement, which (A) is equal to or greater than the number of otters that were released from the holding pens alive and healthy, or 70 otters, whichever is less, and (B) is exhibiting growth. A stabilized population would represent the point at which the experimental population shifts from the transplant stage to the initial growth and reestablishment stage.

(viii) The term "carrying capacity" means the ecological state in which the numbers of sea otters within the translocation zone remain relatively constant and in balance with the available food supply.

(2) *Description of experimental population.* The experimental population of southern sea otters shall include all southern sea otters found within the translocation zone or the management zone. The Service will translocate no more than 70 southern sea otters during the first year, supplemented as necessary with up to 70 otters per year in subsequent years from the parent population to the translocation zone. Although a maximum of 250 southern sea otters may be moved from the parent population in order to establish the experimental population in the translocation zone, it is not likely that supplemental translocation after the initial 70 will involve more than small numbers of southern sea otters, although under this plan a maximum of 70 could be moved if needed in each year up to a total of 250. Of the animals translocated each year, up to 20 will be adults, at a sex ratio of about 3:1, females to males. The remainder will be weaned, immature otters. The sex ratio of the immature otters selected for translocation will be approximately 4 females to 1 male.

(3) *Translocation process.* (i) *Capture.* Capture locations will be selected primarily from the southern third of the range of the parent population. Sea

otters will be captured between early August and mid-October using: diver-held devices, dip nets, surface entangling nets, or other methods which may be proven to be safe and effective in the future. All captured otters will be tagged and examined by a veterinarian experienced in treating marine mammals. During the year prior to each translocation effort, a maximum of 30 otters will be captured and implanted with radio transmitters for observation and study of behavior. Up to 15 of these animals will be recaptured and translocated.

(ii) *Transport.* All animals to be translocated will be held in specially constructed holding facilities prior to their movement to the translocation zone. Access to and care of animals will be restricted to Federal and State personnel and designated agents directly involved with the translocation. Each captured animal will be placed in a carrying cage and transported by truck to the local airport, from which point they will be flown to the translocation zone. From there they will be trucked to the release site. No fewer than 20 animals will be moved to the translocation zone at a single time.

(iii) *Release.* The animals will be held for up to five days in secured floating pens at the release site. No more than 10 individuals will be held in any pen, and males and females will be held separately. The animals will be released passively by opening the floating pens and allowing them to leave at will.

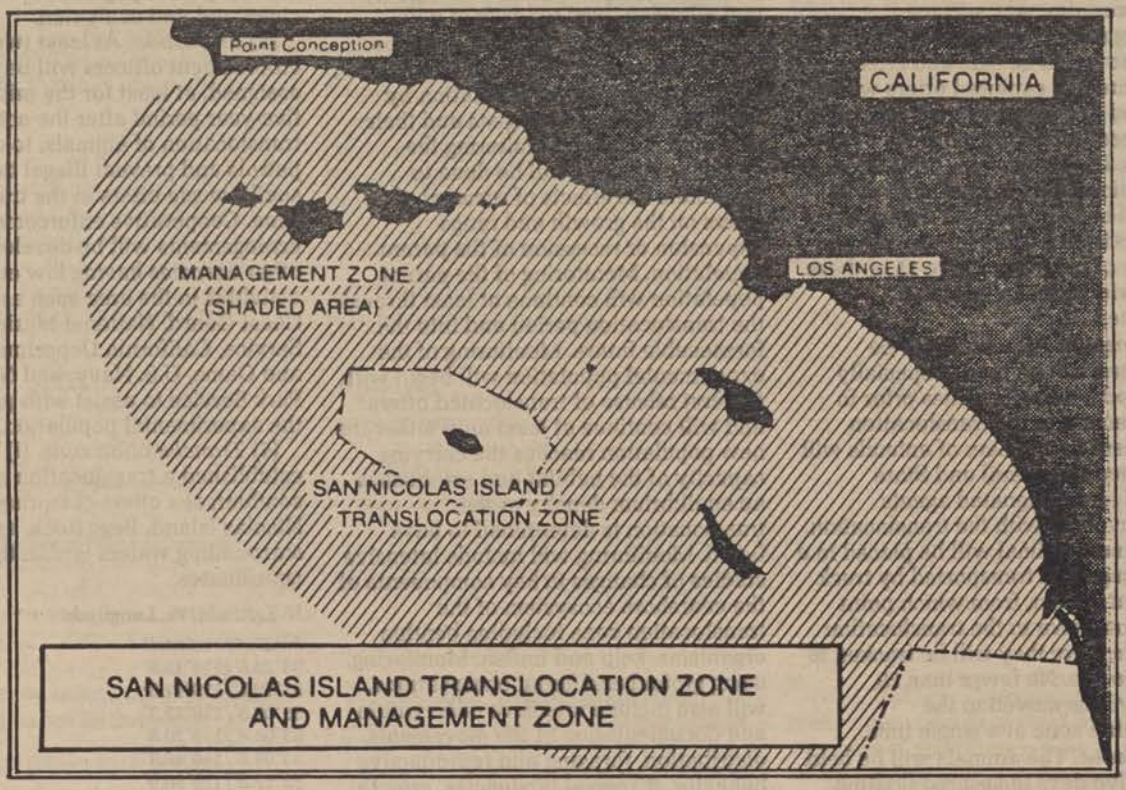
(iv) *Monitoring.* Monitoring will be conducted on both the parent population and the experimental population by State and Federal biologists and their designated agents. Monitoring the parent population will be done to determine the effects of removal of otters on the growth and range expansion or recession of the parent population. Monitoring of the parent population will continue at least through the translocation period and into the foreseeable future. Monitoring of the experimental population will begin with the first release of translocated otters and will continue at least until either the new population reaches the carrying capacity of the habitat and establishes an equilibrium density or the translocation is determined to have failed. Monitoring will include intensive studies of changes in key components of the nearshore ecosystem of the translocation zone including benthic organisms, kelp and finfish. Monitoring, using ground and aerial observations, will also include intensive observation and documentation of the movements, distribution, foraging and reproductive behavior, dispersal tendencies, growth and reproductive rates, prey selection, and social interactions of sea otters in the experimental population. Results of monitoring the experimental population and the parent population will also be compared and evaluated.

(v) *Protection.* At least two law enforcement officers will be specifically assigned, at least for the initial three- to five-year period after the actual translocation of animals, to conduct patrols and prevent illegal taking of southern sea otters in the translocation zone. Cooperative enforcement arrangements will be developed with other agencies having law enforcement activities in the area such as the U.S. Coast Guard, National Marine Fisheries Service, California Department of Fish and Game, U.S. Navy, and National Park Service to assist with protecting the experimental population.

(4) *Translocation zone.* (i) There is established a translocation zone for southern sea otters comprised of San Nicolas Island, Begg Rock, and the surrounding waters within the following coordinates:

N. Latitude/W. Longitude
33°27.8'/119°34.3'
33°20.5'/119°15.5'
33°13.5'/119°11.8'
33°06.5'/119°15.3'
33°02.8'/119°26.8'
33°08.8'/119°46.3'
33°17.2'/119°56.9'
33°30.9'/119°54.2'

(ii) A map depicting the translocation zone is set forth below:



Translocation Zone Coordinates: (North Latitiude/West Longitude)	Management Zone:
33°27.8'/119°34.3', 33°20.5'/119°15.5' 33°13.5'/119°11.8', 33°06.5'/119°15.3' 33°02.8'/119°26.8', 33°08.8'/119°46.3' 33°17.2'/119°56.9', 33°30.9'/119°54.2'	All U.S. areas south of Point Conception (34°26.9' N. Latitude) except the translocation zone.

(iii) *Prohibitions.* Except as provided in paragraph (d)(4)(iv), all of the provisions in § 17.21 (a) through (f) shall apply to any member of the experimental population of southern sea otters within the translocation zone.

(iv) *Exceptions.* The prohibitions of paragraph (d)(4)(iii) shall not apply to:

(A) Any act by the Service, the California Department of Fish and Game, or an authorized agent of the Service or the California Department of Fish and Game that is necessary to effect the relocation or management of any southern sea otter under the provisions of this paragraph;

(B) Any taking of a member of the experimental population of southern sea otters that is incidental to, and not the purpose of, the carrying out of a defense-related agency action as defined in paragraph (d)(1)(i) of this section; or

(C) Any act authorized by a permit issued under § 17.32.

(5) *Management zone.* (i) There is established a management zone for southern sea otters comprised of all waters, islands, islets, and land areas seaward of mean high tide subject to the jurisdiction of the United States located south of Point Conception, California (34°26.9' N. Latitude), except for any area within the translocation zone delineated in paragraph (d)(4)(i) of this section.

(ii) A map depicting the management zone is set forth in paragraph (d)(4)(ii) of this section.

(iii) *Prohibitions.* Except as provided in paragraph (d)(5)(iv), all of the provisions in § 17.21 (a) through (f) shall apply to any member of the experimental population of southern sea otters within the management zone.

(iv) *Exceptions.* The prohibitions of paragraph (d)(5)(iii) shall not apply to:

(A) Any act by the Service, the California Department of Fish and Game, or an authorized agent of the Service or the California Department of Fish and Game that is necessary to effect the relocation or management of any southern sea otter under the provisions of this paragraph;

(B) Any taking of a member of the experimental population of southern sea otters that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity within the management zone delineated in paragraph (d)(5)(i) of this section; or

(C) Any act authorized by a permit issued under § 17.32.

(6) *Containment.*—The following containment measures, listed in order of preference, will be employed to prevent significant emigration of southern sea otters from San Nicolas Island and occupation of habitat within the management zone:

(i) Capture of animals within the management zone for return to the experimental population or to the range of the parent population using non-lethal means. If verified sightings of one or more sea otters are made at any location within the management zone, field crews will be mobilized as soon as weather and sea conditions permit, to capture and remove the otter(s) from the zone. Capture will be done by experienced State and/or Federal personnel or other designated agents, using one or more of the same techniques used in the translocation effort, such as diver-held devices; surface entangling nets; dip nets; or other effective methods which may be developed for capturing sea otters in the future. Animals either will be flown or moved by air-conditioned van to the release site.

(ii) Artificial reduction of fecundity for some sea otters within the experimental population. [Reserved]

(iii) Selective or random, non-lethal removal of members of the experimental population within the translocation zone. [Reserved]

Containment measures will be administered by the Fish and Wildlife Service's Office of Sea Otter Management and Coordination (OSOMC), in consultation and cooperation with the California Department of Fish and Game. The OSOMC will work closely with State biologists to remove otters from the management zone. Federal funding received through the normal appropriations process will be used for research, protection, and containment of the experimental population. Grants to the State of California under 16 U.S.C. 1535, may be employed to facilitate the measures outlined above. Public donations for management and containment of the experimental population will be accepted with assistance from the National Fish and Wildlife Foundation.

(7) *Effects of translocation on recovery and interagency cooperation.*—(i) *Background.* The Recovery Plan specifically describes the importance of translocation to the delisting of the southern sea otter under the Endangered Species Act. The Plan states:

> Sea otter translocation, if properly designed and implemented, should provide the necessary foundation for ultimately obtaining the Recovery Plan's objective and restoring the southern sea otter to a non-threatened status and maintaining OSP by: (i) Establishing a second colony (or colonies) sufficiently distant from the present population such that a smaller portion of southern sea otters will be jeopardized in the event of a large-scale oil spill, and (ii) establishing a data base for identifying the optimal sustainable population level for the sea otter.

Thus the translocation, and establishment of a population of sea otters has been identified by the Recovery Plan as a critical action necessary for the recovery and delisting of the species. With regard to the relationship of a successful translocation to the initiation of a delisting action under the Endangered Species Act. The Plan states:

> Delisting should be considered when the southern sea otter population is stable or increasing at sustainable rates in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe. To reach this point: 1) At least one additional population of sea otters must be established outside the current population range, 2) the existing population of sea otters and its habitat must be protected, and 3) the threat from oil spills or other major environmental changes must be minimized.

The successful establishment of the experimental population to be carried out pursuant to this rule should fully satisfy the first criterion specified above from the Recovery Plan, provided that the parent population is showing sustained growth and expanding its range from its present size and distribution. However, if such growth and expansion is not occurring, the establishment of a single new population may not be sufficient to satisfy the broader criterion that the population must be increasing at a sustainable rate in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe.

(ii) *Effect on recovery.* The translocation will not influence the legal status of the species until such time as the Service determines that the experimental population is established. Once established, other factors such as the status of the parent population and completion of other recovery tasks will be considered. If the experimental population becomes established and the other recovery tasks identified in the recovery plan for the southern sea otter are attained, the southern sea otter will be eligible for consideration for delisting in accordance with the requirements of 50 CFR 424.11(d). If a catastrophic event were to significantly diminish the parent population, the size of the experimental population would be a factor in determining whether or not the southern sea otter should remain listed as "threatened" or reclassified as "endangered," or if relisting should be considered if a delisting action had been completed.

(iii) *Effect on interagency cooperation.* In determining the likelihood of jeopardy or non-jeopardy opinions for proposed Federal actions that "may affect" southern sea otters, the probability of jeopardy determinations will decrease proportionally for comparable projects with comparable types of impacts as the experimental population grows from the point of being established toward the maximum number that its habitat can support, i.e., carrying capacity. Thus, there is an inverse relationship between the size of the experimental population (after being determined to be established) and the probability of jeopardy determinations associated with section 7 consultations under the Endangered Species Act for projects affecting either the parent or the experimental population. However, the status of the experimental population is not the only factor to be considered in section 7 evaluations. The status of the parent population, as well as the cumulative impacts, baseline level of threats, and effects of the action on either population, will also be taken into account. In addition to considering the size of the experimental population, the contribution that such population could make toward helping restore a damaged parent population will also be a factor that will be considered during section 7 evaluations. For section 7 purposes, once the translocated otters become stabilized and enter into the initial growth and reestablishment stage, but before meeting the criteria for an established population, the experimental population will have an existence value that will be taken into consideration both quantitatively and qualitatively. Its numbers will be added to those of the parent population for purposes of analyzing the impacts of a Federal action on the southern sea otter population. Moreover, during the initial growth and reestablishment stage, as part of the analysis of the impacts on the population as a whole, the impacts of proposed Federal actions will be analyzed to clearly determine the relative risk to each of the two populations (parent population and the experimental population).

(8) *Determination of a failed translocation.*—The translocation would generally be considered to have failed if one or more of the following conditions exists:

(i) If, after the first year following initiation of translocation or any subsequent year, no translocated otters remain within the translocation zone and the reasons for emigration or mortality cannot be identified and/or remedied;

(ii) If, within three years from the initial transplant, fewer than 25 otters remain in the translocation zone and the reason for emigration or mortality cannot be identified and/or remedied;

(iii) If, after two years following the completion of the transplant phase, the experimental population is declining at a significant rate and the translocated otters are not showing signs of successful reproduction (i.e., no pupping is observed); however, termination of the project under this and the previous criterion may be delayed if reproduction is occurring and the degree of dispersal into the management zone is small enough that the efforts to continue to remove otters from the management zone are acceptable to the Service and California Department of Fish and Game;

(iv) If the Service determines, in consultation with the affected State and Marine Mammal Commission, that otters are dispersing from the translocation zone and becoming established within the management zone in sufficient numbers to demonstrate that containment cannot be successfully accomplished. This standard is not intended to apply to situations in which individuals or small numbers of otters are sighted within the management zone or temporarily manage to elude capture. Instead, it is meant to be applied when it becomes apparent that, over time, otters are relocating from the translocation zone to the management zone in such numbers that: (A) An independent breeding colony is likely to become established within the management zone, or (B) they could cause economic damage to fishery resources within the management zone. It is expected that the Service could make this determination within a year provided sufficient information is available;

(v) If the health and well-being of the experimental population should become threatened to the point that the colony's continued survival is unlikely, despite the protections given to it by the Service, State, and applicable laws and regulations. An example would be if an overriding military action for national security was proposed that would threaten to devastate the colony and removal of the otters was determined to be the only viable way of preventing the loss of the individuals.

(vi) If, based on any one of these criteria, the Service concludes, after consultation with the affected State and Marine Mammal Commission, that the translocation has failed to produce a viable, contained experimental population, this rulemaking will be amended to terminate the experimental population, and all otters remaining within the translocation zone will be captured and all healthy otters will be placed back into the range of the parent population. Efforts to maintain the management zone free of otters will be curtailed after all reasonable efforts have been made to remove all otters that are still within the management zone at the time of the decision to terminate the translocated population. A joint State-Service consultation will determine when all reasonable efforts have been made and additional efforts would be futile.

(vii) Prior to declaring the translocation a failure, a full evaluation will be conducted into the probable causes of the failure. If the causes could be determined, and legal and reasonable remedial measures identified and implemented, consideration will be given to continuing to maintain the translocated population. If such reasonable measures cannot be identified and implemented, the results of the evaluation will be published in the **Federal Register** with a proposed rulemaking to terminate the experimental population.

Dated: August 5, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-18192 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Record of Decision for Translocation of Southern Sea Otters To Establish an Experimental Population

AGENCY: U.S. Fish and Wildlife Service (Service), Interior.

ACTION: Notice of record of decision.

SUMMARY: This notice makes available to the public the Record of Decision (Record) on the proposal by the Fish and Wildlife Service to translocate a number of southern sea otters from the existing central California population for purposes of establishing and containing an experimental population. The Record was prepared in accordance with Council on Environmental Quality Regulations, 40 CFR 1505.2. The decision is based on information contained in: the Final Environmental Impact Statement (Impact Statement) and draft Final Rule, which were filed with the Environmental Protection Agency on May 1, 1987, and became available to the public on May 8, 1987; public comments received on the Final Impact Statement as well as on a scientific research permit application filed with the Federal Wildlife Permit Office; a biological opinion rendered by the Service, pursuant to section 7 of the Endangered Species Act, on the proposed translocation; legislative history and specific requirements of legislation, Public Law 99-625 (Pub. L.), enacted into law November 7, 1986, to authorize a translocation of California sea otters; a coastal zone consistency determination submitted to the California Coastal Commission on March 17, 1987; other pertinent scientific and technical data; and actions taken by the California Fish and Game Commission on an application for a State scientific research permit and California Coastal Commission on the Service's coastal zone consistency determination.

Alternative 1, the preferred alternative, has been selected as the best alternative for minimizing the effects of oil spills and for conducting scientific research on the relationship between southern sea otters and the marine ecosystem. It is also the environmentally preferred alternative. Alternative 1 involves translocation of up to 250 sea otters from their current central California range over a period of 5 years or longer to a translocation zone encircling San Nicolas Island, Ventura County, offshore of southern California for the purpose of establishing an experimental population. Mitigation of effects of translocated sea otters on fisheries and other marine resource uses includes the establishment of a management zone encompassing the waters of the remainder of southern California south of Point Conception that will be maintained free of otters by non-lethal capture and removal. The action is designed to carry out a major recovery and restoration objective for the sea otter in California, listed as "threatened" under the Endangered Species Act and considered "depleted" under the Marine Mammal Protection Act. The regulations for implementing Alternative 1 as a Final Rule to amend 50 CFR 17.84 appear elsewhere in today's **Federal Register.**

DATE: This Record of Decision is effective on August 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Ladd, Office of Sea Otter Coordination, U.S. Fish and Wildlife Service, Room E–1818, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4873.

SUPPLEMENTARY INFORMATION: The southern (or California) sea otter was listed in 1977 as "threatened" under the Endangered Species Act of 1973, as amended and, as such, is considered "depleted" under the Marine Mammal Protection Act of 1972, as amended. The primary factors contributing to its threatened status were the population's reduced size and range compared to historical levels, which were about 10 times larger than at present, and the vulnerability of sea otters to the effects of an oil spill such as might occur from a tanker accident. Since its 1977 listing, the status of the species has not improved while the risk of an oil spill along the central California coast has increased, primarily as a result of increasing volumes of oil being transported near the otters' range.

A recovery plan for the southern sea otter, approved in 1982, identifies establishment of at least one additional breeding colony as a principal objective that would be necessary in order to restore the California population to a non-threatened, recovered status. Furthermore, it is the primary goal of the Marine Mammal Protection Act that depleted marine mammals be restored to and maintained within their optimum sustainable population level, consistent with maintenance of the health and stability of the marine ecosystem. In 1980 the Marine Mammal Commission, which monitors implementation of the Marine Mammal Protection Act, advised the Service to proceed with the decisionmaking process necessary to establish a second colony of California sea otters, to conduct research necessary to understand the optimum sustainable population, and to consider a plan for zonal management of sea otters in which certain zones would be dedicated to sea otter protection and certain other zones would be designated as otter-free to minimize conflicts between sea otters and fisheries and other marine resource uses. In 1984, the Service published a report that identified four areas having the best potential for a successful translocation, based on a series of criteria. These included San Nicolas Island, California; the coast of northern California; the coast of southern Oregon; and the coast of northern Washington. This report served as the basis for further evaluation, investigation, and analysis by the Service in an Impact Statement.

In June 1984 the Service published a Notice of Intent to prepare an Impact Statement on establishment of an experimental population of southern sea otters, which initiated an intensive public involvement process.

