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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 729 and 1421

RIN 0560-AC66

1992-Crop National Poundage Quota, National Average Support Levels for Quota and Additional Peanuts, and Minimum CCC Export Edible Sales Price for Additional Peanuts

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, Untied States Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule establishes the 1992 national poundage quota for quota peanuts of 1,540,000 short tons (st), national average level of price support for quota peanuts of $674.93 per st, national average level of price support for additional peanuts of $131.09 per st, and minimum CCC sales price of additional peanuts for export edible use of $400.00 per st. These determinations were made pursuant to the statutory requirements of the Agricultural Adjustment Act of 1938, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990.

EFFECTIVE DATES: December 13, 1991, for § 729.214 (the national poundage quota). February 18, 1992, for § 1421.7(c)(8) (the national average support levels for quota and additional peanuts) and § 1421.27(a)(2) (i) and (ii) the minimum CCC sales price of additional peanuts for export edible use).

FOR FURTHER INFORMATION CONTACT: Ronald W. Holling, Tobacco and Peanuts Analysis Division, ASCS, USDA, room 3732, South Building, P.O. Box 2415, Washington, DC 20013, telephone 202-720-7477.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major". This rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Final Regulatory Impact Analyses discussing the impacts of the established quota, support levels, and minimum CCC sales price of additional peanuts for export edible use are available from the above-named person.

The titles and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State law, are not retroactive, and do not involve administrative appeals.

It has been determined that the Regulatory Flexibility Act is not applicable because neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

The amendments to 7 CFR parts 729 and 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Announcement of the Quota

Section 358-1(a)(1) of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), requires that the national poundage quota for peanuts for each of the 1991 through 1995 marketing years (MYs) be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each such MY to domestic edible, seed, and related uses. Section 358-1(a)(1) of the 1938 Act further provides that the national poundage quota for a MY shall not be less than 1,350,000 st. The MY for 1992-crop peanuts is from August 1, 1992 through July 31, 1993. Poundage quotas for the 1991-1995 crops of peanuts were approved by 98.2 percent of peanut growers voting in a referendum conductd December 10-13, 1990.

A proposed quota with a public comment period was published on November 21, 1991, in the **Federal Register** (56 FR 58672). The proposed quota was 1,610,000 st. The calculations included individual estimates for: (1) Domestic food use, (2) farm sales and local sales of peanuts, (3) seed, (4) crushing residual, (5) shrinkage and other losses, and (6) quota product exports. A number of comments were received. Following a review of the comments and more recent estimates made by he USDA Interagency Commodity Estimate Committee (ICEC) for Oilseeds, Oils, and Meals, the 1992 quota is established at 1,540,000 st. Updated data resulted in adjustments to the estimates for domestic food use, seed, and crushing residual. The adjustments in those three factors also produced a slight revision in the estimate for shrinkage and other losses. The differences between the estimates on which the proposed quota was based versus the estimates on which the final quota was established are set out in the following table:

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES

Item	Quota in short tons	
	Proposed [1]	Final [2]
Domestic Edible:		
Domestic food	1,211,000	1,186,000
On farm and local sales	21,000	21,000
Subtotal	1,232,000	1,207,000
Seed	119,000	106,000

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES—Continued

Item	Quota in short tons	
	Proposed [1]	Final [2]
Related Uses:		
Crushing residual	189,000	158,000
Shrinkage and other losses	49,000	48,000
Segregation 2 and 3 loan transfers to quota loan	20,000	20,000
Quota product exports	1,000	1,000
Subtotal	259,000	227,000
Total	1,610,000	1,540,000

[1] Contained in November 21, 1992, **Federal Register** publication.
[2] Final Quota Determination.

Discussion of the Comments on Proposed Quota and of the Revisions

A total of 23 comments was received during the public comment period that ended on December 9, 1991. Comments were submitted by two manufacturer/processor associations, eight manufacturers, three sheller associations, two farm bureaus, four grower associations or commissions, and four growers.

The comments and revisions made to derive the 1992-crop national quota are discussed below.

Overall Quota Level

A number of comments were directed to the overall quota level rather than to individual elements of the calculation.