During the public review of the Impact Statement and the rulemaking process the California Department of Fish and Game, interest groups and some private individuals expressed concern that existing authorities under the Marine Mammal Protection Act may be too restrictive to allow for long-term containment and management of an experimental population of sea otters. In order to address these and other concerns about the translocation, Congress solicited input from agencies and interest groups having an involvement in the issue. This Congressional interest ultimately resulted in the enactment of special legislation, Pub. L. 99–625, in November 1986 that authorizes and establishes procedures and requirements for a translocation of California sea otters. Public Law 99–625, which generally reflected a consensus approach as to how a translocation should be conducted, directs that a translocation plan be developed by rulemaking procedures and implemented in cooperation with the appropriate State agency.

The plan must contain the following:

(1) The number, age, and sex of sea otters proposed to be relocated.

(2) The manner in which sea otters will be captured, translocated, released, monitored, and protected.

(3) The specification of a zone (referred to as the "translocation zone") to which the experimental population will be relocated. The zone must have appropriate characteristics for furthering the conservation of the species.

(4) The specification of a zone (referred to as the "management zone") that—

(A) Surrounds the translocation zone; and

(B) Does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species.

The purpose of the management zone is: (i) To facilitate the management of sea otters and containment of the experimental population within the translocation zone, and (ii) to prevent, to the maximum extent feasible, conflict with other fishery resources within the management zone by the experimental population. Any sea otter found within the management zone shall be treated as a member of the experimental population. The Service shall use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or to the range of the parent population.

(5) Measures, including an adequate funding mechanism, to isolate and contain the experimental population.

(6) A description of the relationship of the implementation of the plan to the status of the species under the [Endangered Species] Act and to determinations of the Secretary [of the Interior] under section 7 of that Act.

The legislative history leading up to the enactment of the Pub. L. 99–625, in House Report 99–124 dated May 15, 1985, recognizes that establishment of a management (otter-free) zone that includes waters south of Point Conception would result in preventing the existing population from expanding its range to historic habitat south of Point Conception. The House Report acknowledged that setting the management zone boundary at Point Conception would allow for expansion beyond the sea otter's present range and would fully comply with the requirements of the legislation.

Alternatives Considered

The following alternatives were considered for accomplishing the purposes of minimizing the effects of an oil spill or similar event on the southern sea otter population and of conducting in-depth research on the population dynamics of sea otters and their relationship to and influence on the marine ecosystem:

1. Translocation to San Nicolas Island, Ventura County, California, and containment within a translocation zone that includes the intermediate nearshore waters of San Nicolas Island and a buffer area. This is identified in the Final Impact Statement as the preferred alternative in that it would meet the requirements for achieving the purposes for translocating otters while having the least environmental and socioeconomic impacts.

2. Translocation to a 185-mile segment of coast in northern California and containment within a translocation zone that includes the intermediate nearshore waters of the coast between Duncans Landing, Sonoma County, and False Cape Rock, Humboldt County, and a buffer area.

3. Translocation to a 70-mile segment of coast in southern Oregon and containment within a translocation zone that includes the intermediate nearshore waters between Cape Blanco and Brookings, Curry County, and a buffer area.

4. Translocation of sea otters in conjunction with additional management and range restriction of the existing population. This alternative involves translocation to and containment of otters at one of the sites described in the first three alternatives but, in addition, it would include a management zone between Point Sal (adjacent to the existing range) and Point Conception, California, which would be specifically managed to prevent expansion of the existing sea otter population into southern California.

5. Increased protection to the existing population, without a translocation, to reduce the threat of oil spills to the existing population. This alternative involves a variety of measures to reduce oil spill risks and effects to the present California sea otter population. Measures include establishment of mandatory-use tanker transport lanes at least 15 miles offshore, prohibition of future offshore oil and gas leasing and production within at least 15 miles of the existing sea otter range, prohibition of tankships from carrying petroleum products to or from major ports within the sea otter range, and procurement and maintenance of two seagoing tugs within the sea otter range to assist disabled tankers to avoid oil spills. Additional Federal legislation, agreements with the International Maritime Organization and promulgation of new regulations by U.S. Coast Guard would be required.

6. No action. This alternative assumes the status quo. The oil spill risks and effects to the present population would not be reduced. The species would continue to be protected as a threatened species under the Endangered Species Act and designated as depleted under the Marine Mammal Protection Act. Impacts on and conflicts with fisheries and other marine resource uses would increase above the present level as the existing population expands its range.

Basis for the Decision

A Draft Impact Statement was made available for public review and comment for 94 days, beginning August 15, 1986. During that period three public hearings were also conducted on the proposal. Based on comments received, a Final Impact Statement was completed and its availability announced in the **Federal Register** on May 8, 1987. Comments obtained from these public reviews were considered to the fullest extent possible leading to this Record of Decision.

Under Alternative 1, sea otters translocated to San Nicolas Island would be allowed to inhabit the available habitat adjacent to the 22-mile perimeter of the island. Within the translocation zone, which includes the sea otter habitat and a buffer area that extends 10–19 nautical miles seaward of the otter's habitat, otters would be given protections similar to those for the existing population. Within this translocation zone, predation by otters on shellfish resources is expected to result in the decline and eventual loss of the commercial and probably sport fisheries for abalone, sea urchins, and possibly spiny lobsters around the island. The commercial catch of these species represents 7–16 percent ($142,000–$354,000) of the total annual catch of these species in the Santa Barbara area (which includes ports in Ventura, Santa Barbara, and San Luis Obispo Counties). Prohibitions on incidental taking of sea otters in commercial fishing nets would be enforced within the translocation zone, thus a small proportion of the existing southern California gillnet fishery, representing about 2 percent or $28,000 annual income of the southern California gillnet landings, would be displaced by the presence of sea otters around San Nicolas Island.

A high quality sport fishery for lobster and abalone would be adversely affected and would probably eventually be lost. The fishery is estimated to represent up to 9 percent of the southern California sport dive boat income, or up to $281,000 net economic value per year.

Estimates of oil and gas resources within the translocation zone are low, with an estimated 1 percent chance of finding recoverable resources, thus the presence of otters (and associated potential restrictions placed on oil development under the Endangered Species Act or State law) would have a negligible impact on oil and gas development.

Predation of otters on dense populations of sea urchins (an algae feeder) in the translocation zone is predicted to result in a substantial increase in commercially available kelp (algae) supplies, an increse of possibly 50 percent or more.

An experimental abalone mariculture project would be precluded from achieving any significant commercial production due to otter predation on abalone; however, the technique for open-ocean abalone mariculture has not been well developed except in Japan where its success is attributed to intensive management and constant removal of all natural abalone predators, a type of management unlikely to ever be permitted on a publicly owned area such as the waters surrounding San Nicolas. Upon issuance of the mariculture lease, the California Fish and Game Commission advised the lessee that the lease would not prejudice future decisions on reintroductions of marine species.

The San Nicolas Island translocation zone meets all the criteria for a translocation site, it is the environmentally preferred alternative, and it has the least socioeconomic impact of the sites considered. The attributes of San Nicolas Island are: (1) It is within the historic range of the southern sea otter, (2) it contains excellent sea otter habitat and food resources, (3) it is relatively inaccessible to the general public (due to its 62-mile distance offshore and its being under U.S. Navy control), which enhances the Service's ability to protect the otters from vandalism and harassment, (4) it is a zone where research can be conducted under a nearly ideal before-and-after research design, (5) its isolated offshore island location increases the likelihood that otters would remain there and not disperse in large numbers, and (6) it is a zone where the risk of oil spills affecting the experimental population would be less than half the risk of such spills to the existing population and the chance that both the experimental and the existing sea otter population could be affected by the same oil spill is almost non-existent. The Service and the Navy have agreed in principle to conclude a Memorandum of Understanding to further the conservation of an experimental sea otter population at San Nicolas Island. This memorandum will cover such topics as access by the Service and notification of the Service prior to weapons testing.

Although small in size, the San Nicolas Island translocation zone is expected to meet the biological needs and recovery plan criterion for establishing a second population of sea otters. The minimum estimated carrying capacity is 280 sea otters. The minimum size colony and productivity needed for this colony to be considered "established" is 150 healthy otters and at least 20 young recruited annually into the new population for 3 out of 5 years with few otters dispersing from the zone. These criteria for an established population should be met relatively easily at San Nicolas and could conceivably be met within 5 or 6 years after translocation begins.

Although significant changes in the marine ecosystem are expected with reintroduction of otters to the San Nicolas translocation zone, the change would be toward a kelp forest ecosystem dominated by sea otters, similar to that which existed prior to

eradication of sea otters by commercial fur hunters in the 18th and 19th centuries. The existing level of commercial shellfish harvest around San Nicolas Island is not expected to continue once sea otters have reoccupied the habitat available around the island, estimated to take about 5 years.

Because the reintroduction of sea otters to waters surrounding San Nicolas island would have adverse impacts on fisheries in particular, the translocation plan developed for Alternative 1, as required by Pub. L. 99–625, would establish a management, or otter-free, zone from which any sea otter would be captured and removed using non-lethal means. The area encompassed by this zone includes all U.S. waters south of Point Conception, including those along the mainland as well as the offshore islands except the San Nicolas Island translocation zone. Maintenance of this management zone free of otters is the principal mitigation feature of the proposal for fisheries and other environmental and socioeconomic impacts. Implementation of this management zone would confine the impact of translocated sea otters on fisheries to the immediate vicinity around San Nicolas Island. In addition, it would prevent the existing population from expanding its range into major shellfish and gillnet fisheries of southern California south of Point Conception. Such range expansion is expected to occur within the next 10 to 20 years, and possibly sooner, in the absence of the management zone proposed in this translocation plan. If the existing population should expand into southern California unrestricted, its impact on commercial and sport fisheries would be many times greater than those projected to result from implementation of Alternative 1. The Alternative 1 plan would provide for additional range expansion both north and south of the present range, it would provide for establishment and protection of a second population of California sea otters for recovery and research purposes, and it would preclude significant conflicts between sea otters and fisheries and other marine resource uses throughout southern California coastal waters south of Point Conception, except within the San Nicolas Island translocation zone. The reintroduction of sea otters to the San Nicolas translocation zone would not eliminate any marine species from the nearshore waters, but it would reduce the densities and average size of the main sea otter prey species. Because of the high degree of protection afforded to the southern sea otter population as a whole from the effects of a major oil spill, and because of the lower adverse environmental and socioeconomic impacts that would result (compared to other alternatives), Alternative 1 is considered to be the environmentally preferable alternative.

Under Alternative 2, translocation of sea otters would result in otters occupying the available nearshore waters along about 185 miles of northern California coastline over a 47-year period. The otters would be protected within this translocation zone similar to the existing population. As with Alternative 1, predation by otters on shellfish within the translocation zone would result in the decline and eventual loss of the nearshore commercial fisheries for sea urchin and dungeness crab and the sport fishery for abalone. The commercial catch within the translocation zone represents about 2 percent of the total northern California catch for urchins and crabs. The sport abalone take from the translocation zone represents virtually 100 percent of the sport abalone fishery in northern California, estimated to be worth about $11,565,000 in annual net economic value, which, if lost, would result in an estimated additional annual loss to the regional economy of about $7,582,000. Oil and gas resources within the northern California translocation zone are believed to be substantial, valued at about $2.5–5.0 billion, with a 57 percent chance of finding recoverable resources. Therefore, the effect on future offshore oil and gas development could be substantial depending on restrictions imposed under the Endangered Species Act or State law as a result of the otters' presence. Sea otter predation on sea urchins could result in an increase in kelp, but at present there is no commercial kelp harvest in northern California so the potential increase in kelp may not have any social or economic benefit. There is no known shellfish mariculture operation that would be affected in northern California.

Northern California contains excellent sea otter habitat and meets the criteria for being suitable as a potential translocation site. However, the length of the zone and its ease of public access would make protection of the colony and research on population dynamics and sea otter influence on the marine ecosystem more difficult than at the San Nicolas site. Containment of otters within the translocation zone would be expected to be more difficult than at an island site, and maintenance of the otter-free management zone (which includes the coast between Duncans Landing and San Francisco Bay on the south and between Eureka and the Oregon border on the north) would not prevent the existing sea otter population from expanding into important fishery areas in southern California. The carrying capacity of the translocation zone is larger than San Nicolas and is estimated to be 1,120–1,200 sea otters, thus it could readily meet the purposes for establishing a second colony.

The Alternative 2 plan would, similar to Alternative 1, provide for additional range expansion both north and south of the present range, it would provide for establishment and protection of a viable second population of California sea otters, and it would preclude conflicts between sea otters and fisheries and other marine resource uses within the surrounding management zone. However, since few significant fisheries exist in the northern California management (no-otter) zone and since it would not prevent the existing sea otter population from expanding into important fishery areas of southern California, the ability to provide mitigation by use of the management zone may not be fully realized.

Translocation to the southern Oregon coast, under Alternative 3, would result in otters occupying available nearshore habitat along a 70-mile stretch of coastline over a 29-year period. They would be protected within the translocation zone similar to the existing California population. As with Alternatives 1 and 2, predation by otters on shellfish within the translocation zone would result in the decline and eventual loss of the nearshore commercial fishery for dungeness crab and sport razor clam fishery. The commercial catch of crabs within the translocation zone represents about 27 percent of the total Oregon crab landings, with an average net annual value of nearly $1.6 million. A maximum of 5 percent of the sport razor clamming trips occur within the translocation zone, estimated to have a value of $153,000 per year. With the loss of this fishery, the regional economy would annually lose an additional $100,000 of fishermen's expenditures. Oil and gas resources within the zone are believed to be very limited, with a 7 percent chance of finding recoverable reserves. Thus little or no impact on oil and gas development would be expected as a result of the otters' presence. There are no known commercial mariculture or kelp operations in the southern Oregon translocation zone. As with Alternatives 1 and 2, southern Oregon would meet the criteria for being suitable as a

potential translocation site. Like Alternative 2, the length of the zone and ease of public access would make protection of the colony and research on population dynamics and influence on the marine ecosystem more difficult than at the San Nicolas site. Containment of otters within the translocation zone is expected to be more difficult than at an island site. Maintenance of the otter-free management zone (which includes the coast between False Cape and Crescent City, California, on the south, and near Cape Blanco to Yaquina Head, Oregon, on the north) would not prevent the existing sea otter population from expanding into important fishery areas in either southern or northern California. The carrying capacity of the translocation zone is estimated at 720–1,200 sea otters, thus this alternative could meet the purposes for establishing a second colony. The Alternative 3 plan, similar to Alternatives 1 and 2, would provide for additional range expansion both north and south of the present range, it would provide for establishment and protection of a viable second population of California sea otters, and it would preclude conflicts between sea otters and fisheries and other marine resource uses within the surrounding management zone. However, since few significant fisheries exist in the southern Oregon management zone and since it would not prevent the existing California population from expanding into important fishery areas of southern and northern California, the ability to provide mitigation by use of the management zone may not be fully realized.

Alternative 4 would produce results and impacts similar to Alternatives 1, 2, or 3, depending on the site chosen for translocation; however, Alternative 4 would produce the additional consequence of restricting the numbers of sea otters that may eventually be allowed to reoccupy the section of historic habitat located between Point Sal (5 miles south of the existing range) and Point Conception. Management of sea otters in this manner would require legislative changes regardless of which of the three sites were selected for translocation. The general results of Alternatives 1 and 4 would be nearly the same if San Nicolas Island was chosen as the translocation site. However, if northern California or southern Oregon were chosen under Alternative 4, it would result in restriction of southward expansion of the present range in addition to establishment of a translocation and management zone, and their associated costs and environmental consequences, at the northern California or Oregon site.

Alternative 5 would take an entirely different approach to reducing the threat and impacts of oil spills to sea otters. It would place major restrictions on future oil development and transportation within the existing sea otter range as well as require two seagoing tug boats to be stationed in the range to assist disabled tankers. No sea otter translocation would be undertaken, and no management or containment of the existing sea otter population would occur. While the direct impacts of a translocation on fisheries would be avoided initially, there would be no restriction in the expected growth and range expansion (assuming that this alternative actually results in a reduced risk of oil spills) of the existing population, thus, eventually sea otters would reoccupy major fishery areas in southern California. Under these circumstances, fishery impacts would be far greater than under the preferred alternative. Furthermore, although placing restrictions on oil development and transportation could reduce overall risks of oil spills to sea otters and other coastal and marine resources, securing the restrictions would be a lengthy process. It would involve, among other things, new Federal legislation and subsequent rulemaking to establish mandatory requirements for vessel operators, approvals by the International Maritime Organization and Congressional appropriations for procurement and operation of seagoing tugs. The lengthy process to implement this alternative and the uncertainty of ever being able to implement certain components would delay the protections for sea otters and, thus, the existing population would remain vulnerable to the possibility of decimation due to a catastrophic oil spill. The immediate and long-term costs of Alternative 5 would be considerably greater than any of the other alternatives, including the preferred alternative.

Alternative 6 would maintain the status quo. There would be no translocation and assocated environmental and socioeconomic impacts, no immediate protection of the sea otter population from oil spills, and no aggressive effort to recover the population except as might occur through Endangered Species Act section 7 consultations and State and Federal actions to curb incidental entanglement of otters in fishing nets and intentional illegal killings. The southern sea otter would continue to be protected as a threatened species, and may even be considered for endangered status if oil spill or other threats increase above current levels or the population status deteriorates. Immediate adverse environmental impacts on fisheries would be avoided; however, unlike with the preferred alternative, the existing population would be expected to grow and expand its range without restriction (if no major perturbation, such as an oil spill, were to decimate the population). In the long run, this would likely result in greater impacts to fisheries, oil development, and other marine uses as the range expands.

If translocation to establish at least one additional colony was precluded indefinitely, the recovery plan for the southern sea otter would require revision to incorporate new strategies to promote recovery under the Endangered Species Act. Selection of either Alternative 5 or 6 would preclude the opportunity for effectively answering most of the research questions to be addressed under the preferred alternative. This research would help scientists to better understand the relationship of sea otters to the marine ecosystem and, thus, aid in restoring the California sea otter to an optimum sustainable population, a goal of the Marine Mammal Protection Act.

Biological Opinion

On March 6, 1987, the Service's Regional Director signed a biological opinion, issued pursuant to section 7 of the Endangered Species Act, on the effects of the proposed translocation of the southern sea otter. The opinion is included in the Final Impact Statement as Appendix I. The biological opinion concluded the following:

> The proposed translocation of southern sea otters to San Nicolas Island, California, is a well designed recovery action that is expected to result in the establishment of a new colony of otters at San Nicolas Island. The plan provides for careful monitoring and evaluations of the project to maximize the opportunity for success while minimizing negative impacts on the parent population. Therefore, it is our biological opinion that the proposed translocation of southern sea otters to San Nicolas Island is not likely to jeopardize the continued existence of the species.

The opinion also includes 18 non-mandatory conservation recommendations which, if implemented, may further minimize impacts of translocation on sea otters and generally improve chances for the species' recovery. The Service intends to implement the 18 conservation recommendations to the maximum extent feasible. Details were provided in

a letter to the California Coastal Commission dated May 18, 1987.

Coastal Zone Consistency Determination

In compliance with Federal regulations and the Coastal Zone Management Act which require that any Federal project that will directly affect the coastal zone must be undertaken in a manner consistent, to the maximum extent practicable, with the State's approved coastal zone management program, the Service submitted a consistency determination to the California Coastal Commission (Coastal Commission) on March 17, 1987, for review and concurrence. The determination (included in the Final Impact Statement as Appendix J) concluded that the proposed translocation would be, to the maximum extent practicable, consistent with the California Coastal Zone Management Program. The Coastal Commission staff expressed concern about two aspects of the translocation in particular: (1) Impacts on fisheries, and (2) the Service's ability (financial and physical) to carry out the principal mitigation feature of maintaining an otter/free management zone on a continuing basis. The staff concluded that the protections afforded fisheries by the management zone throughout the remainder of southern California, except in the San Nicolas translocation zone, would offset the direct fisheries impacts around San Nicolas but only if the Service is fully successful in keeping the management zone otter-free. In order to keep the Coastal Commission informed regarding the results of the containment effort, the Service agreed to provide an annual status report to the Coastal Commission as well as other agencies.

The Coastal Commission held a public hearing on the Service's consistency determination on July 7, 1987. Prior to the hearing, Coastal Commission staff prepared a comprehensive report and recommendation on the proposal. The staff recommended that the Coastal Commission concur with the Service's determination that the project is consistent and would be conducted in a manner consistent, to the maximum extent practicable, with the California Coastal Management Program.

At the conclusion of the July 7 public hearing, the Coastal Commission voted to concur with the Service's determination of consistency.

California Fish and Game Commission

Public Law 99–625 provides that the translocation must be administered by the Service in cooperation with the appropriate State agency. California has enacted legislation that forbids the taking of sea otters in the absence of a scientific research permit. In the 43 CFR 24.4(i)(5)(i), the national fish and wildlife policy states:

> Federal agencies of the Department of the Interior shall . . . [c]onsult with the States and comply with State permit requirements in connection with the activities listed below, except in instances where the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities: In carrying out research programs involving the taking or possession of fish and wildlife or programs involving reintroduction of fish and wildlife. . . .

Accordingly, the Service applied to the California Fish and Game Commission for a State scientific research permit on May 15, 1987, to conduct the translocation. The Service has worked very closely with the California Department of Fish and Game (Department) to develop a mutually acceptable translocation plan that would promote recovery of the southern sea otter while minimizing impacts on the State's fisheries, particularly those in southern California. The Department had reviewed and commented on a number of drafts of the translocation plan, proposed regulations, and impact statements over the nearly 3-year decisionmaking process. On May 21, 1987, the Department recommended to the Fish and Game Commission that the Service be issued a State research permit to conduct the translocation. Consistent with the Department's recommendation, a Federal research permit is being issued to the Department to carry out research on the existing California sea otter population designed to evaluate the effectiveness of several non-lethal containment methods. Specifically this permit authorizes research in three phases. The first phase would result in the take of 20 sea otters from the southern end of their range and extralimital areas south of their current range. These otters would then be released in the northern portion of their current range. This phase will study factors influencing the return of otters to their point of capture. The second phase would involve the capture and removal of all sea otters entering an experimentally established no-otter zone during a 3-year period. The third phase would involve non-lethal reduction in density in the experimental area to determine factors influencing movement and range expansion. This phase would not commence until a fully developed research proposal, based on the results of the first two phases, has been submitted along with a permit renewal or amendment request, at which time comments will be sought from the Marine Mammal Commission and Section 7 consultation will be reinitiated. Also, the Service and the Department have agreed in principle to a Memorandum of Understanding that sets forth the terms and conditions under which the translocation would proceed and the respective roles and responsibilities of the two agencies.

The Fish and Game Commission held a hearing on June 24, 1987, on the proposed translocation permit. However, due to a procedural error under State law regarding notice that they intended to utilize the Federal Impact Statement in making their decision, the Fish and Game Commission did not make a determination on the permit. Instead the Fish and Game Commission has scheduled another hearing for August 7, 1987, and a vote on the permit on August 18, 1987. No otters will be captured for translocation purposes until after August 18, 1987.

Restricted Timeframe for Implementation

The period between the middle of August and the middle of October is the only time during the year that acceptable weather conditions in the capture and release areas can be expected. Fog or storms are prevalent at most other times. Due to the number of otters of specific ages and sexes that must be captured and translocated, the operation will probably require 6–8 weeks to carry out and it must be done when weather and sea conditions are compatible. Thus, the narrow window of time between mid-August and mid-October is the only time that it would be safe to conduct the translocation. If the field work could not be started in August, the project would have to be delayed nearly a full year until next August, with the result that California sea otters would continue to be concentrated in their existing range, where they are vulnerable to oil spills and other catastrophic environmental perturbations, for another year.

Policy Considerations

The Service's extensive analysis of data in its Draft and Final Impact Statements, proposed rulemaking, and public comments thereon; a nearly 3-year study of potential translocation sites and related conflicts prior to initiating a formal decisionmaking process; specific direction from the U.S. Congress; a biological opinion on the effects of the proposal; and the Service's 3-year public involvement process have, collectively, provided a sound basis for

making a decision on the proposed translocation. Alternative 1, the preferred alternative, would, in the view of the Service, clearly promote the recovery of the southern sea otter, meet the spirit and letter of Pub. L. 99-625, and minimize impacts on the environment and other marine resource uses. The Service's preferred alternative incorporates a major mitigation feature that is specifically authorized and required by Federal legislation—the establishment and maintenance of an otter-free management zone. The management zone is economically important to the fishery interests in the region. Implementation of the translocation plan will culminate in a "zonal management" plan to address sea otter-fisheries conflicts in southern California. This has been long sought by the Department and fisheries interests, recommended to the Service by the Marine Mammal Commission, mandated by Congress, and agreed to by environmental groups and other interests. The Department supports the plan and the Coastal Commission agrees that it is consistent, to the maximum extent practicable, with the State's Coastal Zone Management Program. I concur in the judgments of the Service and in the cooperative approach to resolving the longstanding issue of sea otter translocation in California. All practicable means to avoid or minimize environmental or socioeconomic harm have been incorporated into the translocation plan and implementing regulations, which will be published separately in the **Federal Register**.

Conclusion

Based on a careful review and consideration of Pub. L. 99-625, the Environmental Impact Statement, proposed rulemaking prepared by the Service and public comments received thereon, consideration by the California Coastal Commission and Fish and Game Commission, and other relevant factors reflected in the Administrative Record, I select Alternative 1 as the best alternative to achieve the stated purposes of minimizing the effects of oil spills on this threatened population, studying the relationship of sea otters to the marine ecosystem, and implementing Pub. L. 99-625.

Dated: August 5, 1987.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-18193 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-55-M

federal register

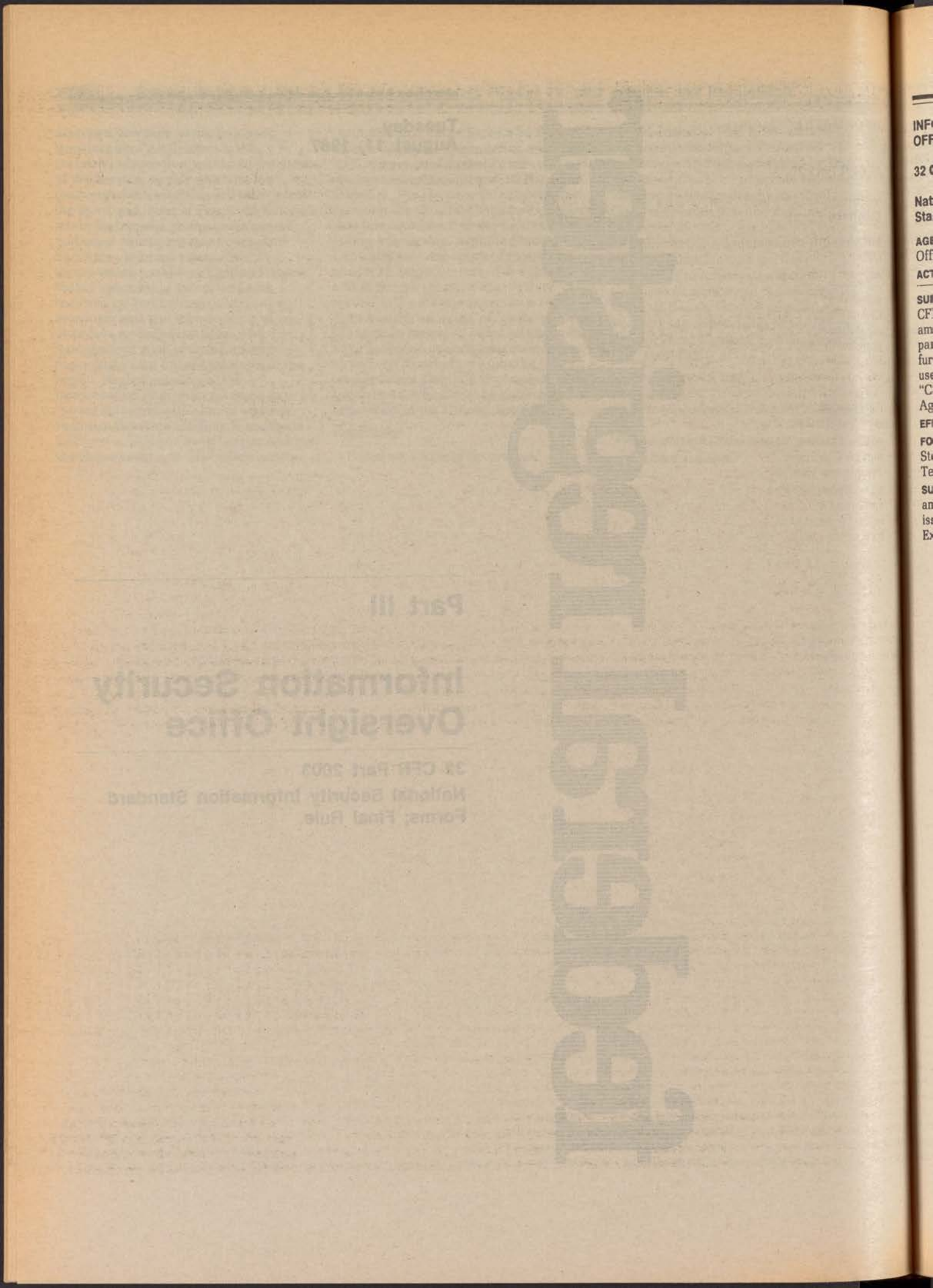
Tuesday
August 11, 1987

Part III

Information Security Oversight Office

32 CFR Part 2003

National Security Information Standard Forms; Final Rule



INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information Standard Forms

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule.

SUMMARY: This is an amendment to 32 CFR 2003.20. The purpose of this amendment is to add at the end of paragraph (h)(1) a sentence to clarify further the definition of "classifiable" as used in the Standard Form 189, "Classified Information Nondisclosure Agreement."

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: (202) 535–7251.

SUPPLEMENTARY INFORMATION: This amendment to 32 CFR Part 2003 is issued pursuant to § 5.2(b)(7) of Executive Order 12356.

List of Subjects in 32 CFR Part 2003

Classified information, Executive orders, Information, National security information, Security information.

32 CFR Part 2003 is amended as follows:

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b)(7) of E.O. 12356.

Subpart B—Prescribed Forms

2. Section 2003.20(h)(1) is revised to read as follows:

§ 2003.20 [Amended]

(h) * * *

(1) As used in paragraph 1 of SF 189, the term, "classifiable information" refers to information that meets all the requirements for classification under Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security, but which, as a result of negligence, time constraints, error, lack of opportunity or oversight, has not been marked as classified information. A party to SF 189 would violate its nondisclosure provisions only if he or she disclosed without authorization classified information or information that he or she knew, or reasonably should have known, was classified, although it did not yet include required classification markings. The term "classifiable" does not include any information that is not otherwise required by statute or Executive order to be protected from unauthorized disclosure in the interest of national security.

Dated: August 6, 1987.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 87–18210 Filed 8–10–87; 8:45 am]

BILLING CODE 6820-KC-M

Federal Register

Tuesday
August 11, 1987

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Experimental and Innovative Training Program; Notice of Funding Priorities for Fiscal Year 1987

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Experimental and Innovative Training Program; Funding Priorities for Fiscal Year 1987

AGENCY: Department of Education, Office of Special Education and Rehabilitative Services.

ACTION: Notice of final funding priorities for fiscal year 1987.

SUMMARY: The Secretary announces annual funding priorities for training grants under the Experimental and Innovative Training Program in order to ensure effective use of program funds and to direct funds to areas of identified personnel need during fiscal year 1987. The Secretary will give an absolute preference to applications that meet the terms of the priorities.

EFFECTIVE DATE: These final annual funding priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final annual funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Toby Lawrence, Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3326—M/S 2312), Washington, DC 20202. Telephone: (202) 732–1351.

SUPPLEMENTARY INFORMATION: Grants for the Experimental and Innovative Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Experimental and Innovative Training Program are established at 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of rehabilitation personnel and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to persons with severe disabilities and to develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

A notice of proposed annual funding priorities was published in the **Federal Register** (52 FR 18782–83) on May 19, 1987, and the public was given 30 days to comment. There are no significant differences between the final priorities and the proposed priorities.

Summary of Comments and Responses

Twenty-one comments were received in response to the notice of proposed annual funding priorities. The comments and the Secretary's response are summarized below:

Comment: The commenters recommended that the notice be changed to allow the submittal of applications that focus on the training of rehabilitation counseling personnel for service delivery to individuals with severe disabilities.

Response: The comments suggested that the commenters do not believe that traumatic brain-injury and specific learning-disability are severe disabilities. Traumatic brain-injury and learning-disability are considered severe disabilities under section 7(15)(A) of the Rehabilitation Act of 1973, as amended. In addition, since the purpose of this program is to develop and demonstrate the effectiveness of new types of personnel in providing services to persons with severe disabilities, and is stated as such in the regulations, it is expected that all training supported under this program will prepare personnel to work with individuals with severe disabilities. Because of a lack of services to the traumatically brain-injured and learning disabled, the Secretary has identified traumatic brain-injury and learning-disability as specific areas of priority in fiscal year 1987 to encourage the development of new training in those areas.

In addition, in a separate notice of closing date published in the **Federal Register** on June 9, 1987, the Secretary announced the availability of funds under the Rehabilitation Long-Term Program for the training of rehabilitation personnel in certain long-term training fields and program areas, including in the area of supported employment. Because supported employment programs are directed to the delivery of services to individuals with severe disabilities, rehabilitation personnel trained in supported employment training programs must be specifically prepared for the provision of services to individuals with severe disabilities. No changes were made in the proposed priorities.

Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications submitted under the Experimental and Innovative Training Program that address the priorities described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities.

Priority 1

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies. The training must upgrade their knowledge and improve their skills: (1) To use diagnostic and evaluative techniques in identifying learning-disabled adults and determining the severity of their disabilities; (2) to interpret diagnostic, psychological, and educational background information and relate such information to the functional capacities of, and any proposed vocational planning for, learning-disabled adults; (3) to determine and substantiate the eligibility of learning-disabled adults to receive services; and (4) to plan effective rehabilitation programs for, and deliver rehabilitation services to, learning-disabled adults. The training must emphasize improving the capacity of these personnel to develop linkages between providers of special education and vocational rehabilitation services and enhance coordination and transition among service providers. The training must include technical assistance to Rehabilitation Continuing Education Programs to increase their capacity to train employed personnel to provide improved rehabilitation services to learning-disabled individuals. Program regulations for the Rehabilitation Continuing Education Programs are established at 34 CFR Part 389. Such technical assistance is intended to ensure the integration and replication of training supported under this priority by Rehabilitation Continuing Education Programs. In addition, written training materials and visual aids must be developed and made available to Rehabilitation Continuing Education Programs for their use in training rehabilitation personnel to provide effective services to learning-disabled adults.

Priority 2

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies to provide effective rehabilitation services to traumatically brain-injured adults. The training must improve their skills: (1) To determine and substantiate the eligibility of traumatically brain-injured

adults to receive rehabilitation services; (2) to evaluate the functional capacities of traumatically brain-injured adults; (3) to plan effective vocational and independent living rehabilitation programs for, and deliver vocational and independent living rehabilitation programs to, traumatically brain-injured adults; (4) to coordinate community resources in the rehabilitation plan to address their needs; and (5) to develop jobs for and place traumatically brain-injured adults in employment. The training must include technical assistance to Rehabilitation Continuing Education Programs in providing rehabilitation services to traumatically brain-injured adults. Such technical assistance is intended to ensure the integration and replication of training supported under this priority by Rehabilitation Continuing Education Programs. In addition, written training materials and visual aids must be developed and made available to Rehabilitation Continuing Education Programs for their use in training rehabilitation personnel to provide effective rehabilitation services to traumatically brain-injured adults.

A separate competition will be conducted for the two priorities described above. Each application must respond to only one of the priorities.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: July 23, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-18187 Filed 8-10-87; 8:45 am]

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federal register

Tuesday
August 11, 1987

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA; Notice of Advisory Committee Meeting and Proposed Actions Under Guidelines for Research

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, on September 21, 1987, from approximately 9 a.m. to adjournment at approximately 5 p.m. This meeting will be open to the public to discuss:

Amendment of Guidelines;

Proposed revision of Guidelines to refer specifically to research with plants and animals; and

Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770–0131, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 3, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18200 Filed 8–10–87; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 21, 1987. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue a decision on these proposals in accord with the NIH Guidelines.

DATES: Comments received by September 4, 1987, will be reproduced and distributed to the RAC for consideration at its September 21, 1987, meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities 12441 Parklawn Drive, Suite 58, Rockville, MD 20852. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Proposed Amendment of Section I–C

This proposed amendment of Section I–C was initially published for comment in the **Federal Register** of March 11, 1987 (52 FR 7525), prior to a scheduled RAC meeting on June 15, 1987. The June 15, 1987, meeting was postponed and rescheduled on September 21, 1987. Accordingly, this proposed amendment of Section I–C is being published again for comment.

Section I–C of the NIH Guidelines currently reads as follows: *"I–C General Applicability.*

"The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by the NIH directly.

"An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an institution that can and does assume the responsibilities assigned in these Guidelines.

"The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines."

In a letter dated January 9, 1987, Mr. Edward Lee Rogers of Washington, DC, Counsel for the Foundation on Economic Trends and Jeremy Rifkin, has proposed that the following text be inserted after the first sentence of the third paragraph of section I–C:

"For purposes of the preceding sentence, the term 'project' includes any research or development of the recombinant organism or other product or process in question, including all such work that is reasonably forseeable when the NIH support is received. NIH support includes both money grants and any type of in-kind support, including research conducted directly by NIH, supplies, equipment, the use of facilities, and biological research materials. NIH support has been given where the source of funds or in-kind support is, directly or indirectly, the NIH.

II. Proposal to Add Bacillus Stearothermophilis to Appendix C–V

Drs. Richard Novick and June Polak of the Public Health Research Institute of the City of New York, Inc., have requested that *Bacillus stearothermophilis* be added to Appendix C–V, *Extrachromosomal Elements of Gram Positive Organisms.* Information on genetic exchange involving this organism is provided in the submission to ORDA.

III. Proposal to Modify and Amend the "Guidelines for Research Involving Recombinant DNA Molecules" to Refer Specifically to Research with Plants and Animals

It has been recognized that the NIH Guidelines for Research Involving Recombinant DNA Molecules do not include specific guidelines for containment of research involving whole plants and animals even though many scientific experiments involving recombinant DNA are now possible and often conducted with these whole organisms.

On June 26, 1986, the U.S. Department of Agriculture (USDA) issued an "Advanced Notice of Proposed USDA Guidelines for Biotechnology Research (51 FR 23367). A notice in the December 9, 1986, **Federal Register** (51 FR 44397) stated that USDA would be proposing new provisions relating to agricultural research for inclusion in the NIH Guidelines in lieu of the Advanced Notice of Proposed USDA Guidelines for Biotechnology Research published on June 26, 1986. USDA organized a workshop in Arlington, VA, on December 13–15, 1986, in part to develop proposed guidelines for plants and animals. Proposed changes to the NIH Guidelines developed by USDA were reviewed and revised by an NIH Working Group on Revision of the Guidelines which met on June 22 and July 16, 1987.

In this proposal, language has been developed to modify Sections II and III of the NIH Guidelines to refer specifically to containment for research with whole plants and animals. Containment is described in the proposed amendments Appendix P for plants and Appendix Q for animals. The suggested modifications and additions will provide guidance to the Institutional Biosafety Committees (IBCs) and Principal Investigators (PIs) to assure safe conduct of such experiments.

ORDA and NIH staff will make necessary editorial modifications to the proposed changes after review by the RAC and prior to incorporation into the NIH Guidelines.

1. Section II of the NIH Guidelines

2. It is proposed that the following language be added to Section II, *Containment*, before the final paragraph:

3. "Physical containment conditions within laboratories, described in Appendix G, may not always be appropriate for all organisms because of their physical size, the number of organisms needed for an experiment, or the particular growth requirements of the organism. Likewise, biological containment for microorganisms described in Appendix I is not appropriate for all organisms and for higher eukaryotic organisms in particular. Considerable information exists, however, on the design of research facilities and experimental procedures applicable to higher organisms carrying recombinant DNA either integrated into the genome or into microorganisms associated with the higher organism as a symbiont, pathogen, or other relationship. This information includes types of facilities for physical containment of organisms other than in traditional laboratories, and practices for limiting or excluding unwanted establishment, transfer of genetic information, and dissemination of organisms beyond an intended location based on both physical and biological containment principles. Research conducted in accordance with these conditions effectively confines the organism."

4. "For research involving plants, four biosafety levels (BL1–P to BL4–P) are described in Appendix P. Biosafety Level 1 for plants (BL1–P) is designed to provide a moderate level of containment for specific recombinant DNA research involving plants and is recommended for experiments for which there is no recognizable and predictable risk to the environment in the event of accidental release or for which there is convincing biological evidence that precludes the possibility of survival, transfer, or dissemination of the recombinant DNA molecules into the environment. Biosafety Level 2 for plants (BL2–P) is designed to provide greater containment of plants and certain associated organisms and is recommended for experiments in which there is a recognized possibility of survival, transmission, or dissemination of the recombinant DNA-containing organisms but the consequence of such a release has a predictably minimal biological impact in the event of inadvertent release. Biosafety Level 3 (BL3–P) and Biosafety Level 4 (BL4–P) for plants describe additional containment conditions for research with plants and certain pathogens and other organisms that require special containment because of their recognized potential for significant detrimental impact on managed or natural ecosystems."

5. "BL1–P relies upon accepted scientific practices for conducting research in most ordinary greenhouse or growth chamber facilities and incorporates accepted procedures for good pest control and cultural practices. Such facilities and procedures, through providing a modified and protected environment for propagation of plants and of microorganisms associated with the plants, also provide a degree of containment that adequately controls sexual and vegetative reproduction and minimizes the potential for release of biologically viable plants, plant parts, and microorganisms associated with them. BL2–P and BL3–P also rely upon accepted scientific practices for conducting research in greenhouses with organisms infecting or infesting plants in a manner that minimizes or prevents inadvertent contamination of plants within or surrounding the greenhouse. BL4–P describes facilities and practices known to provide containment of certain exotic plant pathogens.

6. "For research with animals that are of a size or have growth requirements that preclude the use of conventional primary containment systems used for small laboratory animals, four biosafety levels (BL1–N to BL4–N) are described in Appendix Q."

7. "Biosafety Level 1 for animals (BL1–N) describes containment which is used for animals in which the germ line has been modified through recombinant DNA techniques (transgenic animals) and is designed to eliminate the possibility of sexual transmission of the modified genome or transmission of recombinant-DNA-derived viruses known to be transmitted only vertically (i.e., transmitted from animal parent to offspring only by sexual reproduction). Procedures, practices, and facilities follow classical methods of avoiding genetic exchange between animals."