The manufacturer/processor associations and all manufacturers either supported the proposed quota of 1,610,000 st or a larger quota. One sheller association supported a 1992 quota unchanged from the 1991 quota of 1,550,000 st, but also expressed that it did not have serious disagreement with the proposed quota. All other associations, bureaus, and commissions supported a quota reduction to 1,500,000 st. All growers supported a smaller quota than that which was proposed. However, no grower recommended a specific tonnage. As set forth below, adjustments were made in the quota from the proposed amount based on adjustments in the individual estimates of use.

Crushing Residual

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of quota farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. Manufacturers supported the past and proposed use of a 14-percent factor to account for the amount of crushing peanuts in a ton of farmer stock peanuts. Shellers/growers proposed use of a 12-percent factor and argued that the 14-percent factor should be reduced to reflect the blending of loose shelled kernels and a portion of 1 1/16 kernel splits back into domestic edible shelled peanuts. The prior use of the 14-percent factor was based on the assumption that loose shelled kernels and 1 1/16 kernel would be crushed. Following a review of the comments, it was determined that crushing peanuts will be approximately 12 percent, on a farmer stock basis, of the total MY 1992 domestic food and seed production.

Domestic edible use

One manufacturer/processor association estimated the growth in the quota should be 8 to 9 percent but provided no specific estimate for individual components of domestic edible use. The other manufacturer/processor association estimated the amount of peanuts to be used for domestic edible use to be 1,200,000 st. Sheller and grower associations estimated the amount of peanuts to be used for domestic edible use to be 1,150,000 st. As of December 11, 1991, the ICEC estimated the MY 1992 domestic edible peanut use at 1,200,000 st, down 25,000 st from the ICEC estimate used in connection with the proposed quota. An estimated of 1,200,000 st was determined appropriate but was further reduced by 14,000 st to account for product exporters. (In most instances, product exports are either made from, or may otherwise be credited under section 359a(e)(1) of the 1938 Act as being made from, additional peanuts.)

Seed Use

The seed estimate is based on the expected 1993-crop planted acreage for peanuts and the farmer stock equivalent of the seed needed to plant such acreage. Manufacturer and grower comments regarding this estimate varied concerning seeding rates. Manufacturers supported the use of a more traditional 110-pound-per-acre seeding rate. Shellers/growers proposed the use of a 90-pound-per-acre seeding rate. The sheller/grower recommendation was based on the improved accuracy of pneumatic planters and research enabling growers to have sustained yields with reduced seeding rates. The final seed estimate is based on a review of the most reliable data. ICEC concluded that a 95-pound-per-acre seeding rate is the best estimate.

Shrinkage and Other Losses

This estimate is based on multiplying a factor of 0.04 times domestic food use. Because the domestic food use estimate was revised downward, the estimate for shrinkage and other losses was lowered accordingly.

Quota Peanuts Support Level

The Agricultural Act of 1949, as amended, provides that the Secretary of Agriculture (Secretary) shall determine the rate of loans, payments, and purchases for the 1991–1995 crops of commodities without regard to the requirements for notice and public participation in rulemaking as prescribed in 5 U.S.C. 553 or in any directive of the Secretary.

The announcement of the national support level for the 1992 crop of quota and additional peanuts was required to be made by the Secretary no later than February 15, 1992.

In accordance with section 108B(a)(2) of the 1949 Act, as amended, the national average price support level for the 1992 crop of quota peanuts must be the corresponding 1991-crop price support level adjusted to reflect any increases in the national average cost of peanut production excluding any changes in the cost of land) during the calendar year immediately preceding MY 1992, except that the price support level cannot exceed the 1991-crop support level by more than 5 percent. The 1991-crop quota peanut price support level was $642.79 per st. The 1992-crop support level was determined based on the following estimates:

COST ESCALATOR CALCULATIONS

Variable/ component	1990 crop	1991 crop
Total Cash Expense, Capital Replacement, and Unpaid Labor, Less Land Return.	$507.76/acre	$567.91/acre.
Trend Yields	2,500 lbs/acre	2,500 lbs/acre.
Adjusted Costs Per Pound.	$0.20310	$0.22716.
	Dollars Per st.	
Adjusted Costs Per st.	1990	1991.
	406.21	454.33.