8. "Biosafety Level 2 for animals (BL2–N) describes containment which is used for transgenic animals and animals associated with recombinant-DNA-derived organisms and is designed to eliminate the possiblity of vertical or horizontal transmission. Procedures, practices, and facilities follow classical methods of avoiding genetic exchange between animals or controlling arthropod transmission."

9. "Biosafety Level 3 for animals (BL3–N) and Biosafety Level 4 for animals (BL4–N) describe higher levels of containment which are used for research with certain transgenic animals and with agents posing a recognized hazard."

10. *Section III of the NIH Guidelines.*

11. It is proposed that Section III–B, *Experiments That Require IBC Approval Before Initiation*, be changed as follows:

12. Proposed changes in Section III–B–1, *Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) as Host-Vector Systems:*

13. These changes specify in the NIH Guidelines the containments recommended for research with

recombinant-DNA-containing pathogens which involves whole animals.

14. Section III–B–1–a currently reads:

15. "Experiments involving the introduction of recombinant DNA into Class 2 agents can be carried out at BL2 containment."

16. It is proposed that the following text be added to the end of Section III–B–1–a:

17. "Experiments with such agents shall be carried out with whole animals at BL2 or BL2–N containment."

18. Section III–B–l–b currently reads:

19. "Experiments involving the introduction of recombinant DNA into Class 3 agents can be carried out at BL3 containment."

20. It is proposed that the following text be added at the end of Section III–B–l–b:

21. "Experiments with such agents can be carried out with whole animals at BL3 or BL3–N containment."

22. Section III–B–l–c currently reads:

23. "Experiments involving the introduction of recombinant DNA into Class 4 agents can be carried out at BL4 containment."

24. It is proposed that the following text be added at the end of Section III–B–l–c:

25. "Experiments with such agents shall be carried out with whole animals at BL4 or BL4–N containment."

26. Section III–B–l–d currently reads:

27. "Containment conditions for experiments involving the introduction of recombinant DNA into Class 5 agents will be set on a case-by-case basis following ORDA review. A U.S. Department of Agriculture (USDA) permit is required for work with Class 5 agents [18, 20]."

28. It is proposed that the following text be added at the end of Section III–B–l–d:

29. "Experiments with such agents shall be carried out with whole animals at BL4 or BL4–N containment."

30. Proposed changes in Section III–B–4, *Recombinant DNA Experiments Involving Whole Animals or Plants.* These changes clarify the organisms to which this section applies and the containment recommended for research.

31. It is proposed that the title of Section III–B–4 be changed to read:

32. "*Recombinant DNA Experiments Involving Whole Animals*" since Item #43 proposes a new Section III–B–5 entitled: "*Recombinant DNA Experiments Involving Whole Plants.*"

33. It is proposed that the following text be inserted into Section III–B–4 prior to Section III–B–4–a:

34. "This section covers experiments involving whole animals, both those in which the animal's genome has been altered by recombinant DNA techniques and experiments involving viable recombinant-DNA-modified microorganisms tested on whole animals. For the latter, other than viruses which are only vertically transmitted, the experiments may not be carried out at BLl–N containment; a minimum containment of BLl or BL2–N is required."

35. Section III–B–4–a currently reads: "Recombinant DNA, or RNA molecules derived therefrom, from any source except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to BLl and appropriate to the organism under study [2]. It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A USDA permit is required for work with Class 5 agents [18,20]."

36. It is proposed that Section III–B–4–a be revised to read as follows:

37. "Recombinant DNA, or RNA molecules derived therefrom, from any source except for a eukaryotic viral genome may be transferred to any non-human vertebrate or any invertebrate organism and propagated under conditions of physical containment comparable to BLl or BLl–N and appropriate to the organism under study [2]. Animals containing sequences from viral vectors are exempt if the sequences do not lead to transmissible infection either directly or indirectly as a result of complementation or recombination in animals. For experiments involving recombinant DNA modified Class 2, 3, 4, or 5 organisms (1) using whole animals, see Section III–B–l."

38. Section III–B–4–b currently reads:

39. "For all experiments involving whole animals and plants and not covered by Section III–B–4–a, the appropriate containment will be determined by the IBC (22)."

40. It is proposed that Section III–B–4–b be changed to read:

41. "For experiments involving whole animals and not covered by Section III–B–l or Section III–B–4–a, the appropriate containment will be determined by the IBC (22,23)."

42. It is proposed that a new Section III–B–5 be added for experiments with whole plants. This proposed new section would read as follows:

43. "Section III–B–5, *Recombinant DNA Experiments Involving Whole Plants.*

"Experiments to genetically engineer plants by recombinant DNA methods, to utilize such plants for other experimental purposes (e.g., response to stress), to propagate such plants, or to use plants together with microorganisms or insects containing recombinant DNA, can be conducted under the following containment conditions. If experiments involving whole plants are not described in III–B–5 and do not fall under Section III–A or Section III–D, they are included in Section III–C."

44. *Note.*—For recombinant DNA experiments falling under III–B–5–a, III–B–5–b, III–B–5–c, and III–B–5–d, physical containment requirements can be reduced to the next lower level by appropriate biological containment practices, such as conducting experiments on a virus with an obligate insect vector in the absence of the vector or using a genetically attenuated strain.

45. "Section III–B–5–a. BL3–P or BL2–P + BC containment is recommended for experiments involving most exotic (23) infectious agents with recognized potential for serious detrimental impact on managed or natural ecosystems when the exotic agent is modified by recombinant DNA techniques and is associated with whole plants.

46. "III–B–5–b. BL3–P containment is recommended for experiments involving plants containing cloned genomes of readily transmissible exotic (23) infectious agents with recognized potential for serious detrimental effects on managed or natural ecosystems in which there exists the possibility of reconstituting the complete and functional genome of the infectious agent by genomic complementation *in planta.*"

47. "III–B–5–c. BL4–P containment is recommended for experiments with a small number of readily transmissible exotic (23) infectious agents, such as the soybean rust fungus (Phakopsora pachyrhizi) and maize streak or other viruses in the presence of their specific arthropod vectors, that have the potential of being serious pathogens of major U.S. crops."

48a. "III–B–5–d. BL3–P containment is recommended for experiments involving sequences encoding potent vertebrate toxins introduced into plants or associated organisms."

48b. BL3–P or BL2–P + BC is recommended for experiments with microbial pathogens of insects or small animals associated with plants if the recombinant DNA-modified organism has a recognized potential for serious detrimental impact on managed or natural ecosystems.

49. It is proposed that the following new footnote, number 23, be added to

Section V, and that it be cited as indicated above in Section III–B–5:

50. "23. In accordance with accepted scientific and regulatory practices of the discipline of plant pathology, an exotic plant pathogen (e.g., virus, bacterium, fungus) is one not known to occur within the United States [18]. Recognition as to whether a pathogen has a potential for serious detrimental impact on managed (agricultural, forest, grassland) or natural ecosystems should be made by the PI and IBC, in consultation with scientists knowledgeable of plant diseases, crops and ecosystems in the geographic area of the research. Examples of serious detrimental impacts are provided by plant pathogens that can significantly reduce the yield of a major crop plant and by pathogens of beneficial insects, such as pollinators. A listing of all possible cases is not appropriate for these Guidelines."

51. To accommodate new Section III–B–5, renumber present Section III–B–5 to III–B–6. It would read:

52. "III–B–6, *Experiments Involving More than 10 Liters of Culture.* The appropriate containment will be decided by the IBC. Where appropriate, Appendix K, *Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules*, should be used."

53. It is proposed to add at the end of this section:

54. "Appendix K describes containment conditions BL1–LS through BL4–LS."

55. Section III–C, *Experiments That Require IBC Notice Simultaneously with Initiation of Experiments*, states that all experiments not included elsewhere in these NIH Guidelines can be conducted at BL1.

56. It is proposed that the first two paragraphs of the current Section III–C be numbered as Section III–C–1, that the final paragraph of the current Section III–C be numbered III–C–2, and that the following language be added as Section III–C–3:

57. "Section III–C–3. *Experiments Involving Whole Plants.* Section III–C–3 covers experiments involving recombinant DNA-modified whole plants, and/or experiments involving recombinant DNA-modified organisms associated with whole plants, except those that fall under Section III–A, III–B, or III–D. It should be emphasized that knowledge of the organism(s) and judgment based on accepted scientific practices should be used in all cases in selecting the appropriate level of containment under the NIH Guidelines.

For example, if the genetic modification has the objective of increasing pathogenicity or converting a non-pathogenic organism into a pathogen, then a higher level of containment may be appropriate, depending on the organism, its mode of dissemination , and its target organisms. By contrast, a lower level of containment may be appropriate for small animals associated with many types of recombinant DNA-modified plants."

58. "Section III–C–3–a. BL1–P is recommended for all experiments with recombinant DNA-containing plants and plant associated microorganisms not covered below in Section III–C–3–b or in other sections of the NIH Guidelines (see above). Such experiments include, for example, those involving recombinant DNA-modified plants that are not noxious weeds or cannot interbreed with noxious weeds. Also included are those involving whole plants and recombinant DNA-modified non-exotic [23] microorganisms that have no recognized potential for rapid and widespread dissemination and for serious detrimental impact on managed or natural ecosystems (e.g., *Rhizobium* spp., *Agrobacterium* spp.)

59. "Section III–C–3–b. BL2–P or BL1–P + biological containment (BC) is recommended for the following experiments involving plants:"

60. "Section III-C-3-b-(1). Plants modified by recombinant DNA that are noxious weeds or can interbreed with noxious weeds."

61. "Section III-C-3-b-(2). Plants in which the introduced DNA represents the complete genome of a non-exotic infectious agent [23]."

62. "Section III-C-3-b-(3). Plants associated with recombinant DNA-modified non-exotic microorganisms which have a recognized potential for serious detrimental impact on managed or natural ecosystems [23]."

63. "Section III-C-3-b-(4). Plants associated with recombinant DNA-modified exotic microorganisms which have no recognized potential for serious detrimental impact on managed or natural ecosystems [23]."

64. "Section III-C-3-b-(5). Experiments with recombinant DNA-modified insects or small animals associated with plants, or with insects or small animals with recombinant DNA-modified microorganisms associated with them if the recombinant DNA-modified organism has no recognized potential for serious detrimental impact on managed or natural ecosystems [23]."

65. Under Section III-D-5 of Section III–D, *Exempt Experiments*, certain classes of recombinant DNA molecules are exempt from the NIH Guidelines and are listed in Appendix C. Appendix C–I specifies that most recombinant DNA molecules containing less than one half of a eukaryotic viral genome are exempt from the NIH Guidelines when propagated and maintained in cells in tissue culture.

66. The following sentence is proposed as an addition to Appendix C–I for clarification of plant cell cultures which are induced to regenerate into whole plants. Without this sentence a strict interpretation of the NIH Guidelines would require IBC prior approval for the transition from a cell culture to a differentiated plant since it would be a whole plant and subject to Section III–B–5.

67. It is proposed to add to Appendix C–I after the first paragraph the following:

68. "Whole plants regenerated from plant cells and tissue cultures are covered by this exemption provided they remain axenic cultures even though they differentiate into embryonic tissue and regenerate into plantlets."

69. *Appendix G.* Proposal to Modify Appendix G, *Physical Containment.* It is proposed that the following text be added at the very beginning of Appendix G:

70. "Appendix G specifies physical containment for standard laboratory experiments and defines Biosafety Level 1 to Biosafety Level 4 (BL1–BL4). For large scale (over 10 liters) research or production, Appendix K replaces Appendix G; it defines Biosafety Level 1-Large Scale to Biosafety Level 4-Large Scale (BL1–LS to BL4–LS). For certain work with plants, Appendix P replaces Appendix G; it defines Biosafety Level 1-Plants to Biosafety Level 3-Plants (BL1–P to BL3–P). For work animals, Appendix Q replaces Appendix G; it defines Biosafety Level 1-Animals to Biosafety Level 4-Animals (BL1–N to BL4–N)."

71. *Appendix P.* It is proposed that the following text be added to the NIH Guidelines as Appendix P:

72. "Appendix P, *Physical and Biological Containment for Recombinant DNA Research Involving Plants* This appendix specifies physical and biological containment conditions and practices suitable to the greenhouse conduct of experiments involving recombinant DNA-containing plants, as well as plant-associated microorganisms and small animals. All provisions of the NIH Guidelines shall apply to plant research activities with the following modifications:"

73. "Appendix P shall replace Appendix G when the research plants are of a size, number, or have growth requirements that preclude the use of containment described in Appendix G.

The plants covered in Appendix P include but are not limited to mosses, liverworts, macroscopic algae, and vascular plants including terrestrial crops, forest, and ornamental species."

74. "Plant-associated microorganisms include viroids, virusoids, viruses, bacteria, fungi, protozoans, and certain small algae. They include microorganisms that have a benign or beneficial association with plants, such as certain Rhizobium species, as well as micro-organisms known to cause plant diseases. The NIH Guidelines also apply to microorganims which are being modified with the objective of fostering an association with plants."

75. "Plant-associated small animals include those insects that: (1) Have an abligate association with plants, (2) are plant pests, (3) are plant pollinators, or (4) transmit plant disease agents, as well as other small animals, such as nematodes, for which tests of biological properties necessitate the use of plants. Microorganisms associated with such small animals as, for example, pathogens or symbionts are also included.

76. "The Institutional Biosafety Committee shall include at least one scientist with expertise in plant, plant pathogen, or plant pest containment principles when experiments utilizing Appendix P require IBC prior approval."

77. "Appendix P–I, *General Plant Biosafety Levels.*"

78. "the principal purpose of plant containment is to avoid unintentional transmission of a recombinant DNA-containing plant genome, including nuclear or organelle hereditary material, or release of recombinant DNA-derived organisms associated with plants."

79. "The containment principles are based on the recognition that the organisms to which they apply pose no health threat to humans or higher animals (unless deliberately modified to do so), and that the containment minimizes the possibility of an unanticipated deleterious effect on organisms and ecosystems outside of the experimental facility. Examples of deleterious effects to be minimized are the inadvertent spread of a serious pathogen from a greenhouse to a local agricultural crop or the unintentional introduction and establishment of an organism in a new ecosystem."

80. "Four biosafety levels, referred to as BL1–P, BL2–P, BL3–P, and BL4–P are established in Section II of the NIH Guidelines. The selection of containment levels required for research involving recombinant DNA molecules in or associated with plants is specified in Section III of the NIH Guidelines. The biosafety levels are described in Appendix P–II. The descriptions include: (1) Greenhouse practices, and (2) special greenhouse facilities for physical containment."

81. "The biosafety levels are designed to provide differential levels of biosafety for plants in the absence or presence of other experimental organisms that contain recombinant DNA. These biosafety levels, in conjunction with biological containment described in Appendix P–III, provide flexible approaches to assure research is conducted safely."

82. "In experiments in which plants are grown within BL1–BL4 laboratory facilities, including plant tissue culture rooms, growth chambers within laboratory facilities, or on open benches, containment practices described for Biosafety Levels 1–4 in Appendix G in these NIH Guidelines shall be followed. Additional practices should be added by the principal investigator or IBC as needed from the descriptions in Appendix P–III if botanical reproductive structures are produced and have the potential of being released."

83. "Appendix P–II, *Physical Containment Levels.*"

84. "Appendix P–II–A, *BL1–P (Biosafety Level 1—plants).*"

85. "Appendix P–II–A–1, *Standard Practices—BL1–P.*"

86. "Access to the greenhouse is limited or restricted at the discretion of the principal investigator when experiments are in progress."

87. "Personnel are required to read instructions on BL1–P greenhouse practices and procedures and to follow them."

88. "All procedures are performed in accordance with practices appropriate to the experimental organism. A greenhouse practices manual is prepared to describe these practices. It should advise personnel of potential consequences if practices are not followed and outline contingency plans in the event containment loss results in release of organisms with recognized potential for serious detrimental impact."

89. "A log is kept of experimental plant, microorganisms, or small animals that are brought in or removed from the greenhouse facility."

90. "Experimental organisms are rendered biologically inactive by appropriate methods before disposal outside of the greenhouse facility."

91a. "A program is utilized to control undesired species, such as weed, rodent, or insect pests and pathogens, by methods appropriate to the organisms and in accordance with applicable state and federal laws."

91b. "Insects and other motile macroorganisms are housed in appropriate cages. If macroorganisms, such as flying insects or nematodes, are released within the greenhouse, precautions are taken to minimize escape beyond the facility."

91c. "A sign incorporating the universal biohazard symbol and the name of the recombinant DNA-modified organism(s) is posted on greenhouse access doors."

91d. "Experiments involving other organisms which require a containment level lower than BL1–P may be conducted in the same greenhouse concurrently with those requiring the BL1–P level provided all work is conducted in accordance with BL1–P greenhouse practices."

92. "Appendix P–II–A–2, *Facilities—BL1–P.*"

93a. "The term 'greenhouse' refers to a permanent structure with walls, roof, and floor designed and utilized principally for growing plants in a controlled and protected environment. Walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth. The term 'greenhouse facility' includes the actual greenhouse rooms or compartments for growing plants plus all immediately contiguous hallways and headhouse areas, and is considered part of the confinement area."

93b. "The floor may be of gravel or other porous material but, at a minimum, impervious (e.g., concrete) walkways are recommended."

93c. "Windows and other openings in the walls and roof of the greenhouse compartments may be open for ventilation as needed for proper operation and require no special barrier to contain or exclude pollen, microorganisms, or small flying animals (e.g., insects, birds). Screens to exclude the latter are, however, utilized in most standard greenhouses and are recommended."

94. "Appendix P–II–B, *BL2–P (Biosafety Level 2—plants).*"

95. "Appendix P–II–B–1, *Standard Practices—BL2–P.*"

96. "Access to the greenhouse is limited or restricted at the discretion of the principal investigator to individuals directly involved in the experiments when they are in progress."

97. "Personnel are required to read instructions on BL2–P greenhouse practices and procedures and to follow them."

98. "All procedures are performed in accordance with accepted greenhouse practices appropriate to the experimental organisms. A greenhouse

practices manual is prepared to describe these practices. It should advise personnel of potential consequences if practices are not followed and outline contingency plans in the event containment loss results in release of organisms with recognized potential for serious detrimental impact."

99. "A log is kept to experimental plants, microorganisms, or small animals that are brought into or removed from the greenhouse facility. Materials containing experimental microorganisms that are brought into or removed from the greenhouse facility in a viable or intact state are transferred in a closed nonbreakable container."

100. "Experimental organisms are rendered biologically inactive by appropriate methods before disposal outside of the greenhouse facility. Decontamination of run-off water is not required. If part of the greenhouse is gravel or similar material, appropriate treatments should be made periodically to eliminate any organisms potentially entrapped by the gravel."

101. "Insects and other motile macroorganisms are housed in appropriate cages. If microorganisms, such as flying insects or nematodes, are released within the greenhouse, precautions are taken to minimize escape from the facility."

102. "A program is utilized to control undesired species, such as weed, rodent, or insect pests and pathogens, by methods appropriate to the organisms and in accordance with applicable State and Federal laws."

103a. "A sign incorporating the universal biohazard symbol and the name of the recombinant DNA-modified organism is posted on greenhouse access doors. The presence of organisms having a recognized potential for serious detrimental impacts to managed or natural ecosystems should also be indicated on these signs when used in the greenhouse."

103b. "Experiments involving other organisms which require a containment level lower than BL2–P may be conducted in the same greenhouse concurrently with those requiring the BL2–P level provided all work is conducted in accordance with BL2–P greenhouse practices."

104. "Appendix P–II–B–2, *Facilities—BL2–P.*"

105. "The term 'greenhouse' refers to a permanent structure with walls, roof, and floor designed and utilized principally for growing plants in a controlled and protected environment. Walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth."

106a. "A greenhouse floor of an impervious material such as concrete is recommended, but gravel or other porous material under benches is acceptable unless propagules of experimental organisms are readily disseminated through soil."

106b. "Windows and other openings in the walls and roof of the greenhouse compartments may be open for ventilation as needed for proper operation if fitted with No. 30 mesh (or finer) fly screens to exclude small flying animals (e.g., insects, birds). No special barrier to contain pollen or microorganisms is required."

107. "If intake fans are used, measures must be taken to minimize the ingress of insects. Louvers or fans shall be constructed so as not to open unless the fan is in operation."

108. "An autoclave for treatment of contaminated greenhouse materials is available in the facility."

109. "BL2–P greenhouse containment requirements can be satisfied by using a growth chamber or growth room within a building, provided that the external physical structure limits access and escape of macroorganisms in a manner that satisfies the intent of the foregoing clauses."

110. "Appendix P–II–C, *BL3–P (Biosafety Level 3—plants).*"

111. "Appendix P–II–C–1, *Standard Practices—BL3–P.*"

112a. "Access to the greenhouse is restricted to individuals whose presence is required for program or support purposes and are authorized to enter. The principal investigator has the final responsibility for assessing each circumstance and determining the individuals to be authorized."

112b. "Personnel are required to read instructions on BL3–P practices and to follow them."

113a. "All practices are in accordance with practices appropriate to the experimental organism(s). A greenhouse practices manual is prepared to describe these practices. It should advise personnel of potential consequences if practices are not followed and outline contingency plans in the event containment loss results in the release of organisms with recognized potential for serious detrimental impact."

113b. "A log is kept of experimental plants, microorganisms, or small animals that are brought into or removed from the greenhouse facility. Materials containing experimental microorganisms to be brought into or removed from the greenhouse facility in a viable or intact state are transferred in a nonbreakable sealed secondary container. The surface of the secondary container is decontaminated prior to removal from the greenhouse by passage through a chemical disinfectant or fumigation chamber, or by an alternative procedure demonstrated to be effective against the experimental organism, if at the time of transfer the same plant species, hosts, or vectors are present within the effective dissemination distance of propagules of the experimental organism(s)."

114. "All experimental materials, except those that are to remain in a viable or intact state for experimental purposes, are sterilized in an autoclave or rendered biologically inactive by an alternate effective method before removal from and disposal outside of the greenhouse facility. This includes water that comes in contact with experimental microorganisms or with material exposed to them, as well as all contaminated equipment and supplies."

115. "A program is implemented to control undesired species, such as weed, rodent, or insect pests and pathogens, by methods appropriate to the organisms and in accordance with applicable State and Federal laws."

116. "Insects and other motile macroorganisms are housed in cages appropriate to the organisms and experiments are conducted within cages designed to contain the motile organisms."

117. "A sign incorporating the universal biohazard symbol and the name of the recombinant DNA-modified organism is posted on greenhouse access doors. The presence of organisms having a recognized potential for serious detrimental impacts to managed or natural ecosystems should also be indicated on these signs when used in the greenhouse."

118. All procedures are performed carefully to minimize the creation of aerosols and excessive splashing of potting material/soil during watering, transplanting and all experimental manipulations."

119. Disposable clothing or solid front or wrap-around gown, scrub suit, or other appropriate clothing is worn in the greenhouse if deemed necessary by the principal investigator because of potential dissemination of the experimental microorganism(s), and removed upon exit from the greenhouse. The protective clothing worn in the greenhouse is decontaminated prior to laundering or disposal. Personnel thoroughly wash their hands upon exiting the greenhouse."

120. Experiments involving other organisms which require a containment level lower than BL3–P may be conducted in the same greenhouse concurrently with those requiring the

BL3–P level provided all work is conducted in accordance with BL3–P greenhouse practices.

121. "Appendix P–II–C–2, *Facilities—BL3–P.*"

122. "The term 'greenhouse' refers to a permanent structure with walls, roof, and floor designed and utilized principally for growing plants in a controlled and protected environment. Walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth. The term 'greenhouse facility' includes hallways and headhouse areas immediately contiguous to the actual greenhouse rooms or compartments for growing plants, and is considered part of the confinement area."

123. "The floor of the greenhouse is of concrete or other impervious material with provision for collection and decontamination of liquid run-off."

124. "Windows are closed and sealed. All glazing is resistant to breakage. The need to maintain negative pressure should be considered when constructing or renovating the greenhouse."

125. "The greenhouse is a permanent, closed, self-contained structure with a continuous covering which is separated from areas open to unrestricted traffic flow. The greenhouse has impervious floors, such as concrete, with provision for collection and decontamination of liquid run-off. The need to maintain negative pressure should be considered when constructing or renovating the greenhouse. Passage through two sets of lockable self-closing doors is the basic requirement for entry into the greenhouse."

126. "The greenhouse facility is surrounded by a security fence or is protected by an equivalent means of security."

127. "The internal walls, ceilings, and floors are resistant to penetration by liquids and chemicals to facilitate cleaning and decontamination of the area. All penetrations in these structures and surfaces, such as plumbing and utilities, are sealed."

128. "It is recommended that bench tops and other work surfaces have seamless surfaces impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat."

129. "A hand-washing facility is located near the greenhouse exit door."

130. "An autoclave for decontaminating materials is available within the facility. A double door autoclave for decontaminating materials passing out of the facility is recommended, but not required."

131. "Vacuum lines are protected with high efficiency particulate air (HEPA) or equivalent filters and liquid disinfectant traps."

132. "An individual supply and exhaust air ventilation system is provided. The system maintains pressure differentials and directional airflow as required to assure flows inward from areas outside the greenhouse."

133a. "The exhaust air from the facility is filtered through HEPA filters and discharged to the outside. The filter chambers are designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. Air supply filters shall be 80–85% average efficiency by the ASHRAE Standard 52–68 test method using atmosphere dust. Air supply fans are equipped with backflow damper that will close when the air supply fan is off. The supply and exhaust airflow is interlocked to assure inward (or zero) airflow at all times."

133b. "The BL3–P greenhouse containment requirement can be met by a growth chamber or growth room within a building, provided that the location, access, airflow patterns, and provisions for decontamination of experimental materials and supplies meet the intent of the foregoing clauses of the present section."

134. "Appendix P–II–D, *BL4–P (Biosafety Level 4—plants).*"

135. "Appendix P–II–D–1, *Standard Practices—BL4–P.*"

136. "Only persons whose presence in the greenhouse is required for program or support purposes are authorized to enter. The principal investigator has the final responsibility for assessing each circumstance and determining who may enter or work in the greenhouse during experiments. Access to the facility is limited by means of secure, locked doors; accessibility is managed by the greenhouse director, local biosafety officer, or other person responsible for physical security of the facility. Before entering, persons are advised of the potential environmental hazards and instructed on appropriate safeguards for ensuring environmental safety. Persons authorized to enter the facility comply with the instructions and all other applicable entry and exit procedures. A record of all personnel indicating the date and time of each entry and exit is maintained."

137. "Personnel enter and leave the facility only through the clothing change and shower rooms. Personnel shower each time they leave the facility. Personnel use the airlocks to enter or leave the laboratory only in an emergency. During an emergency, every reasonable effort should be made to prevent the possible transport of viable propagules from containment."

138. "A greenhouse operations manual is prepared and adopted. The manual includes contingency plans to be implemented in the event of the unintentional release of experimental organisms. Personnel are required to read instructions on practices and procedures and to follow them."

139. "A warning sign incorporating the universal biohazard symbol is posted on all access doors. The sign identifies the plants, microorganisms, and animals in use, lists the name of the principal investigator, greenhouse director, or other responsible person(s) and indicates any special requirements for entering the area."

140. "Experimental materials to be brought into or to be removed from the greenhouse in a viable or intact state are put in a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container which is removed from the facility through a chemical disinfectant or fumigation chamber, or an airlock designed for this purpose. A log is kept of all experimental material entering and leaving the greenhouse."

141. "Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility retrieve the materials by opening the interior door of the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility."

142. "No materials, except for experimental materials that are to remain in a viable or intact state, are removed from the maximum containment greenhouse unless they have been autoclaved. Equipment or material which might be damaged by high temperatures or steam is decontaminated by other methods such as gaseous or vapor methods in an airlock or chamber designed for this purpose."

143. "Water that comes in contact with experimental material treated with microorganisms (e.g., run-off from watering plants) is collected and decontaminated before disposal."

144. "Standard microbiological procedures are followed for decontamination of contaminated equipment and materials. Spray or liquid waste or rinse water from containers used to apply the experimental microorganisms shall be decontaminated before disposal."

145. "Street clothing is removed in the outer clothing change room and kept there. Complete laboratory clothing (may be disposable) including undergarments, pants, and shirts or jumpsuits, shoes, and hats is provided and worn by all personnel entering the facility. When leaving the laboratory and before proceeding into the shower area, personnel remove their laboratory clothing and store it in a locker or hamper in the inner change room. All laboratory clothing must be autoclaved before laundering."

146. "Greenhouse accidents involving inadvertent release or spills of microorganisms are reported immediately to the laboratory director and other authorities as appropriate. Written records of such accidents are prepared and maintained."

147. "Insects or other microorganisms used in conjunction with experiments requiring BL4–P level physical containment shall be housed in appropriate cages. When appropriate to the organism, experiments are conducted within cages designed to contain the motile organism."

148. "A chemical control program is implemented to eliminate undesired pests and pathogens in accordance with state and federal laws."

149. "Experimental microorganisms assigned to a containment level lower than BL4–P may be tested in a BL4–P greenhouse concurrently with microorganisms assigned to BL4–P provided that the tests are conducted in accordance with BL4–P greenhouse practices. When the experimental microorganisms in use require a containment level lower than BL4–P, greenhouse practices will reflect the level of containment required by the highest containment level microorganisms being tested."

150. "Appendix P–II–D–2, *Facilities—BL4–P.*"

151. "The maximum containment greenhouse facility consists of either a separate building or a clearly demarcated and isolated zone within a building. The need to maintain negative pressure should be considered when constructing or renovating the facility. Access doors to the greenhouse are self-closing and lockable. Outer and inner change rooms separated by a shower are provided for personnel entering and leaving the facility. A double-doored autoclave, fumigation chamber, or ventilated airlock is provided for passage of those materials, supplies, or equipment which are not brought into the facility through the change room."

152. "The greenhouse facility is surrounded by a security fence or is protected by an equivalent means of security."

153. "Walls, floor, and ceiling of the greenhouse are constructed to form a sealed internal shell which facilitates fumigation and is animal and insect proof. These internal surfaces are resistant to penetration and degradation by liquids and chemicals, thus facilitating cleaning and decontamination of the area. All penetrations (plumbing, utilities) in these structure and surfaces are sealed. Sewer vents and other ventilation lines contain HEPA filters. HEPA filter must be certified annually."

154. "It is recommended that bench tops and other work surfaces have seamless surfaces impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat."

155. "A double-doored autoclave is provided for decontaminating materials passing out of the facility. The autoclave door which opens to the area external to the facility is sealed to the outer wall and automatically controlled so that the outside door can only be opened after the autoclave "sterilization" cycle has been completed."

156. "A pass-through dunk tank fumigation chamber, or an equivalent decontamination method is provided so that materials and equipment that cannot be decontaminated in the autoclave can be safely removed from the facility."

157. "Liquid effluents from sinks, floors, and autoclave chambers are decontaminated by heat or chemical treatment before being released from the maximum containment facility. Liquid wastes from shower rooms and toilets may be decontaminated with chemical disinfectants or by heat in the liquid waste decontamination system. The procedure used for autoclaving or chemically decontaminating liquid wastes is evaluated by appropriate standard procedures for autoclaved wastes. The procedure is evaluated mechanically and biologically by using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes are decontaminated with chemical disinfectants, the chemical used is of demonstrated efficacy against the target or indicator microorganisms."

158. "If there is a central vacuum system, it does not serve areas outside the facility. In-line HEPA filters are placed as near as practicable to each use point or vacuum service cock. Other liquid and gas services to the facility are protected by devices that prevent backflow. HEPA filters must be certified annually."

159. Windows are closed and sealed. All glazing is resistant to breakage (e.g., double pane tempered glass or equivalent)."

160. "An individual supply and exhaust air ventilation system is provided. The system maintains pressure differentials and directional airflow as required to assure flows inward from areas outside of the greenhouse. Differential pressure transducers are used to sense pressure levels. If a system malfunctions, the transducers sound an alarm. A backup source of electricity is provided to run the air handling equipment if the main power source should fail. The supply and exhaust airflow is interlocked to assure inward (or zero) airflow at all times. The integrity of the greenhouse must have an air leak rate (decay rate) not to exceed 7% per minute (logarithm of pressure against time) over a 20-minute period at 2" of water gauge pressure. Nominally, this is 0.05" of water gauge pressure loss in 1 minute at 2" water gauge pressure."

161. "The exhaust air from the facility is filtered through HEPA filters and discharged to the outside so that it is dispersed away from occupied buildings and air intakes. The filter chambers are designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. HEPA filters are provided to treat air supplied to the facility. HEPA filters must be certified annually."

162. "Appendix P–III, *Biological Containment Practices.*"

163. "An appropriate selection of the following biological containment practices can be used to meet the containment requirements for a given organism. The present list is not exhaustive and there may be other ways of preventing effective dissemination, by which is meant dissemination leading to the establishment in the environment of the organism or its genetic material with deleterious consequences to managed or natural ecosystems."

164. "Appendix P–III–A, *Plants.* Effective dissemination of plants by pollen or seed can be prevented by one or more of the following:"

165. "Covering reproductive structures to prevent pollen dissemination at flowering and seed dissemination at maturity."

166. Removing reproductive structures, employing male sterile strains or terminating the experiment and harvesting the plant material prior to the reproductive stage."

167. "Ensuring that the experimental plants flower at a time of year when no

cross-fertile plant is flowering within the normal pollen dispersal range of the experimental plant."

168. Ensuring that no cross-fertile plant is growing within the experimental plant's known pollen dispersal range."

169. "Appendix P–III–B. *Microorganisms.* Effective dissemination of microorganisms beyond the confines of the greenhouse can be prevented by one or more of the following:"

170. "Confining all operations to injections of microorganisms or other biological procedures, including genetic manipulation, that limit replication or reproduction of viruses and microorganisms, or sequences derived from microorganisms, to internal plant parts or adherent surfaces of plants."

171. "Ensuring that no organism that can serve as a host or promote the transmission of the virus or microorganism is present within a distance that the airborne virus or microorganism may be expected to be disseminated."

172. "Carrying out the experiment at a time of year when plants that can serve as a host are either not growing or are not susceptible to productive infection."

173. "Using viruses and other microorganism (or their genomes) with insect or animal vectors in the absence of the vectors."

174. Using microorganisms that have an obligate association with the plant."

175. "Using microorganism that are genetically disabled to minimize survivial outside of the research facility, or whose natural mode of transmission requires injury of the target organism or in some other way assures that inadvertent release is unlikely to initiate a productive infection of organisms outside of the experimental facility."

176. "Appendix P–III–C, *Microorganisms.* Effective dissemination of insects and other small animals can be prevented in the following way:"

177. "Insects: using non-flying, flight-impaired or sterile insects."

178. "Other animals: using non-motile or sterile strains."

179. "Conducting the experiment at a time of year that precludes the survival of escaping organisms."

180. "Effluent treatment: collecting run-off water and allowing it to evaporate or treating it chemically to prevent escape of organisms with run-off water."

181. "Using animals that have an obligate association with a plant that is not present within the organism's dispersal range."

182. "Appendix Q."

183. "Appendix Q, *Physical and Biological Containment for Recombinant DNA Research Involving Animals."*

184. "This appendix of the NIH Guidelines specifies containment and confinement practices for research involving recombinant DNA molecules in animals or for microorganisms associated with animals. All provisions of the NIH Guidelines shall apply to animal research activities with the following modifications:"

185. "Appendix Q shall replace Appendix G when the research animals are of a size or have growth requirements that preclude the use of containment for laboratory animals. Some animals may require other types of containment (4). The animals covered in Appendix Q are those species normally categorized as animals including but not limited to cattle, swine, sheep, goats, horses, and poultry."

186. "The Institutional Biosafety Committee (IBC) shall include at least one scientist with expertise in animal containment principles when experiments utilizing Appendix Q require IBC prior approval."

187. "The institution shall establish and maintain a health surveillance program for personnel engaged in animal research involving viable recombinant DNA-containing microorganisms which require BL3 or greater containment in the laboratory."

188. "Appendix Q–1, *General Consideration."*

189. "Appendix Q–1–A, *Containment Levels.* The containment levels required for research involving recombinant DNA molecules in or associated with animals is based on classification of experiments in Section III of the NIH Guidelines. For the purpose of animal research, four levels of containment are established. These are referred to as BL1–N, BL2–N, BL3–N, and BL4–N and are described in the following sections of Appendix Q. The descriptions include: (1) standard practices, (2) special practices for physical and biological containment, and (3) special animal containment facilities."

190. "Appendix Q–I–B, *Disposal of Animals."*

191. "When an animal covered by Appendix Q containing recombinant DNA or a recombinant DNA-derived organism is euthanized or dies, the carcass must be disposed of to avoid its use as food for human beings or animals unless food use is specifically authorized by an appropriate Federal agency. A record must be maintained of the experimental use and disposal of each animal or group of animals for three years."

192. "Appendix Q–II, *Physical and Biological Containment Levels."*

193. "Appendix Q–II–A, *Biosafety Level 1 for Animals—BL1–N."*

194. "Appendix Q–II–A–1, *Standard Practices—BL1–N."*

195. "Appendix Q–II–A–1–a. Access to the containment area shall be limited or restricted when experimental animals are being held."

196. "Appendix Q–II–A–1–b. All genetically engineered neonates will be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct assayable DNA sequences which allow identification of transgenic animals from among non-transgenic animals."

197. "Appendix Q–II–A–2, *Special Practices—BL1–N."*

198. "Appendix Q–II–A–2–a. The containment areas will be locked."

199. "Appendix Q–II–A–2–b. The containment area will be patrolled or monitored at frequent intervals."

200. "Appendix Q–II–A–2–c. A double barrier shall be provided to separate male(s) and female(s) animals, unless reproductive studies are part of the experiment or other measures are taken that avoid reproductive transmission."

201. "Appendix Q–II–A–2–d. Reproductive incapacitation can be utilized if needed."

202. "Appendix Q–II–A–2–e. The animal containment area shall be in accordance with Federal law and animal care requirements."

203. "Appendix Q–II–A–3, *Special Animal Facilities—BL1–N.* Animals must be confined in securely fenced areas or otherwise confined but do not have to be in enclosed structures (animal rooms) to minimize the possibility of theft or unintentional release."

204. "Appendix Q–II–B, *Biosafety Level 2 for Animals—BL2–N."*

205. "Appendix Q–II–B–1, *Standard Practices—BL2–N."*

206. "Appendix Q–II–B–1–a. All genetically engineered neonates will be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences which allow identification of transgenic animals from among non-transgenic animals.

207. "Appendix Q–II–B–1–b. Appropriate steps should be taken to

prevent horizontal transmission or exposure of laboratory personnel. If the agent used as vector is known to be transmitted by a particular route, such as an arthropod, special attention should be given to preventing spread by that route. In the absence of specific knowledge of a particular route of transmission, all potential means of horizontal transmission, such as arthropods, contaminated bedding, or animal waste, etc., should be prevented."

208. "Appendix Q–II–B–1–c. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area."

209. "Appendix Q–II–B–1–d. Persons shall wash their hands after handling materials involving organisms containing recombinant DNA molecules and animals, and when they leave the containment area."

210. "Appendix Q–II–B–2, *Special Practices—BL2–N.*"

211. "Appendix Q–II–B–2–a. The containment areas will be locked."

212. "Appendix Q–II–B–2–b. The containment area will be patrolled or monitored at frequent intervals."

213. "Appendix Q–II–B–2–c. A double barrier shall be provided to separate male(s) and female(s) animals, unless reproductive studies are part of the experiment or other measures are taken that avoid reproductive transmission."

214. "Appendix Q–II–B–2–d. Reproductive incapacitation can be utilized if needed."

215. "Appendix Q–II–B–2–e. The containment building will be controlled and have a lockable access."

216. "Appendix Q–II–B–2–f. Contaminated materials that are to be decontaminated at a site away from the laboratory shall be placed in a durable leakproof container which shall be closed before being removed from the laboratory."

217. "Appendix Q–II–B–2–g. The director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) may enter the laboratory or animal rooms."

218. "Appendix Q–II–B–2–h. When the animal research requires special provisions for entry (e.g., vaccination), a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors to the animal work area."

219. "The hazard warning sign shall identify the agent, animal species, list the name and telephone number of the director or other responsible person(s), and indicate the special requirement(s) for entering the laboratory."

220. "Appendix Q–II–B–2–i. Laboratory coats, gowns, smocks, or uniforms shall be worn while in the animal area or attached laboratory. Before leaving for nonlaboratory areas (e.g., cafeteria, library, administrative offices), this protective clothing shall be removed and left in the work entrance area.

221. "Appendix Q–II–B–2–j. Animals of the same or different species not involved in the work being performed shall not be permitted in the animal area."

222. "Appendix Q–II–B–2–k. Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn handling experimental animals and when skin contact with the infectious agent is unavoidable."

223. "Appendix Q–II–B–2–l. Hypodermic needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needles and syringe shall be promptly placed in a puncture-resistant container and docontaminated, preferably by autoclaving, before discard or reuse."

224. "Appendix Q–II–B–2–m. All incidences involving spills and accidents which result in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be immediately reported to the director. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records shall be maintained. If necessary, the area will be appropriately decontaminated."

225. "Appendix Q–II–B–2–n. When appropriate and giving consideration to the agent(s) handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility."

226. "Appendix Q–II–B–2–o. A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and shall be required to read instructions on practices and procedures and to follow them."

227. "Appendix Q–II–B–2–p. Biological materials to be removed from the animal containment area in a viable or intact state shall be transferred to a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the facility. Advance approval for transfer of material must be obtained from the director. Such packages containing viable agents can only be opened in a facility having equivalent or higher physical containment unless the agent is biologically inactivated or is nonreproductive."

228. "Appendix Q–II–B–3, *Special Animal Facilities—BL2–N.*"

229. "Appendix Q–II–B–3–a. All animals shall be contained within an enclosed structure (animal room or equivalent) to avoid the possibility of theft or unintentional release and avoid access of arthropods. The special provision to avoid the entry or escape of arthropods from the animal areas may be waived if the agent in use is known not to be transmitted by arthropods."

230. "Appendix Q–II–B–3–b. The animal laboratory area shall be designed so that is can be easily cleaned."

231. "Appendix Q–II–B–3–c. Surfaces shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat."

232. "Appendix Q–II–B–3–d. If the building has windows that open, they shall be fitted with fly screens."

233. "Appendix Q–II–B–3–e. An autoclave for decontaminating laboratory wastes shall be available."