COST ESCALATOR CALCULATIONS—Continued

Variable/component	1990 crop	1991 crop
	1992 Quota Calculations Dollars per st.	
Change During 1991 in the Average Cost of Producing Peanuts.	48.12	
Maximum Increase (5%).	32.14	
1992 Quota Support Level.		642.79+32.14=674.93

Source: T&PAD/ASCS/USDA January 1992.

As indicated in the chart, which was derived form data of the USDA, Economic Research Service, relevant peanut production costs, as calculated in accordance with the statute, increased $48.12 per st, exceeding the maximum permitted 5-percent increase ($32.14 per st). The 1992-crop quota peanut price support level is accordingly established at $674.93 per st.

Additional Peanut Support Level

Section 108B(b)(1) of the 1949 Act, as amended, provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The price support level for additional peanuts is established at $131.09 per st to assure no losses to CCC from the sale or disposal of such peanuts. It reflects the average 1991 soybean oil and meal price equivalent of $192.24 per st less an estimated carrying cost of $61.15 per st on 1991 loan inventory. Peanuts pledged as collateral for a price support loan are sold to recover the loan and related costs. The $131.09 per st support level will provide a reasonable margin of error to prevent losses to the CCC on the sale and disposition of 1992-crop additional peanuts. Prior to making this determination, the following information was considered.

The domestic use of peanut oil during MY 1992 is forecast to be 100,500 st, down 20 percent from MY 1991 projected domestic use. MY 1992 peanut oil beginning stocks are expected to be 30,000 st, up 240 percent from MY 1991. MY 1992 peanut oil prices are expected to average 26.5 cents per pound, up 4.5 cents per pound from MY 1991 prices, but lagging well behind the average price of 45.5 cents per pound for MY 1990.

The domestic use of peanut meal during MY 1992 is forecast to be 65,000 st, down 19,500 st from MY 1991 projected domestic use. MY 1992 peanut meal beginning stocks are expected to be 5,000 st, up 11 percent from MY 1991. Peanut meal prices are expected to average $175.00 per st, up $2.50 per st from MY 1991 prices, but lagging behind the average price of $193.00 per st for MY 1990.

The average price for soybean oil for MY 1992 is forecast to be 19.0 cents per pound, unchanged from MY 1991. The domestic disappearance of soybean oil during MY 1992 is forecast to be 6,200,000 st, up less than 1 percent from projected MY 1991 domestic disappearance. MY 1992 soybean oil beginning stocks are expected to be 1,125,000 st, up 242,500 st from MY 1991.

The average price for cottonseed oil for MY 1992 is forecast to be 18.75 cents per pound, up 0.25 cents per pound from MY 1991. The domestic disappearance of cottonseed oil during MY 1992 is forecast to be 505,000 st, up 7 percent from projected MY 1991 domestic disappearance. MY 1992 cottonseed oil beginning stocks are expected to be 80,000 st, up 12,000 st from MY 1991.

The average soybean meal price for MY 1992 is forecast to be $170.00 per st, down $2.50 per st from MY 1991. The domestic disappearance of soybean meal during MY 1992 is forecast to be 23,300,000 st, down 1 percent from projected MY 1991 domestic disappearance. MY 1992 soybean meal beginning stocks are expected to be 300,000 st, up 15,000 st from MY 1991.

The average cottonseed meal price for MY 1992 is forecast to be $140.00 per st, down $5.00 per st from MY 1991. The domestic disappearance of cottonseed meal during MY 1991 is forecast to be 1,845,000 st, up 4 percent from projected MY 1991 domestic disappearance. MY 1992 cottonseed meal beginning stocks are expected to be 75,000 st, down 20 percent from MY 1991.

The world use of peanuts for MY 1991 is expected to be 23.03 million metric tons, up 0.5 percent from MY 1990. World peanut production for MY 1991 is forecast to be a record 23.51 million metric tons, up 3 percent from MY 1990. Ending stocks for MY 1991 are forecast at 0.75 million metric tons, up 63 percent from MY 1990.

Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

The announcement of a minimum price at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is announced at the same time that the quota and additional peanut support level are announced. Thus, producers and handlers have information to facilitate the negotiation of private contracts for the sale of additional peanuts.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the price could unnecessarily adversely affect prices paid to producers for additional peanuts.

The minimum price at which 1992-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is established at $400 per st. This level will provide price stability for additional peanuts sold under contract and provide some assurance to handlers that CCC will not undercut the handlers' export contracting efforts by offerings of additional peanuts for export edible sale below the historic minimum sales price.

List of Subjects

7 CFR Part 729

Poundage quotas, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 1421

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR parts 729 and 1421 are amended as follows:

PART 729—[AMENDED]

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c-3.

2. Part 729, subpart B, is amended by adding a new section, § 729.214, to read as follows:

§ 729.214 National poundage quota.

(a) The national poundage quota for quota peanuts for marketing year 1991 is 1,550,000 short tons.

(b) The national poundage quota for quota peanuts for marketing year 1992 is 1,540,000 short tons.

PART 1421—[AMENDED]

3. The authority citation for part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.7 is amended by revising paragraph (c)(8) to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(c) * * *

(8)(i) 1991 Peanuts, Quota—$642.79 per short ton; Additional—$149.75 per short ton;

(ii) 1992 Peanuts, Quota—$674.93 per short ton; Additional—$131.09 per short ton;

* * * * *

5. Section 1421.27(a)(2) (i) and (ii) is added to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a)(1) * * *

(2) * * *

(i) The 1991 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton;

(ii) The 1992 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton.

* * * * *

Signed at Washington, DC, on October 2, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–24589 Filed 10–8–92; 8:45 am]

BILLING CODE 3410–05–M

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD: Docket No. R-0753]

Truth in Savings; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Regulation DD (Docket No. R-0753) published September 21, 1992 (57 FR 43337). The regulation implements the Truth in Savings Act, which requires depository institutions to disclose fees, interest rates and other terms concerning deposit accounts, and limits the methods by which institutions determine the balance on which interest is calculated.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, or Jane Ahrens, Kurt Schumacher, or Mary Jane Seebach, Staff Attorneys (202/736-5500), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Regulation DD, which is the subject of these corrections, implements the Truth in Savings Act (12 U.S.C. 4301 *et seq.*, contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, 105 Stat. 2236).

Need for Correction

As published, the final regulation contains two drafting errors that may be confusing and should be clarified. Several minor typographical errors in the regulation appeared and are being corrected. Errors in the supplementary information that may be confusing are also being corrected at this time.

Correction of Publication

For the reasons set forth in the preamble, the publication on September 21, 1992 of the final regulations (Docket No. R-0753), which were the subject of FR Doc. 92-22478, is corrected as follows:

1. On page 43353, in the third column, in Paragraph (b)(6)(iii)—Withdrawal of interest prior to maturity, first sentence, the word "account" is corrected to read "amount".

2. On page 43362, in the third column, in Paragraph (a)(4)--Length of period, third paragraph, second sentence, the phrase "both April 30" is corrected to read "both April 1 and April 30".

3. On page 43371, in the third column, in Appendix A, Part I, B. Stepped-rate accounts (different rates apply in succeeding periods), second sentence, the word "but" is corrected to read "that".

4. On page 43372, in the second column, in Appendix A, Part I, D. Tiered-rate accounts (different rates apply to specified balance levels), Tiering Method A, second paragraph, third line from the top of the column, the word "within" is corrected to read "with".

PART 230 [CORRECTED]

§ 230.6 [Corrected]

5. On page 43379, in the second column, in § 230.6(a)(3), in the fourth and fifth lines, the words "dollar amounts of the" are removed.

Appendix A [Corrected]

6. On page 43380, in the second column, in Appendix A, introductory text, in the tenth line, the word "percentages" is corrected to read "percentage".

7. On page 43382, first column, in Appendix A, Part II, example (2), in the 16th line, the figure "6.69%" is corrected to read "5.40%".

8. On page 43382, first column, in Appendix A, Part II, example (2), in the equation in the last line, the figure "6.69%" is corrected to read "5.40%".

Appendix B [Corrected]

9. On page 43382, second column, in Appendix B, B-1 (a)(ii), under Limitations on Rate Changes, fourth line, the word "by" is corrected to read "be".