234. "Appendix Q–II–C, *Biosafety Level 3 for Animals—BL3–N.*"

235. "Appendix Q–II–C–1, *Standard Practices—BL3–N.*"

236. "Appendix Q–II–C–1–a. All genetically engineered neonates will be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences which allow identification of transgenic animals among non-transgenic animals."

237. "Appendix Q–II–C–1–b. Appropriate steps should be taken to prevent horizontal transmission or exposure of laboratory personnel. If the agent used as vector is known to be transmitted by a particular, route, such as an arthropod, special attention

should be given to preventing spread by that route. In the absence of specific knowledge of a particular route of transmission, all potential means of horizontal transmission, including arthropods, contaminated bedding, or animal waste should be prevented."

238. "Appendix Q–II–C–1–c. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area."

239. "Appendix Q–II–C–1–d. If experiments involving other organisms which require lower levels of containment are to be conducted in the same area concurrently with experiments requiring BL3–N containment, they shall be conducted in accordance with BL3–N practices."

240. "Appendix Q–II–C–1–e. Persons shall wash their hands after handling materials involving organisms containing recombinant DNA molecules and animals and when they leave the animal area."

241. "Appendix Q–II–C–1–f. Animal holding areas shall be decontaminated at least once a day and after any spill of viable material."

242. "Appendix Q–II–C–1–g. All procedures shall be performed carefully so as to minimize the creation of aerosols."

243. "Appendix Q–II–C–2. *Special Practices—BL3–N.*"

244. "Appendix Q–II–C–2–a. The containment areas will be locked."

245. "Appendix Q–II–C–2–b. The area will be patrolled or monitored at frequent intervals."

246. "Appendix Q–II–C–2–c. A double barrier shall be provided to separate male(s) and female(s) animals unless reproductive studies are part of the experiment or other measures are taken that avoid reproductive transmission. Reproductive incapacitation can be utilized if needed."

247. "Appendix Q–II–C–2–d. The containment building will be controlled and have a lockable access."

248. "Appendix Q–II–C–2–e. All animals must be euthanized at the end of their experimental usefulness and the carcasses shall be decontaminated before disposal in an approved manner. Documents regarding animal experimental use and disposal shall be maintained in a permanent log book."

249. "Appendix Q–II–C–2–f. The director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) and who comply with all entry requirements may enter the laboratory or animal rooms."

250. "Appendix Q–II–C–2–g. When the animal research requires special provisions for entry (e.g., vaccination), a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors to the animal work area. The hazard warning sign shall identify the agent, animal species, list the name and telephone number of the director, or other responsible person(s) and indicate the special requirement(s) for entering the laboratory.

251. "Appendix Q–II–C–2–h. Full protective clothing that protects the individual (e.g., scrub suits, coveralls, uniforms) shall be worn in the animal area. Clothing shall not be worn outside the animal containment zone, and it shall be decontaminated before being laundered.

252. "Appendix Q–II–C–2–i. Animals of the same or different species not involved in the work being performed shall not be permitted in the animal area."

253. "Appendix Q–II–C–2–j. Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn when handling experimental animals and when skin contact with the infectious agent is unavoidable.

254. "Appendix Q–II–C–2–k. Hypodermic needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needle and syringe shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse."

255. "Appendix Q–II–C–2–l. All incidences involving spills and accidents which result in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be immediately reported to the laboratory director. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records shall be maintained. If necessary, the area will be appropriately decontaminated.

256. "Appendix Q–II–C–2–m. When appropriate, and giving consideration to the agent(s) handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility."

257. "Appendix Q–II–C–2–n. A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and shall be required to read instructions on practices and procedures and to follow them."

258. "Appendix Q–II–C–2–o. Biological materials to be removed from the animal containment laboratory in a viable or intact state shall be transferred to a nonbreakable, sealed primary container and then enclosed in an nonbreakable, sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the facility. Advance approval for transfer of material must be obtained from the director. Such packages containing viable agents can only be opened in another BL3–N facility unless the agent is biologically inactivated or is nonreproductive. Special safety testing, decontamination procedures, and IBC approval are required to move agents or tissue/organ specimens from a BL3–N facility to one with a lower containment classification."

259. "Appendix Q–II–C–2–p. Animal room doors and gates or other closures shall be kept closed when experiments are in progress."

260. "Appendix Q–II–C–2–q. The work surfaces of containing equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up."

261. "Appendix Q–II–C–2–r. Molded surgical masks or respirators shall be worn in rooms containing experimental animals."

262. "Appendix Q–II–C–3, *Special Animal Facilities—BL3–N.*"

263. "Appendix Q–II–C–3–a. All animals shall be contained within an enclosed structure (animal room or equivalent) to avoid the possibility of theft or unintentional release and avoid access of arthropods. The special provision to avoid the entry or escape of arthropods from the animal areas may be waived if the agent in use in known not to be transmitted by arthropods."

264. "Appendix Q–II–C–3–b. The interior surfaces of walls, floors, and ceilings shall be impervious to water and resistant to acids, alkalis, organic

solvents, and moderate heat, so that they can be easily cleaned. Penetrations in these surfaces shall be sealed to facilitate decontaminating the area."

265. "Appendix Q–II–C–3–c. Windows in the laboratory shall be closed, sealed, and breakage resistant."

266. "Appendix Q–II–C–3–d. An autoclave for sterilizing animals and wastes shall be available, preferably within the containment area. If feasible, a double door autoclave is preferred and should be positioned to allow removal of material from the containment zone."

267. "Appendix Q–II–C–3–e. The animal area shall be separated from all other areas. Passage through two sets of doors is the basic requirement for entry into the animal area from access corridors or other contiguous areas. Physical separation of the animal containment area from access corridors or other laboratories or activities will be provided by a double-doored clothes change room, equipped with integral showers and airlock."

268. "Appendix Q–II–C–3–f. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers are decontaminated by heat treatment before being released into sanitary system(s). The procedure used for heat decontamination of liquid wastes is to be monitored with a recording thermometer. The waste is to be monitored for biological activity by introducing an appropriate indicator microorganism with a defined heat susceptibility pattern, and culturing samples of treated waste for presence of the organism."

269. "Appendix Q–II–C–3–g. All perimeter joints and opening must be sealed to form an insect-proof structure."

270. "Appendix Q–II–C–3–h. Access doors to the containment area shall be self-closing."

271. "Appendix Q–II–C–3–i. An exhaust air ventilation system is provided. This system creates directional airflow that draws air into the animal room through the entry area. The building exhaust can be used for this purpose if the exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from occupied areas and air intakes. Personnel must verify that direction of the airflow (into the animal room) is proper. The exhaust air from the animal room that does not pass through biological safety cabinets or other primary containment equipment can be discharged to the outside without being filtered or otherwise treated. If the agent is transmitted by aerosol, then the exhaust air must pass through a HEPA filter. Heating, Ventilation, Air Conditioning (HVAC) supply and exhaust ducts should comply with the NIH Laboratory Safety Monograph or superseding volumes."

272. "Appendix Q–II–C–3–j. Vacuum lines shall be protected with high efficiency particulate air (HEPA) filters and liquid disinfectant traps."

273. "Appendix Q–II–C–3–k. In lieu of open housing in the special animal room, animals held in a BL3–N area may be housed in partial-containment caging systems, such as Horsfall units or gnotobiotic systems, or other special containment primary barriers. Prudent judgment must be exercised to implement this ventilation system and its discharge location and the animal species."

274. "Appendix Q–II–C–3–l. Each animal area shall contain a sink for handwashing. The sink shall be foot, elbow, or automatically operated and shall be located near the exit door."

275. "Appendix Q–II–C–3–m. Restraining devices for animals may be required to avoid damage to the integrity of the containment facility."

276. "Appendix Q–II–D. *Biosafety Level 4 for Animals—BL4–N."*

277. "Appendix Q–II–D–1, *Standard Practices—BL4–N."*

278. "Appendix Q–II–D–1–a. All genetically engineered neonates will be permanently marked within 72 hours after birth if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences which allow identification of transgenic animals from among nontransgenic animals."

279. "Appendix Q–II–D–1–b. All contaminated liquid or solid wastes shall be decontaminated before disposal."

280. "Appendix Q–II–D–1–c. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area."

281. "Appendix Q–II–D–1–d. If experiments involving other organisms which require lower levels of containment are to be conducted in the same area concurrently with experiments requiring BL4–N containment, they shall be conducted in accordance with BL4–N practices."

282. "Appendix Q–II–D–1–e. Persons shall wash their hands after handling materials involving organisms containing recombinant DNA molecules and animals, and when they leave the animal area."

283. "Appendix Q–II–D–1–f. Animal holding areas shall be decontaminated at least once a day and after any spill of viable material."

284. "Appendix Q–II–D–1–g. All procedures shall be performed carefully so as to minimize the creation of aerosols."

285. "Appendix Q–II–D–1–h. Persons under 18 years of age shall not be permitted to enter the animal area."

286. "Appendix Q–II–D–1–i. The work surfaces of containment equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up."

287. "Appendix Q–II–D–2, *Special Practices—BL4–N."*

288. "Appendix Q–II–D–2–a. The containment areas will be locked."

289. "Appendix Q–II–D–2–b. The area will be patrolled or monitored at frequent intervals."

290. "Appendix Q–II–D–2–c. A double barrier shall be provided to separate male and female animals. Animal isolation barriers shall be sturdy and be accessible for cleaning."

291. "Appendix Q–II–D–2–d. Reproductive incapacitation can be utilized if needed."

292. "Appendix Q–II–D–2–e. The animal containment area shall be in accordance with Federal law and animal care requirements."

293. "Appendix Q–II–D–2–f. The containment building will be controlled and have a lockable access."

294. "Appendix Q–II–D–2–g. All wastes from animal rooms and laboratories shall be appropriately decontaminated before disposal."

295. "Appendix Q–II–D–2–h. No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the maximum containment laboratory unless they have been autoclaved or decontaminated. Equipment or material which might be damaged by high temperatures or steam shall be decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose."

296. "Appendix Q–II–D–2–i. The director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) may enter the laboratory or animal room."

297. "Appendix Q–II–D–2–j. When the animal research requires special provisions for entry (e.g., vaccination), a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors to the animal

work area. The hazard warning sign shall identify the agent, animal species, list the name and telephone number of the director, or other responsible person(s) and indicate the special requirement(s) for entering the laboratory."

298. "Appendix Q–II–C–2–k. Personnel shall enter and leave the facility only through the clothing change and shower rooms. Street clothing shall be removed in the outer clothing change room and kept there. Complete laboratory clothing, including undergarments, pants, and shirts or jumpsuits, and shoes shall be provided and used by all personnel entering the facility. When leaving the BL4–N zone and before proceeding into the shower area, personnel shall remove their laboratory clothing in the inner change room and with appropriate discard for sterilization. Personnel shall shower each time they leave the facility. Personnel shall use the airlocks to enter or leave the laboratory only in an emergency."

299. "Appendix Q–II–D–2–l. When personnel ventilated suits are required, the animal personnel shower entrance/exit zone will be equipped with a chemical disinfectant shower to decontaminate the surface of the suit before the worker leaves the area. A neutralization or water dilution device will be integral with the chemical desinfectant discharge piping before it enters the heat sterilization system. Entry to this area is through an airlock fitted with airtight doors."

300. "Appendix Q–II–D–2–m. The ventilated head hood or a one-piece positive pressure suit that is ventilated by a life-support system shall be worn by all personnel entering the rooms containing experimental animals when appropriate."

301. "Appendix Q–II–C–2–n. The life support system for the ventilated suit or head hood will be equipped with alarms and emergency back-up breathing air tanks. The exhaust air from the suit area is filtered by two sets of HEPA filters installed in series or incinerated. A duplicate filtration unit, exhaust fan, and an automatically starting emergency power source are provided. The air pressure within the suit area is to be greater than that of any adjacent area. Emergency lighting and communication systems are provided. A double-doored autoclave is provided for decontaminating waste materials to be removed from the suit area."

302. "Appendix Q–II–D–2–o. Hypodermic needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needles and syringe shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse."

303. "Appendix Q–II–D–2–p. A system shall be set up for reporting laboratory accidents and exposures which result in overt exposures to organisms containing recombinant DNA molecules, employee absenteeism and for the medical surveillance of potential laboratory-associated illnesses. Written records are prepared and maintained. An essential adjunct to such a reporting-surveillance system is the availability of a facility for quarantine, isolation, and medical care of personnel with potential or known laboratory-associated illnesses."

304. "Appendix Q–II–D–2–q. When appropriate with giving consideration to the agents handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility."

305. "Appendix Q–II–D–2–r. A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and shall be required to read instructions on practices and procedures and to follow them."

306. "Appendix Q–II–D–2–s. Biological materials to be removed from the animal maximum containment laboratory in a viable or intact state shall be transferred to a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container which shall be removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose. Advance approval for transfer of material must be obtained from the director. Such packages containing viable agents can only be opened in another BL4–N facility unless the agent is biologically inactivated or is nonreproductive. Special safety testing, decontamination procedures, and IBC approval are required to move agents or tissue/organ specimens from a BL4–N facility to one with a lower containment classification."

307. "Appendix Q–II–D–2–t. Animal room doors and gates shall be kept closed when experiments are in progress."

308. "Appendix Q–II–D–2–u. Molded surgical masks or respirators shall be worn in rooms containing experimental animals."

309. "Appendix Q–II–D–2–v. Vacuum lines shall be protected with high efficiency particulate air (HEPA) filters and liquid disinfectant traps."

310. "Appendix Q–II–D–2–w. A log book signed by all personnel shall indicate the date and time of each entry and exit."

311. "Appendix Q–II–D–2–x. Supplies and materials needed in the facility shall be brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility shall retrieve the materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors shall be secured after materials are brought into the facility."

312. "Appendix Q–II–D–3, *Special Animal Facilities—BL4–N.*"

313. "Appendix Q–II–D–3–a. All animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or unintentional release and avoid access of nonexperimental arthropods."

314. "Appendix Q–II–C–3–b. The interior surfaces of walls, floors, and ceilings shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat so that they can be easily cleaned. Penetrations in these surfaces shall be sealed to facilitate decontaminating the area."

315. "Appendix Q–II–D–3–c. Windows in the laboratory shall be closed, sealed, and breakage resistant."

316. "Appendix Q–II–D–3–d. An autoclave, incinerator, or other effective means to decontaminate animals and wastes shall be available, preferably within the containment area. If feasible, a double-door autoclave is preferred and positioned to allow removal of material from the containment zone."

317. "Appendix Q–II–D–3–e. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers is decontaminated by heat treatment before being released into sanitary system(s). Liquid wastes from shower rooms and toilets may be decontaminated with chemical

disinfectants or by heat in the liquid waste decontamination system by methods shown to be effective. The procedure used for heat decontamination of liquid wastes is to be monitored with a recording thermometer and waste is to be monitored for biological activity by introducing an appropriate indicator microorganism with a defined heat susceptibility pattern, and culturing samples of treated waste for presence of the organism. If liquid wastes from the shower room are decontaminated with chemical disinfectants, the chemical used is of demonstrated efficiency against the target or indicator microorganisms. Chemical disinfectants must be neutralized or diluted before release into general effluent waste systems."

318. "Appendix Q–II–D–3–f. All equipment and floor drains will be equipped with deep traps (minimally 5 inches). Floor drains will be fitted with isolation plugs or fitted with automatic water fill devices."

319. "Appendix Q–II–D–3–g. All perimeter joints and openings must be sealed to form an insect-proof structure."

320. "Appendix Q–II–D–3–h. Access doors to the containment area shall be self-closing."

321. "Appendix Q–II–D–3–i. The BL4–N laboratory shall provide a double barrier to prevent the release of recombinant DNA containing microorganisms into the enviornment. Design of the facility will provide that, should the barrier of the inner facility be breached, the outer barrier will prevent release into the environment. The animal area shall be separated from all other areas. Passage through two sets of doors is the basic requirement for entry into the animal area from access corridors or other contiguous areas. Physical separation of the animal containment area from access corridors or other laboratories or activities will be provided by a double-doored clothes change room equipped with integral showers and airlock."

322. "Appendix Q–II–D–3–j. A necropsy room will be provided within the BL4–N containment area."

323. "Appendix Q–II–D–3–k. Each animal area shall contain a sink for handwashing. The sink shall be foot, elbow, or automatically operated and shall be located near the exit door."

324. "Appendix Q–II–D–3–l. A ducted exhaust air ventilation system shall be provided. This system shall create directional airflow that draws air into the laboratory through the entry area. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from the occupied areas and air intakes. Personnel must verify that the direction of the airflow (into the animal rooms) is proper."

325. "Appendix Q–II–D–3–m. Exhaust air from BL4–N containment zone must be double HEPA filtered or treated by passing through a certified HEPA filter and an air incinerator before release to the atmosphere. Double HEPA filters are required in the supply air system in a BL4–N containment zone. Heating Ventiliation Air Conditioning (HVAC) supply and exhaust ducts and filter housing should comply with the NIH Laboratory Safety Monograph or supeseding volumes."

326. "Appendix Q–II–D–3–n. Restraining devices for animals may be required to avoid damage to the integrity of the containment facility."

327. "Appendix Q–II–D–3–o. All HEPA filters' frames and housings must be certified to have nodetectable smoke [dioctylphthalate (DOP)] leaks when the exit face (direction of flow) of the filter is scanned above 0.01 percent when measured by a linear or logarithmic photometer. The instrument shall have a threshold sensitivity of at least 1×10^{-3} micrograms per liter for 0.3 micrometer diameter DOP particles and a challenge concentration of 80–120 micrograms per liter. The air sampling rate should be at least 1 cfm (28.3 liters per minute)."

328. "Appendix Q–II–D–3–p. If an air incinerator is used in lieu of the second HEPA filter(s), it must be biologically challenged to prove all viable test agents are sterilized. The biological challenge must be minimally 1×10^{8} organisms per cubic foot of airflow through the incinerator. It is universally accepted if bacterial spores are used to challenge and verify that the equipment is capable of sterilizing spores then assurance is provided that all other known agents will also be sterilized by the parameters established to operate the equipment. Test spores meeting this criterion are *Bacillus subtilis var. Niger* or *Bacillus Stearothermophilis*. The operating temperature of the incinerator shall be continously monitored and recorded during use."

329. "Appendix Q–II–D–3–q. The supply water distribution system must be fitted with a backflow preventer or break tank."

330. "Appendix Q–II–D–3–r. All utilities, liquid and gas services, are protected with devices that avoid backflow."

331. "Appendix Q–II–D–3–s. Sewer and other atmospheric ventilation lines must be equipped with minimally a single HEPA filter. Condensate drains from these type housings must be appropriately connected to a contaminated or sanitary drain system. The drain position in the housing will dictate which system is to be used."

332. "Appendix Q–III, *Footnotes and References for Appendix Q.*"

333. "[1] If recombinant DNA is derived from a Class 2 organism requiring BL2 for laboratory research, personnel shall have specific training in handling pathogenic agents and are to be directed by knowledgeable scientists."

334. "[2] Personnel who handle pathogenic and potentially lethal agents must have specific training and must be supervised by knowledgeable scientists who are experienced in working with these agents. BL3–N containment also minimizes escape of recombinant DNA-containing organisms from exhaust air or waste material from the containment zone."

335. "[3] Microorganisms in Classes 4 and/or 5 pose a high individual risk of life-threatening diseases to personnel and/or animals. Special approval must be obtained from USDA/APHIS to import class 5 agents."

336. Laboratory staff have specific and thorough training in handling extremely hazardous infectious agents, and they understand the primary and secondary containment functions of the standard and special practices, the containment equipment, and the laboratory design characteristics. They are supervised by knowledgeable scientists who are trained and experienced in working with these agents and in the special containment facilities."

337. "Within work areas of the facility, all activities are confined to the specially equipped animal rooms or support areas. The maximum animal containment area and support areas have special engineering and design features to avoid microorganisms being disseminated into the environment via exhaust air or waste disposal."

338. "[4] Other research with nonlaboratory animals that may not appropriately be conducted under conditions described in Appendix Q can be conducted safety by applying practices routinely used for controlled culture of these biota. In aquatic systems, for example, BL1 equivalent conditions could be met by utilizing growth tanks that provide adequate physical means to avoid the escape of the aquatic species, its gametes, and introduced exogenous genetic material. A mechanism should be provided to ensure that neither the organisms nor their gametes can escape into the supply or discharge system of the rearing

container (e.g. tank, aquarium, etc.). Acceptable barriers include appropriate filter, irradiation, heat treatment, chemical treatment, etc. Moreover, the top of the rearing container should be covered to avoid escape of the organism and its gametes. In the event of tank rupture, leakage, or overflow, the construction of the room containing these tanks should prevent the organisms and gametes from entering the building's drains before the organism and its gametes have been inactivated."

339. "Other types of non-laboratory animals may be accommodated by laboratory Biosafety levels 1 to 4 specified in Appendix G or Biosafety Levels 1–3 for plants described in Appendix P. Examples might include certain nematodes, insects and certain forms of smaller animals."

340. "It is proposed that the following new footnote, number 7, be added to Appendix B–IV, *Footnotes and References of Appendix B.*"

341. "[7] The containment requirements for derivatives of pathogenic strains that are attenuated by deletion or other means that prevent reversion to pathogenicity can be lowered by the IBC."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 5, 1987.

James C. Hill,

Acting Director, National Institute of Allergy and Infectious Diseases.