10. On page 43383, first column, in Appendix B, B-1 (f), Fees, the clause is corrected to read as follows:

* * * * *

(f) * * *

The following fees may be assessed against your account:

_____ $_____

_____ $_____

_____ $_____

_____ *(conditions for imposing fee)* $_____

_____ %

of _____.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-24623 Filed 10-8-92; 8:45 am]

BILLING CODE 6210-01-F

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615 and 627

RIN 3052-AA92

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Title V Conservators and Receivers

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations governing conservatorships and receiverships for which the Farm Credit System Insurance Corporation (Insurance Corporation) is appointed as conservator or receiver. These regulations were published as proposed regulations on June 3, 1992, 57 FR 23348. The final regulations reflect

amendments to the Farm Credit Act of 1971 by the Agricultural Credit Act of 1987 providing that, after January 5, 1993, the Insurance Corporation will be the exclusive entity appointed as conservator or receiver of a Farm Credit System institution (System institution or Farm Credit institution). Also adopted are amendments to existing conservatorship and receivership regulations, which continue to apply in situations where the Insurance Corporation is not appointed as conservator or receiver.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444,

or

John J. Hays, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

The Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding a new title V which provided for the establishment of the Insurance Corporation. New sections 5.51(5) and 5.58(9) of the Act empower the Insurance Corporation to act as conservator or receiver. The 1987 Act also amended section 4.12(b) of the Act to provide that, after January 5, 1993, the Insurance Corporation will be the exclusive entity to be appointed by the FCA as conservator or receiver of a System institution. In new part 627, the Board sets forth the powers and duties of the Insurance Corporation when it acts as conservator or receiver of a System institution. Other conservators or receivers will continue to be governed by the existing provisions in part 611, subparts K, L, M, and N of the regulations, as amended.

The Board's decision to promulgate separate regulations for conservatorships and receiverships for which the Insurance Corporation is the conservator or receiver is based on fundamental differences between the Insurance Corporation and other persons or entities that have previously been appointed to the position. The primary difference is that the Insurance Corporation is a Federal agency in its own right. Thus, provisions pertaining to the status of other conservators or receivers as agents of the FCA are unnecessary for the Insurance Corporation. In addition, the Board believes that retention of a Farm Credit charter by an institution for which the Insurance Corporation acts as receiver is no longer necessary in all circumstances and has provided that the Board may, in its discretion, cancel the charter at the commencement of such receivership or at any time thereafter. Finally, most of the provisions relating to FCA supervisory involvement have been removed. For a full discussion of these matters, see 57 FR 23348 (June 3, 1992).

II. Discussion of Comments

The FCA received comments from the Farm Credit Council (FCC) on behalf of its member System institutions, and from two Farm Credit Banks (FCBs). The FCBs' comments consisted of statements of support for the FCC's comments. Their comments are discussed below.

A. Definition of "Farm Credit institution"

The FCC objected to the inclusion of the Federal Farm Credit Banks Funding Corporation (Funding Corporation), the Farm Credit System Financial Assistance Corporation (FAC), and the Federal Agricultural Mortgage Corporation (Farmer Mac) in the definition of "Farm Credit institution" in proposed § 627.2705(b) for purposes of applying the conservatorship and receivership regulations. These institutions are also included in the definition of "bank" in existing regulation § 611.1170(h) of this chapter. The FCC questioned the appropriateness of applying the receivership procedures to these institutions on the ground that such institutions are "congressionally established."

The FCA Board agrees with the FCC that the institutions were either established by Congress, in the case of the Funding Corporation and Farmer Mac, or chartered by the FCA pursuant to congressional mandate, in the case of the FAC. All the institutions are, however, designated by statute as "institution[s] of the Farm Credit System." See sections 4.9(a), 6.20, and 8.1(a) (1) of the Act. Section 4.12(b) of the Act empowers the FCA Board to "appoint a conservator or receiver for any *System institution*" (emphasis added) if one or more specified grounds exist, and the FCA's power to appoint is exclusive. Should a System institution become insolvent or should any other ground for appointment of a conservator or receiver arise, only the FCA can appoint a conservator or receiver. There is no distinction made in the application of section 4.12(b) on the basis of how a System institution was created. Therefore, unless some other provision of the Act provides for a different treatment, the three institutions in question should be subject to section 4.12(b) and to the conservatorship and receivership regulations.

The provisions pertaining to the FCA's authority to regulate Farmer Mac are in title VIII of the Act. This title was amended by the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (1991 Amendments) (Pub. L. 102–237) to establish a regulatory scheme of FCA examination and supervision through the Office of Secondary Market Oversight (OSMO). New section 8.11(a) provides that the FCA shall act through OSMO to examine, supervise, and promulgate rules and regulations for Farmer Mac, and new section 8.37(b)(6) authorizes the Director of OSMO to "[a]ppoint a conservator for [Farmer Mac] consistent with this Act." [1] Furthermore, section 8.3(c)(6), which was enacted in 1988, provides that Farmer Mac shall "have succession until dissolved by a law enacted by the Congress." Therefore, it appears that the Act gives the FCA, acting through the OSMO Director, power to appoint a conservator but does not permit the FCA to place Farmer Mac in receivership. The FCA would appoint a receiver only if Congress enacts a new law directing or authorizing the agency to take such action. Consequently, the receivership regulations would be inapplicable to Farmer Mac.

In addition, the Board has determined that the conservatorship regulations adopted here today should not be applicable to Farmer Mac but should be addressed separately. The Board has therefore removed Farmer Mac from the definitions of "bank" and "Farm Credit institution" in the final regulations.

There is no other provision of the Act that specifically addresses the appointment of a conservator or receiver for the Funding Corporation or the FAC. Accordingly, it is the Board's view that section 4.12(b) applies to them and that these regulations should likewise be

[1] The FCA interprets "consistent with this Act" to mean that relevant provisions of section 4.12 apply—such as, for example, the provision that an institution has a right to challenge the appointment of a conservator, or the requirement that the Insurance Corporation be appointed to act as conservator.

applicable.[2] Therefore, the final regulations include the Funding Corporation and the FAC in the definitions of "bank" and "Farm Credit institution."

The FCA Board is aware of the special statutory origin of the Funding Corporation and the FAC. Should one or more of the grounds for appointment of a conservator or receiver ever arise at one of the institutions, the Board would not anticipate taking any action without full consideration of such institution's special status and consultation with appropriate parties. The Board notes that the nature of the operational activities of these two institutions makes it extremely unlikely that either would ever be placed in receivership, but should that occur, there should be some mechanism for winding up the affairs of the institutions. Also, when the FAC terminates its existence, it may be necessary to place the corporation in receivership to wind up its affairs. When and if any of these events occur, it should be the FCA that places them in receivership and the Insurance Corporation that acts as receiver.

B. Consultation With District Bank Before Voluntary Liquidation of Association

Section 627.2720 of the proposed regulations did not contain a requirement that the FCA consult with the district FCB before placing an association in voluntary receivership, as is currently required in § 611.1160(a) of this chapter. The FCC requested that the consultation requirement be added to new part 627, reasoning that the FCA would and should want to know the views of the association's largest creditor and bank, in light of the potential impact of the liquidation on the FCB itself and the other association stockholders in the district. The FCC also stated that, if the district FCB did not have the opportunity to express its views to the FCA prior to the liquidation, it seemed unreasonable and unworkable to expect the FCB to fulfill its statutory and regulatory requirement to "institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution" (section 4.12(a) of the Act).

The Board does not agree that it is "unreasonable and unworkable" to expect an FCB to fulfill its statutory duties if the FCB has not been consulted. The Board notes, however, that because the FCA would also be concerned about minimizing the adverse effects of a liquidation, the FCA would ordinarily be in contact with a district bank before approving an association's proposed voluntary liquidation. Although the Board does not believe it is necessary to place a consultation requirement in the regulations, in light of the FCC's concerns a provision has been added in § 627.2720(a) that the FCA may, in its discretion, consult with the district bank prior to approving a voluntary liquidation of an association.

The discretionary consultation provision should not, however, be construed as granting an FCB any right to prevent an association's proposed liquidation. Rather, the consultation would provide the FCA with additional information with which to decide whether to approve the liquidation and, if it is approved, how to arrange for continued Farm Credit service in the territory.

The FCC also requested the addition in part 627 of another provision of existing regulations that permits the board of directors of an institution in receivership, at the discretion of the FCA Board, to remain in office during the receivership to provide advice and recommendations to the receiver during the liquidation. The Board has decided not to add this provision to part 627 because it believes that the issue is now more appropriately the concern of the Insurance Corporation when it acts as receiver.