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August 11, 1987

Part VI

Department of Education

34 CFR Part 309

Handicapped Children's Early Education Program; Implementation of New Requirements and Announcement of Funding Priorities; Final Regulations and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 309

Early Education for Handicapped Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Handicapped Children's Early Education Program (HCEEP) authorized by section 623 of Part C of the Education of the Handicapped Act (EHA). These final regulations are needed to implement new requirements under the EHA amendments of 1986 (Pub. L. 99–457) and to revise selection criteria for awards under this program. The intended effect of these final regulations is to clarify statutory requirements and to improve the operation of the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ruth Ward, Early Childhood Branch, Department of Education, 330 C Street, SW. (Switzer Building, Room 4611–M/S 3409), Washington, DC 20202. Telephone: (202) 732–1045.

SUPPLEMENTARY INFORMATION: The HCEEP provides Federal financial assistance for a variety of programs and activities designed to address the special problems of children with handicaps, birth through age eight—including demonstration and outreach projects, and other programs authorized under the EHA amendments of 1986 (e.g., research and training activities, research instititues, experimental programs, and a technical assistance development system). The following changes in the existing HCEEP regulations implement the EHA amendments of 1986 (Pub. L. 99–457):

(1) Experimental programs have been added;

(2) Research and training activities (previously authorized under section 624 of the EHA, but now authorized under section 623) have been added;

(3) Early childhood research institutes to carry on sustained research and to generate and disseminate new information in preschool and early intervention programs for young children with handicaps and their families have been added;

(4) The State planning, development, and implementation grant provisions for preschool and early intervention have been deleted. Under Pub. L. 99–457, States may conduct these activities under (1) the preschool grant program (section 619 of the EHA), and (2) the new program for infants and toddlers with handicaps.

In addition to the changes required by the statute, these regulations add new selection criteria for all of the programs and activities that are authorized under this part. With regard to training projects, the Secretary may use selection criteria under this part or Part 318 (Training Personnel for the Education of the Handicapped program). It is expected that, the selection criteria for Part 318 will apply if appropriate for the preservice training priority.

These final regulations do not apply to contracts, which are subject to Title 48 of the Code of Federal Regulations. A technical assistance development system designed "to assist entities operating experimental demonstration, and outreach programs, and to assist State agencies to expand and improve services provided to handicapped children" is now authorized under section 623 of the EHA. That system will be implemented through a Request for Proposal (RFP), which will be published in the *Commerce Business Daily*.

On May 13, 1987, the Secretary published a notice of proposed rulemaking for the Handicapped Children's Early Education Program in the **Federal Register** (52 FR 18174). The comments received in response to that notice and the Secretary's responses are summarized below:

Comment: One commenter suggested that Subpart D should apply not just to experimental, demonstration, and outreach projects but also to the technical assistance development system, research projects, training projects, and research institutes.

Response: A change has been made. The statute establishes the postaward conditions and matching requirements contained in Subpart D only for experimental, demonstration, and outreach projects. However, the Subpart D heading has been changed to indicate that these requirements and conditions apply only to experimental, demonstration, and outreach projects.

Comment: One commenter suggested that the words "and their families" be added in Subpart A (§§ 309.1(a), 309.3(a), and 309.3(c)) to emphasize the statute's focus on families and family-centered activities.

Response: A change has been made. The Secretary agrees that the words should be added to emphasize the focus of the statute.

Comment: One commenter suggested deleting the word "educational" from § 309.3(a) as unnecessary.

Response: A change has been made. The Secretary considers all types of experimental projects that compare alternative and innovative practices related to early intervention, preschool and early education services for children with handicaps and their families. The word "educational" is deleted, and the types of projects the Secretary considers are added.

Comment: One commenter suggested indicating in the introductory clause of § 309.3 that the Department may also offer financial assistance in the form of contracts under this part.

Response: No change has been made. Although the Department may enter contractual arrangements for activities authorized by section 623 of the EHA, the regulatory provisions of Part 309 do not apply to contracts. Specific requirements for proposed contracts will be contained in the individual Requests for Proposals published in *Commerce Business Daily*.

Comment: One commenter suggested adding technical assistance projects to the list of activities in § 309.3 that the Secretary may fund under these regulations.

Response: No change has been made. Section 623 authorizes a technical assistance development system that the Department has decided to support through a contract. These regulations do not apply to contracts. While other technical assistance projects are not authorized by the statute, technical assistance activities may be part of experimental, demonstration, and outreach projects that are supported under this part.

Comment: One commenter suggested that the selection criteria for training projects be expanded to include consideration of the project's relationship to the State's Part B Comprehensive System of Personnel Development (CSPD), Part H CSPD, and State licensure or certification standards.

Response: A change has been made. The Secretary has included these factors under § 309.21(c)(3).

Comment: One commenter recommended adding to the selection criteria at § 309.21(f)(2) that applicants indicate how they will ensure that all personnel are qualified and meet the highest requirement in the State for employment in the profession for which they provide services.

Response: No change has been made. Under § 309.21(f), the Secretary evaluates the qualifications of personnel in relation to the goals of the project.

Comment: One commenter suggested adding the Part H lead agency to the list of agencies with which experimental, demonstration, and outreach projects must coordinate under § 309.30(b).

Response: No change has been made. The scope of § 309.30(b) includes all agencies eligible to serve as Part H lead agency.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency of authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 309

Education, Education of the handicapped, Education—research, Grants program—education, Preschool, Reporting and record keeping requirements, Teachers.

(Catalogue of Federal Domestic Assistance Number 84.024, Early Education for Handicapped Children)

Dated: July 24, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 309 to read as follows:

PART 309—HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award by Experimental, Demonstration, and Outreach Projects?

Authority: 20 U.S.C. 1423, unless otherwise noted.

Subpart A—General

§ 309.1 What is the Handicapped Children's Early Education Program (HCEEP)?

The HCEEP supports activities that are designed—

(a) To address the special problems of children with handicaps, birth through age eight, and their families; and

(b) To assist State and local entities in expanding and improving programs and services for these children and their families.

(Authority: 20 U.S.C. 1423)

§ 309.2 Who is eligible for an award?

Public agencies and nonprofit private organizations are eligible for a grant or cooperative agreement under this part. In addition, profitmaking organizations are eligible under § 309.3(e) and (f).

(Authority: 20 U.S.C. 1423)

§ 309.3 What activities may the Secretary fund?

The Secretary may provide financial assistance in the form of a grant or cooperative agreement under this part to support the following activities:

(a) *Experimental projects.* These projects support the design of investigative models that compare alternative and innovative practices related to early intervention, preschool, and early education services for children with handicaps and their families.

(b) *Demonstration projects.* These projects assist in developing and implementing preschool and early intervention program practices that establish specific strategies and products worthy of dissemination and replication.

(c) *Outreach projects.* These projects support the replication of established practices to assist other agencies and organizations in expanding and improving services to children with handicaps and their families.

(d) *Research institutes.* These institutes are designed to carry on sustained research to generate and disseminate new information on preschool and early intervention programs.

(e) *Research projects.* These projects are designed to identify and meet the full range of special needs of children covered under this part.

(f) *Training projects.* These projects support the training of personnel for programs specifically designed for children with handicaps.

(Authority: 20 U.S.C. 1423)

§ 309.4 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 309.

(Authority: 20 U.S.C. 1423)

§ 309.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
Department
EDGAR
Fiscal year
Grant
Local educational agency
Nonprofit
Nonpublic
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300. The section of Part 300 that contains the definition is given in parentheses:

Handicapped children (§ 300.5)
Include (§ 300.6)
Parent (§ 300.10)
Related services (§ 300.13)
Special education (§ 300.14)

(c) *Other definitions.* As used in this part, "Act" means the Education of the Handicapped Act, as amended.

(Authority: 20 U.S.C. 1423)

Supart B—How Does One Apply for an Award?

§ 309.10 What separate applications must an applicant submit?

Applicants for assistance under this part must submit a separate application for each activity in § 309.3 that is announced for competition.

(Authority: 20 U.S.C. 1423)

§ 309.11 How does the Secretary select and announce funding priorities under the program?

The Secretary may establish as a priority any activity in § 309.3.

(Authority: 20 U.S.C. 1423)

Subpart C—How Does the Secretary Make an Award?

§ 309.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under this part on the basis of the criteria in § 309.21.

(b) The Secretary awards up 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1423)

§ 309.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications unless, with regard to training projects, he determines that the selection criteria in 34 CFR Part 318 are more appropriate:

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project wil address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan.

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practice leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other that those available through this part.

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project:

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timeliness for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objectives and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

(Authority: 20 U.S.C. 1423)

§ 309.22 Are awards for experimental, demonstration, and outreach projects geographically dispersed?

To the extent feasible, the Secretary, in addition to using the selection criteria in § 309.21, geographically disperses awards for experimental, demonstration, and outreach projects throughout the Nation in urban as well as rural areas.

(Authority: 20 U.S.C. 1423(a)(3))

Subpart D—What Conditions Must Be Met After an Award By Experimental, Demonstration, and Outreach Projects?

§ 309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?

(a) Experimental, demonstration, and outreach projects must include services and activities that are designed to—

(1) Facilitate the intellectual, emotional, physical, mental, social, speech, language development, and self-help skills of children with handicaps, birth through age eight;

(2) Encourage the participation of the parents of those children in the development and operation of projects under this part;

(3) Acquaint the community in which the project is located with the problems and potentialities of those children;

(4) Offer training about exemplary models and practices to State and local personnel who provide services to children with handicaps, birth through age eight; and

(5) Support the adoption of exemplary models and practices in States and local communities.

(b) Experimental, demonstration, and outreach projects must be coordinated with State and local educational agencies, and appropriate public and private health and social service agencies, in order to—

(1) Inform those agencies of the nature and purposes of the assisted project's activities or services; and

(2) Provide opportunities for the project staff to coordinate their activities with staff of other agencies.

(Authority: 20 U.S.C. 1423(a) (1), (2))

§ 309.31 What are the matching requirements for experimental, demonstration, and outreach projects?

(a) Federal financial participation for an experimental, demonstration, or outreach project may not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project.

(b) The Secretary may waive the matching requirement in paragraph (a) of this section in the case of an arrangement entered into with governing bodies of Indian tribes located on Federal or State reservations and with consortia of those bodies if they are able to demonstrate that insufficient resources are available.

(Authority: 20 U.S.C. 1423(a)(4))

[FR Doc. 87-18188 Filed 8-10-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Children's Early Education Program

AGENCY: Department of Education.

ACTION: Notice of final annual funding priorities.

SUMMARY: The Secretary announces annual funding priorities for the Handicapped Children's Early Education Program. These priorities support early childhood research institutes required by the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457.

EFFECTIVE DATE: These final annual funding priorities take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these final annual funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 300 "C" Street SW., (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

SUPPLEMENTARY INFORMATION: The Handicapped Children's Early Education Program (HCEEP) was established under Pub. L. 91-230 on April 13, 1970, and is currently authorized by section 623 of Part C of the Education of the Handicapped Act, as amended. The purpose of the program is to support a variety of activities designed to address the special problems of handicapped children from birth through age eight including experimental, demonstration, and outreach projects, research and training activities, early childhood research institutes, and a technical assistance development system. These priorities will establish two early childhood research institutes. The first institute will be established to develop new or improved interventions for infants and toddlers with handicaps who, because of the nature of their disabilities, require extended medical care in hospital intensive care units and who may require life-supporting technologies and systems of health care. The second institute will be established to develop, evaluate, and disseminate new or improved curricula and materials (for preservice, inservice, and self-study use) for training special education and related service personnel to deliver intervention services to infants and toddlers with handicaps and their families.

Summary of Comments and Responses

A notice of proposed annual funding priorities was published in the Federal Register on May 13, 1987 at 52 FR 18180. The public was given thirty days in which to comment. The comments and the Department's responses are summarized below:

Comment: One commenter recommended that the language in both priorities which requires the institutes to provide research training and experience for at least 10 graduate students annually be revised to indicate that graduate students be selected from a variety of professions.

Response: No change has been made. The language of both priorities, as written, would not preclude an applicant from providing research training and experience for graduate students from a variety of professions.

Comment: One commenter recommended that "professional associations" be listed along with institutions of higher education and other agencies that the Early Childhood Research Institute on Personnel is expected to work with in developing new or improved training curricula and materials. The commenter also recommended that "professional associations" be listed along with institutions of higher education and other agencies for inservice training activities designed to assist personnel in learning about effective training curricula and materials.

Response: A change has been made. "Professional associations" have been listed along with institutions of higher education and other agencies that the Early Childhood Research Institute on Personnel is expected to work with in developing new or improved training curricula and materials. Also, "professional associations" are now listed along with institutions of higher education and other agencies for inservice training activities designed to assist personnel in learning about effective training curricula and materials.

Comment: One commenter recommended that when referring to the provision of speech or language services and the profession, the preferred term is "speech-language pathology services" and "speech-language pathology."

Response: A change has been made. The reference to "speech/language" has been changed to the preferred term, "speech-language pathology."

Priorities

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(c)(3), and subject to available funds, the Secretary will give an absolute preference to each application submitted in response to one of the following priorities. Each application must provide satisfactory assurance that the recipient will use funds made available to conduct one of the following activities:

Priority 1: Early Childhood Research Institute—Intervention

This priority will establish an Early Childhood Research Institute to develop new or improved interventions for infants and toddlers with handicaps who, because of the nature of their disabilities, require extended medical care in hospital intensive care units and who may require life-supporting technologies and systems of health care. The institute's purpose will be to conduct a program of research and development designed to produce information and materials that can be used in concert with the provision of intensive health care and that promote the developmental progress of these children. The institute's research and development activities must produce information and materials that can be used within intensive care units and that facilitate the successful transition of the child to the home and to community-based services. The research and development activities must consist of two major areas of inquiry.

First, the institute must conduct a program of research to develop new or improved procedures related to the identification, referral, and intervention process. The institute's research must include, but need not be limited to, studies that: (1) develop exemplary practices related to physician referral, initial family counseling, and tracking of the child's progress and services; (2) identify effective practices and procedures for forming and involving a multidisciplinary team to plan services for the child and family; (3) establish criteria and procedures for enlisting the services of different State agencies, including the State Protection and Advocacy agency or other child protection groups; (4) develop exemplary models for determining the point in the child's life when nonmedical interventions can be appropriately and safely implemented; (5) identify a variety of effective nonmedical interventions that are keyed to child developmental needs, child medical needs, family needs and characteristics,

and the potential for delivering these services within a hospital intensive care unit; and (6) develop new or improved interventions that will facilitate the transition of the child to the home and to community-based services.

Second, the institute must conduct a program of research to develop new or improved organizational structures related to the identification, referral, and intervention process. The institute's research must include, but need not be limited to, studies that: (1) Identify the full range of services and personnel needed in a comprehensive hospital-based intensive care unit; (2) develop model organizational structures (including roles, responsibilities, lines of authority, communication, and coordination) for a comprehensive hospital-based intensive care unit; (3) identify exemplary models for involving parents, siblings, friends, and extended family with a multi-disciplinary team; (4) develop procedures to prevent or solve role conflicts among team members; and (5) identify alternative approaches to team composition and team member roles in providing intervention and transitional services.

In carrying out its research activities, the institute must provide research training and experience for at least 10 graduate students annually.

In addition to conducting the activities described above, the institute must commit approximately 20% of its budget to inservice training activities. These training activities must be designed to assist hospital intensive care unit staff to learn about new or improved procedures and organizational structures to serve infants and toddlers with handicaps and their families. The training activities must be based on the results of the institute's research findings, already published information, and existing exemplary procedures and organizational structures.

Priority 2: Early Childhood Research Institute—Personnel

The priority will establish an Early Childhood Research Institute to develop, evaluate, and disseminate new or improved curricula and materials (for preservice, inservice, and self-study use) for the training of special education and related service personnel to deliver intervention services to infants and toddlers with handicaps and their families. The goal of the institute will be to produce validated, replicable training curricula that can be used across settings, disciplines, and disciplinary training programs to prepare personnel to deliver effective services and to work effectively within multi-disciplinary teams. The final materials must be developed for broad application, including their use by existing training programs that currently prepare no specialists for this age group.

In developing new or improved training curricula and materials, the institute is expected to work with institutions of higher education, professional associations, and other agencies that have nationally recognized training programs in one or more of the relevant disciplinary areas (special education, speech-language pathology and audiology, occupational therapy, physical therapy, psychology, social work, nursing, or nutrition). To take advantage of current best practices, institute researchers shall examine the curricula and materials now being implemented in exemplary training programs and use these as a point of departure in the institute's research and development program. In developing a series of training modules for each special education and related service area, the institute must, where appropriate, take advantage of overlap and commonalities in training content. The institute must also develop the curricula and materials in a manner that is responsive to different training uses. For example, some potential trainers will view their trainees as specialists not generalists. In those instances, the curricula and materials must be sufficently flexible to accommodate this training approach, but contain enough information about other disciplines to enable effective communication and coordination of services. In other instances, the training program may be aimed at producting trainees for more generalist roles, such as those that may be required in rural areas, in which more extensive knowledge of delivering different services is required. In either instance, however, the training curricula and materials must develop trainee skills in working with parents and families, interacting with professionals from other disciplines, determining when other specialists must be consulted, developing an individualized family service plan, and accessing emerging information and research findings in the trainee's own and related disciplinary areas.

For each disciplinary area the institute must conduct a series of evaluation studies of the different versions of the training materials. In addition to addressing other goals and objectives established for the evaluations, curricula and material must be evaluated with respect to their effectiveness in preservice, inservice, and self-study applications.

In carrying out its research and development activities, the institute must provide research training and experience for at least 10 graduate students annually.

In addition to conducting the activities described above, the institute must commit approximately 20% of its budget to inservice training activities. These training activities must be designed to assist personnel in institutions of higher education, professional associations, and other agencies in learning about effective training curricula and materials for this population. The training activities must be based on the results of the institute's research and development activities, already published information about training programs, and existing exemplary training programs.

Period of Award

The Secretary will approve cooperative agreements with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The serivces of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation which the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement and its subgrantees; and

(2) the degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

(20 U.S.C. 1423)
(Catalog of Federal Domestic Assistance Number 84.024; Handicapped Children's Early Education Program)

Dated: July 17, 1987.

William J. Bennett,
Secretary of Education.

[FR Doc. 87-18189 Filed 8-10-87; 8:45 am]
BILLING CODE 4000-01-M

federal register

Tuesday
August 11, 1987

Part VII

Department of Education

34 CFR Part 629

Veterans Education Outreach Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 629

Veterans Education Outreach Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Veterans Education Outreach Program, formerly called the Veterans Cost-of-Instruction Payments Program. These amendments are needed to conform the regulations to the changes made in section 420A of Title IV of the Higher Education Act of 1965 by the Higher Education Amendments of 1986, Pub. L. 99–498 (October 17, 1986), and to establish criteria for the Secretary to exercise the authority to waive certain expenditure requirements of the program for individual institutions.

EFFECTIVE DATE: The regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Neil McArthur, Division of Higher Education Incentive Programs, Office of Postsecondary Education, U.S. Department of Education, Room 3022, ROB–3, 400 Maryland Avenue SW., Washington, DC 20202–3327. Telephone: (202) 732–4406 .

SUPPLEMENTARY INFORMATION: The Veterans Education Outreach Program provides Federal financial assistance on a formula basis to all eligible institutions of higher education to provide certain services to veterans.

The Secretary makes several changes to conform the regulations to the Higher Education Amendments of 1986:

Name Change. The name of the program is changed from the "Veterans Cost-of-Instruction Payments (VCIP) Program" to the "Veterans Education Outreach Program (VEOP)."

Availability of Awards. Awards made under VEOP are now available for expenditure by the institution over a period not to exceed two academic years.

Minimum Award. The minimum award an institution may receive is now $1,000, subject to the availability of appropriations.

Award Amounts. In addition to payments for the two categories of veterans described in prior law, an eligible institution will now receive a payment of $100 for each undergraduate student who has received an honorable discharge from military service but who is no longer eligible to or does not receive educational benefits under 38 U.S.C. Chapter 31 or 34.

Summary of Comments and Responses

On Wednesday, June 24, 1987 the Secretary published a notice of proposed rulemaking for the Veterans Education Outreach Program in the **Federal Register** (52 FR 23774). One comment was received from the public. No significant changes have been made in the final regulations.

Comment: The commenter sought clarification of § 629.20(a)(3) regarding the $100 payment. He wanted to know if all honorably discharged veterans could be included in the student enrollment count, regardless of when they served (i.e., World War II, Korean War, Vietnam War, etc.).

Response: No change has been made. The statute does not impose any limitations on when a veteran's military service was rendered.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact: In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 629

Adult education, Colleges and universities, Education, Reporting and recordkeeping requirements, Veterans.

(Catalog of Federal Domestic Assistance Number 84.065: Veterans Education Outreach Program)

Dated: August 4, 1987.

Thomas K. Turnage

Administrator, Veterans Administration.

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 629 of Title 34 of the Code of Federal Regulations to read as follows:

PART 629—VETERANS EDUCATION OUTREACH PROGRAM

Subpart A—General

Sec.

Subpart B—How Does an Eligible Institution Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must a Grantee Meet?

Authority: 20 U.S.C. 1070e–1, unless otherwise noted.

Subpart A—General

§ 629.1 What is the Veterans Education Outreach Program?

The Veterans Education Outreach Program (VEOP) provides Federal financial assistance to institutions of higher education to provide certain services to veterans.