C. Cancellation of the Charter of an Institution in Receivership

The FCC questioned the appropriateness of canceling the charter of an institution at the commencement of a receivership, rather than at the end as is currently the practice. The FCC asserted that the charter cancellation "needlessly clouds" the issue of whether the institution has standing to challenge the imposition of an involuntary receivership.

The FCA Board does not believe that cancellation of the charter places any cloud on the right of the institution to bring an action, within 30 days after the appointment of a receiver, for an order requiring the FCA Board to remove the receiver. This right is expressly granted by section 4.12(b) of the Act, and no valid regulation can have the effect of overriding a statutory requirement.

However, the Board has determined that it will consider the merits of cancellation of the charter at the commencement of each receivership on a case-by-case basis. The Board expects that, ordinarily, the charter would be canceled when the Insurance Corporation is appointed as receiver. If circumstances indicate that there would be a benefit to retaining the charter of a specific institution for a period of time after the appointment of the receiver, the Board will have the flexibility to so provide. Therefore, the Board is adopting a provision that the Board may, in its discretion, cancel the charter of an institution in receivership at any time after the Insurance Corporation is appointed as receiver.

D. Ongoing and Future Credit Needs of Eligible Borrowers

The FCC requested that the Board clarify in the final regulations how the ongoing and future credit needs of eligible borrowers will be met in the territory formerly served by an association in liquidation. The Board has decided not to revise the proposed regulations in response to this comment because it believes that the organizational differences among districts are too numerous and the credit needs of eligible borrowers throughout the country are too various to address this issue through regulations. Thus, future credit needs will necessarily be addressed on a case-by-case basis.

List of Subjects

12 CFR Part 611

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons set forth in the preamble, parts 627, 611, and 615 of chapter VI, title 12 of the Code of Federal Regulations are added and amended, respectively, as follows:

1. A new part 627 is added to read as follows:

PART 627—TITLE V CONSERVATORS AND RECEIVERS

Subpart A—General

Sec.

Subpart B—Receivers and Receiverships

[2] The FCA interprets the FAC termination provision in section 6.31 of the Act to set a time after which the FAC authorities are extinguished, not to prohibit the placing of the institution in conservatorship or receivership.

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act; 12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7.

Subpart A—General

§ 627.2700 General—applicability.

The provisions of this part shall apply to conservatorships and receiverships of Farm Credit institutions for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver.

§ 627.2705 Definitions.

For purposes of this part the following definitions apply:

(a) *Act* means the Farm Credit Act of 1971, as amended.

(b) *Farm Credit institution(s)* or *institution(s)* means all associations, banks, service corporations chartered under title IV of the Act, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

(c) *Conservator* means the Farm Credit System Insurance Corporation acting in its capacity as conservator.

(d) *Insurance Corporation* means the Farm Credit System Insurance Corporation.

(e) *Receiver* means the Insurance Corporation acting in its capacity as receiver.

§ 627.2710 [Reserved]

§ 627.2715 Action for removal of conservator or receiver.

Upon the appointment of a conservator or receiver for a Farm Credit institution by the Farm Credit Administration Board pursuant to § 627.2710 of this part, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of subpart B or C of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by such institution's board of directors.

Subpart B—Receivers and Receiverships

§ 627.2720 Appointment of receiver.

(a) The board of directors of a Farm Credit institution, by the adoption of an appropriate resolution, may vote to liquidate the institution, and upon approval of the resolution by the Farm Credit Administration Board, the Board may, by order, place the Farm Credit institution in receivership. If the institution seeking to liquidate is an association, the Farm Credit Administration may, in its discretion, consult with the district bank prior to approving the association's resolution to liquidate.

(b) The Farm Credit Administration Board may, in its discretion, appoint ex parte and without notice a receiver for any Farm Credit institution in accordance with the grounds for appointment set forth in § 627.2710 of this part.

(c) The voluntary or involuntary liquidation of a Farm Credit institution shall be conducted by the receiver. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as receiver.