(Authority: 20 U.S.C. 1070e–1)

§ 629.2 Who is eligible for an award?

An institution of higher education, or any branch thereof which is located in a different community from that in which the parent institution is located, is eligible to receive an award if the institution or branch has—

(a) At least 100 veterans with honorable discharges in attendance as undergraduate students on April 16 of the current year; or

(b) Received an award under the Veterans Cost-of-Instruction Payments (VCIP) Program for a continuous period of three of the five most recent fiscal years ending on or before September 30, 1985.

(Authority: 20 U.S.C. 1070e–1)

§ 629.3 What definitions apply?

The following definitions apply to the regulations in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant

Application

Award
Department
EDGAR
Fiscal year
Grant period
Grantee
Secretary
State

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period beginning on July 1 and ending the following June 30.

"Counseling" means professional consultation on educational, vocational, personal, or family problems.

"Disabled veteran" means a veteran who—

(1) Is entitled to compensation, or who but for the receipt of military retired pay would be entitled to compensation, under laws administered by the Veterans' Administation;

(2) Was discharged or released from active duty because of a service-connected disability; or

(3) Has been certified by a physician as having a disability.

"Full-time student" means a student who is enrolled for the equivalent of not less than 12 semester hours and is being charged for tuition on the basis of the institution's full-time fee schedule.

"Institution of higher education" is defined in section 1201(a) of the Higher Education Act of 1965, as amended.

"Instructional expenses in academically related programs" means the funds expended by an instructional department of an institution of higher education for salaries, office expenses, equipment, and research.

"Outreach" means a coordinated, community-wide program of reaching veterans to encourage enrollment in, and completion of, postsecondary education, with special emphasis on educationally disadvantaged veterans, service-connected disabled veterans, other disabled or handicapped veterans, and incarcerated veterans within the institution's service area, including activities to determine their needs and to make appropriate referral and follow-up arrangements with relevant service agencies, as needed to encourage such enrollment and completion.

"Recruitment" means a concerted effort to enroll veterans in postsecondary training programs available at the institution or elsewhere.

"Special education programs" means remedial, tutorial, and motivational programs designed to promote success in postsecondary education.

"Student" means a person in attendance at an institution of higher education.

"Undergraduate student" means a student who is enrolled in an undergraduate course of study at an institution of higher education and has not been awarded a baccalaureate or first professional degree.

"Veteran" means a person who—

(1) Served on active duty in the Armed Forces for a continuous period of more than 180 days and was discharged or released with other than a dishonorable discharge;

(2) Was discharged or released from active duty in the Armed Forces because of a service-connected disability; or

(3) Is receiving or is eligible to receive benefits under 38 U.S.C. Chapter 30.

(Authority: 20 U.S.C. 1070e-1, 1088)

§ 629.4 What regulations apply?

The following regulations apply to the Veterans Education Outreach Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that apply to Department Regulations).

(4) 34 CFR Part 78 (Education Appeal Board).

(b) The regulations in this Part 629.

(Authority: 20 U.S.C. 1070e-1, 1088)

§ 629.5 What activities may a grantee support with VEOP funds?

(a) Except as provided in § 629.30(b)(2), a grantee may use VEOP funds only for the following activities:

(1) Maintaining an office of veterans' affairs which has responsibility for veterans' outreach, recruitment, special education programs, and the provision of educational, vocational, and personal counseling to veterans.

(2) Carrying out programs designed to prepare educationally disadvantaged veterans for postsecondary education for which they are receiving benefits under 38 U.S.C. Chapter 34, Subchapter V.

(3) Carrying out active outreach (with special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans), recruiting, and counseling activities, through the use of funds available under federally assisted work-study programs (with special emphasis on the veteran-student services program under 38 U.S.C. 1685).

(4) Carrying out an active tutorial assistance program for veterans, including disseminating information regarding the program, with special emphasis on making maximum use of the benefits available under 38 U.S.C. 1692.

(5) Assisting in the readjustment, rehabilitation, personal counseling, and employment needs of veterans.

(6) Coordinating activities carried out under this part with the Veterans Administration's—

(i) Readjustment counseling program authorized under 38 U.S.C. 612A; and

(ii) Programs of veterans employment and training authorized under the Job Training Partnership Act and under 38 U.S.C. Chapters 41 and 42.

(7) After the institution has carried out the activities described in paragraphs (a)(1)–(6) of this section, defraying instructional expenses in academically related programs.

(b) An institution may not use VEOP funds for a school or department of divinity or for any religious worship or sectarian activity.

(c) A grantee may use VEOP funds to pay travel expenditures only if the travel expenditures are incurred in connection with recruitment and outreach activities, or attendance at Department-sponsored meetings providing technical assistance or Department-approved professional meetings.

(Authority: 20 U.S.C. 1070e-1)

Subpart B—How Does an Eligible Institution Apply for an Award?

§ 629.10 What are the application requirements?

(a) An institution applying for funds under this part must submit an application in the form prescribed by the Secretary.

(b) Each application must contain the following:

(1) Information that shows the institution is eligible for an award under this part.

(2) Information necessary for the Secretary to determine the amount of the payment to which the applicant would be entitled.

(3) An assurance that the institution, during the fiscal year for which payment is sought, will expend the amounts required under § 629.31.

(4) Plans, policies, assurances, and procedures to ensure that the institution will—

(i) Make an adequate effort to carry out the activities described in § 629.5(a)(1) through (6); and

(ii) Use any awarded funds remaining, after the institution has carried out the activities described in § 629.5(a) (1) through (6), solely to defray instructional expenses in its academically related programs.

(5) An assurance that the institution will not use VEOP funds for a school or department of divinity or for any religious worship or sectarian activity.

(6) An assurance that the institution will submit to the Secretary the reports required by § 629.32.

(Authority: 20 U.S.C. 1070e–1)

(Approved by the Office of Management and Budget under control number 1840–0054)

Subpart C—How Does the Secretary Make an Award?

§ 629.20 How does the Secretary calculate the amount of the award?

(a) Except as otherwise provided in this section, for each veteran who is in attendance as a full-time undergraduate student, the Secretary pays to each eligible applicant the following:

(1) $300 for each veteran who is receiving—

(i) Vocational rehabilitation under 38 U.S.C. Chapter 31; or

(ii) Educational assistance under 38 U.S.C. Chapter 34.

(2) $150 for each veteran who—

(i) Has been the recipient of educational assistance under 38 U.S.C. Chapter 34, Subchapter V;

(ii) Has a service-connected disability as defined in 38 U.S.C. 101(16); or

(iii) Is a disabled veteran as defined in § 629.3.

(3) $100 for each veteran other than those listed in paragraphs (a)(1) and (a)(2) of this section, who has received an honorable discharge from military service but who is no longer eligible to, or does not, receive educational benefits under 38 U.S.C. Chapter 31 or 34.

(b) The Secretary reduces the amount of payment awarded for each veteran attending the institution on a less than full-time basis in proportion to the degree to which that person is attending on a less than full-time basis.

(c) The total payment that the Secretary makes in any fiscal year to an institution, or to an eligible branch thereof, is at least $1,000 but does not exceed $75,000.

(d) The Secretary apportions funds which become available as a result of the limitation on payments described in paragraph (c) of this section so that all grantees under this part receive—

(1) A payment of $9,000 or the amount to which it is entitled under paragraphs (a) and (b) of this section for that fiscal year (but not less than $1,000), whichever is lesser; and

(2) Additional amounts up to the $75,000 maximum for each eligible institution or eligible branch thereof.

(e) If the amount appropriated for any fiscal year is not sufficient to make payments in the amounts to which all applicants are entitled, the Secretary ratably reduces those payments. If any amounts become available for a fiscal year after such reductions have been imposed, the Secretary increases the reduced payments on the same basis as they were decreased.

(Authority: 20 U.S.C. 1070e–1)

Subpart D—What Conditions Must a Grantee Meet?

§ 629.30 How must a grantee use its award?

(a) Except as provided in paragraph (b) of this section, a grantee shall use—

(1) At least 90 percent of the amount it receives under this part, or the amount of funds needed to carry out the activities described in § 629.5(a)(1), whichever is greater, to carry out those activities;

(2) Any remaining awarded funds subject to this 90 percent limitation to carry out the activities described in § 629.5(a) (2) through (6); and

(3) Any remaining awarded funds—

(i) First, to carry out the activities described in § 629.5(a) (2) through (6); and

(ii) Then, to defray instructional expenses in its academically related programs.

(b)(1) The Secretary may waive the expenditure requirements of paragraphs (a) (1) and (2) of this section if he determines that the grantee is capable of adequately carrying out the activities described in § 629.5(a) (1) through (6) using less than 90 percent of its award. An institution that receives such a waiver may use any awarded funds remaining after carrying out the activities described in § 629.5(a) (1) through (6) to defray instructional expenses in its academically related programs, subject to any limitations imposed by the Secretary.

(2) In making the determination described in paragraph (b)(1) of this section, the Secretary may consider all aspects of the institution's programs for veterans, including, but not limited to the following:

(i) *Administration.* (A) Adequate identification of the veteran population in the institution's service area and adequate assessment of its needs related to postsecondary education;

(B) The employment of an adequate number of qualified staff members to support veterans' activities and services;

(C) The provision of adequate, prominently located, and accessible housing for the institution's office of veterans' affairs, in light of the institution's veteran student enrollment and physical environment; and

(D) The coordination of veterans' services with other campus services available to veterans, such as admissions, student financial assistance, counseling, job placement, and programs carried out by the Veterans Administration pursuant to 38 U.S.C.

(ii) *Outreach.* The establishment and maintenance of—

(A) Contact with veterans in the institution's service area;

(B) An effective procedure for assessing veterans' needs, problems, and interests related to postsecondary education; and

(C) An effective referral service involving agencies providing assistance in areas such as housing, employment, health, recreation, vocational and technical training, and financial assistance as such services are related to encouraging the pursuit of postsecondary education.

(iii) *Recruitment.* The establishment and maintenance of procedures for bringing veterans into programs of postsecondary education most suited to their educational and career aspirations, including such techniques as publications, use of mass media, and personal contacts.

(iv) *Special Education Programs.* The establishment and maintenance of support from appropriate departments of the institution for special remedial, motivational, and tutorial programs for veteran students.

(v) *Counseling.* The establishment and maintenance of ready access by veteran students to professional assistance and consultation on personal, family, educational, and career problems.

(c) If an institution cannot carry out all of the activities described in § 629.5(a) (1) through (6) due to limited veteran enrollment, the Secretary may permit one or more of the required activities to be carried out through a consortium agreement with one or more institutions of higher education.

(d) An award made in any fiscal year remains available for expenditure by the grantee for up to two academic years.

(Authority: 20 U.S.C. 1070e–1)

§ 629.31 What are the matching requirements?

(a) During the fiscal year for which it receives an award, a grantee shall expend from non-Federal sources—

(1) For all academically related programs of the institution, an amount at least as great as the average amount it expended for such programs during the three years preceding the grant year; and

(2) For the activities described in § 629.5(a), an amount at least as great as the amount of the grant.

(b) The Secretary applies the rules in 34 CFR Part 74, Subpart G, in assessing an institution's compliance with paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1070e–1)

§ 629.32 When must a grantee submit a proposed budget?

The grantee shall submit a proposed budget for the use of the funds it is awarded in any fiscal year under this program to the Secretary within 90 days of receipt of notice of its award.

(Authority: 20 U.S.C. 1070e–1)

(Approved by the Office of Management and Budget under control number 1840–0054)

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August 11, 1987

Part VIII

Department of Health and Human Services

Centers for Disease Control

National Institute for Occupational Safety and Health; Cooperative Agreements to Support Sentinel Event; Notification Systems for Occupational Risks (SENSOR) in State Health Departments; Availability of Funds for Fiscal Year 1987

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Cooperative Agreements To Support Sentinel Event; Notification Systems for Occupational Risks (SENSOR) in State Health Departments; Availability of Funds for Fiscal Year 1987

The National Institute for Occupational Safety and Health (NIOSH) solicits applications for cooperative agreements to provide assistance for: (1) Developing targeted, sentinel provider-based reporting activities in State health departments for selected occupational disorder; (2) enhancing the capability of State health departments, in collaboration with existing State expertise, to direct intervention and prevention activities to reported cases, co-workers of the cases, and the workplace; and (3) providing documented model(s) for use by other States that illustrate the development and implementation of occupational illness and injury reporting and intervention activities where no prior activity of this nature had existed. Awards will be made to State health departments both with and without prior activity in occupational disorder reporting *and* subsequent intervention.

Authority

The legislative authority for this program is contained in the Occupational Safety and Health Act and the Federal Mine Safety and Health Act; section 301(a) of the Public Health Service Act; and Title 31 U.S.C. 6301 and 6305. The Catalog of Federal Domestic Assistance number is 13.262

Program Objectives

Objectives of these cooperative agreements are to:

A. Assist State health departments in developing and/or refining targeted, sentinel provider-based reporting systems for selected occupational disorders.

B. Enhance the capability of State health departments to direct appropriate and effective intervention and prevention effors to the reported cases, the co-workers of the case, and the workplace.

C. Provide the opportunity for State health departments to evaluate the effectiveness of various methods of targeted sentinel reporting and intevention so that the most effective methods can be utilize by States.

D. Provide a collaborative focus for occupational health expertise already in existence in States.

E. Contribute to a better understanding of occupational hazards experienced by hazardous waste workers.

F. Ultimately reduce the occurrence and burden of occupational disorders in individual States and in the United States.

Eligibility Requirements

Eligible applicants are the official State Public Health agencies, including the District of Columbia, the Commonwealth of Pureto Rico, and any Territory or possession of the United States. Awards will be limited to States because of the appropriationess of utilizing State and related public health authorities for intervention into occupational health and safety problems.

Availability of Funds

Approximately $700,000 will be available in Fiscal Year 1987 to fund two to five Cooperative Agreements. The duration of these Cooperative Agreements is expected to be from 1 to 5 years. Each year is renewable subject to satisfactory performance and availability of resources.

Cooperative Activities

1. recipient Activities

a. Develop, implement, and maintain a targeted, sentinel provider-based reporting system for selected occupational disorder(s) linked to response and intervention efforts, to include:

(1) Designation of and maintenance of regular contact with sentinel providers in order to assist in recognition and receipt of case reports of selected occupational disorder(s). These disorders include one or more of the following: Carpal tunnel syndrome, lead poisoning/elevated blood lead levels in adults, noise-induced hearing loss, occupational asthma, pesticide poisoning, and/or silicosis. Other occupational disorders (e.g., burn injuries, asbestos-related disease, confined space injuries, etc.) may be placed under surveillance if justified by the State program.

(2) Sensitive, confidential attention to reported cases, including case confirmation and determination of appropriate, prioritized follow-up.

(3) Screening of co-workers of cases for possible disease, as appropriate.

(4) Coordination and/or conduct of appropriate and effective evaluation of worksite factors potentially responsible for the case.

(5) Preparation and distribution in the medical and public health communities, and to sentinel providers, of regular summaries of the characteristics of reported cases and resulting actions.

b. Draw upon and collaborate with occupational safety and health expertise available in the State from academic institutions, NIOSH Occupational Safety and Health Educational Resource Centers, occupational health groups, and other elements of State government (e.g., State labor departments), in order to provide technical consultation and training in a wide variety of occupational health issues, as well as consultative assistance to sentinel reporters and to the workplace.

c. Identify and evaluate the appropriateness of existing State legislation or other means available to maintain the confidential medical components of individual case reports, and to support sensitive case follow-up and workplace intervention activities.

d. Demonstrate the value of this surveillance effort to hazardous waste workers, in particular, through targeted follow-up of case reports of occupational disorders in workers associated with hazardous waste activities. Although the primary goals of the proposed provider-based identification and reporting of occupational disorders are intervention at the workplace and primary prevention activities, summary reviews of case reports also will provide information about hazards in relatively new occupations and activities through case report follow-up activities. In particular, we know very little about the specific occupational hazards and resulting health effects experienced by the thousands of workers at risk from exposure to hazardous waste or hazardous materials incidents. As case reports of occupational disorders associated with hazardous waste activities are reviewed and summarized, information about exposures and adverse health effects in hazardous waste workers and emergency response workers will allow more specific prevention activities in this new and expanding industry, and more specific training in the recognition and control of such hazards.

e. Evaluate the activities and outcomes of the targeted, provider-based reporting activities and interventions, including assessments of the degree of case ascertainment, number of workers affected by the program, effectiveness of worksite consultations and recommendations,

and appropriateness of the types of targeted sentinel reporters to the occupational condition(s) under surveillance.

2. CDC/NIOSH Activities

a. Provide technical assistance in all phases of the development, implementation, and maintenance of the reporting, consultation, training, and intervention activities.

b. Provide guidance on occupational conditions appropriate for reporting and intervention, to include recommended reporting guidelines and epidemiologic case definitions for carpal tunnel syndrome, lead poisoning/elevated blood lead levels in adults, noise-induced hearing loss, occupational asthma, pesticide poisoning, and silicosis.

c. Provide technical assistance in the evaluation of the results of the reporting and intervention activities.

d. Provide epidemiologic assistance and collaboration in the summarization, analyses, and distribution of information on reported cases and resulting actions.

e. Coordinated, among the States, the identification of the most effective methods and techniques for case reporting, intervention, and prevention activities.

Application Submission and Deadline

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before August 17, 1987, to: Henry Cassell, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications

Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Application Content

Applications must include a narrative which includes the following:

A. Briefly states the applicant's understanding of the need or problem to be addressed and the purpose of this Cooperative Agreement.

B. Documents the applicant's ability to provide staff, knowledge, and other resources required to perform the responsibilities in this project, and describe the approach to be used in carrying out those responsibilities.

C. Describes clearly the objectives of the project, the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, CDC, and any other entities for carrying out those steps.

D. Provides a proposed schedule for accomplishing each of the activities to be carried out in this project, and a method for evalulating the accomplishments.

E. Describes the names, qualifications, and time allocations of the professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

F. Specifies a proposed plan for administering this project, and the name, qualifications, and time allocations of the individual whom the applicant proposes to make responsible for its administration.

G. Provides a detailed budget which indicates (1) anticipated costs for personnel travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs.

Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Review and Evaluation Criteria

The application will be reviewed in accordance with PHS Grants Administration Manual, Part 134, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the merit of the application which will be based on the following:

A. Technical Approach

1. The applicant's understanding of the objectives of the proposed reporting and intervention activity.

2. Appropriate selection of one or more occupational conditions for reporting based upon documented and/or perceived risk to workers in the State, and documentation of the existence of relevant business and industry from which the conditions might arise.

3. Appropriate designation of proposed targeted sentinel reporters (e.g., pulmonary specialists and/or occupational specialists for silicosis, laboratories for elevated blood lead levels, etc.), and plans to explore other approaches to targeted case-finding.

4. Plans and capability to provide for maintenance of the confidential nature of individual case reports as medical information, and sensitivity to the need for careful management of each reported case especially with regard to his/her employment status.

5. Plans to provide consultation and training in the recognition of occupational disorders.

6. An approach to the development of feasible evaluation techniques for the reporting and intervention activities.

7. Proposed schedule for accomplishing the activities of the cooperative agreement, and a reasonable proposed budget which is consistent with the intended use of the CDC funds.

B. Background, Experience, and Capability

1. Experience of the proposed staff in conducting demonstration projects and other types of research and, in particular, the qualifications of the proposed project coordinator.

2. Experience in conducting, or intent and ability to direct and implement, directly or through collaborative association, workplace evaluations and issuance of workplace-specific recommendations for hazard abatement.

3. Identification of existing occupational health expertise in the State, especially in State government (e.g., State labor departments), and plans for creative coordination of and collaboration with this expertise for the purpose of implementing the proposed reporting, intervention, consultation, and training efforts.

C. State Commitment

1. Existence of prior and current occupational health activities and/or plans for new activities especially as they relate to varied approaches to the surveillance of occupational illness and injury (e.g., use of existing data sources, such as death certificates, for trend surveillance).

2. Ability and willingness to incorporate surveillance for occupational disorders as an integral part of State public health programs for identification, investigation, control, and prevention of disease, including the possibility of providing needed

additional State/local funds and/or staff time.

3. The proportion of the project coordinator's time that the State is willing to make available to the program.

Information

Information on application procedures, copies of application forms, and other material may be obtained from: Henry Cassell, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georga 30305, Telephone: (404) 262–6575.

Technical assistance may be obtained from: Patricia A. Honchar, M.S., Ph.D., Chief, Surveillance Coordinating Activity, Office of the Director, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 329–3901; FTS 236–3901.

Dated: August 7, 1987.

Larry W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

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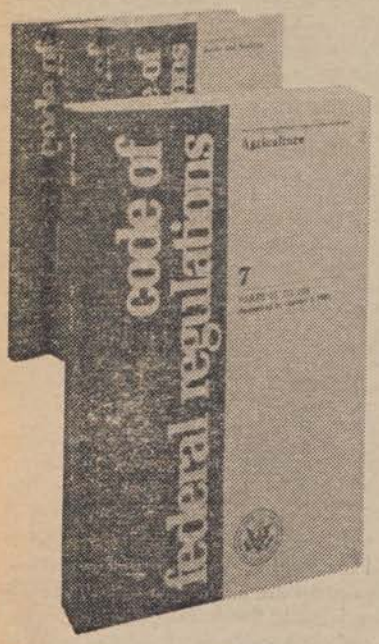

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