(d) Upon the appointment of the Insurance Corporation as receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the institution, and its district bank in the case of an association, and shall publish a notice of the appointment in the **Federal Register.**

(e) In the case of the voluntary or involuntary liquidation of an association, the district bank shall institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(f) Upon the issuance of the order placing a Farm Credit institution into liquidation and appointing the Insurance Corporation as receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the institution shall be vested exclusively in the receiver. The Farm Credit Administration Board may simultaneously, or any time thereafter, cancel the charter of the institution.

§ 627.2725 Powers and duties of the receiver.

(a) *General.* (1) Upon appointment as receiver, the receiver shall take possession of a Farm Credit institution pursuant to 12 U.S.C. 2183 and § 627.2710 of this part in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver is authorized to exercise all powers necessary to the efficient termination of an institution's operation as provided for in this subpart.

(2) Upon its appointment as receiver, the receiver automatically succeeds to—

(i) All rights, titles, powers and privileges of the institution and of any stockholder, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) Title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(3) The receiver of a Farm Credit institution serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the charter, articles, and bylaws of the institution.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the institution during the process of liquidating its assets and winding up its affairs.

(3) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(4) Borrow such sums as necessary to effectuate the purposes of the receivership.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the institution's assets or property or rehabilitate or improve such property and assets.

(6) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the institution has a lien or in which the institution has a

financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(7) Investigate any matter related to the conduct of the business of the institution, including, but not limited to, any claim of the institution against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(8) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the institution or in which the institution or its creditors or members have any interest, and represent in every way the institution, its members, and creditors.

(9) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(10) Hire any agents or employees necessary for proper administration of the receivership.

(11) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the institution's officers by authority of its board of directors.

(12) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note contract, judgment or decree, stock, or debt owed to the institution, or any property (real or personal, tangible or intangible).

(13) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(14) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(15) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the institution or receiver.

(16) Pay, out of the assets of the institution, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(17) Pay out of the assets of the institution all approved claims of indebtedness in accordance with priorities established in this subpart.

(18) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(19) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

(c) *Authority to pay claims.* The receiver of a bank is also empowered to pay claims of holders of notes, bonds, debentures, or other obligations issued by the bank under 12 U.S.C. 2153(c) or (d) in accordance with procedures specified by the Insurance Corporation pursuant to § 627.2740(d) of this part.

§ 627.2730 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the institution, no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate voluntarily the institution, the capital stock, participation certificates, equity reserves, and allocated equities of the institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities until such time as the stockholders of the institution or the Farm Credit Administration Board disapproves such resolution. In the event the resolution is approved by the stockholders of the institution and the Farm Credit Administration Board, and the institution is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the institution.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2735 Notice to holders of uninsured accounts and stockholders.

(a) Upon the placing of an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) as described in § 614.4513 of this chapter that the funds ceased earning interest when the receivership was instituted and will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

(b) As soon as practicable after the receiver takes possession of the institution, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(1) The number of shares such holder owns;

(2) That the stock and other equities of the institution may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the owners of such equities; and

(3) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 627.2740 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the institution, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the institution's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the institution's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final, unless, within 30 days after the notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this subpart and

in such manner and amounts as the receiver deems appropriate. In the event the institution has a claim against a creditor of the institution, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

(d) The claims of holders of notes, bonds, debentures, or other obligations issued by a bank under 12 U.S.C. 2153 (c) or (d) shall be made, if deemed necessary or appropriate, in accordance with procedures formulated by the Insurance Corporation. In the formulation of such procedures, the Insurance Corporation shall consult with the Farm Credit Administration.

§ 627.2745 Priority of claims—associations.

The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the association, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the association not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors, including the district bank, which are secured by assets or equities of the association in accordance with applicable Federal or State law.

(g) All claims of the district bank other than those provided for in paragraph (f) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock or other equity of the district bank owned by the association made in accordance with this paragraph or paragraph (f) of this section. Prior to making such setoff, the district bank must obtain the approval of the Farm Credit Administration Board for the retirement of such equities.

(h) All claims of general creditors.

§ 627.2750 Priority of claims—banks.

The following priority of claims shall apply to the distribution of the assets of a bank in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the bank, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the bank.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the bank whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the bank not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the bank, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of holders of bonds issued by the bank individually to the extent such are collateralized in accordance with 12 U.S.C. 2154.

(h) All claims of holders of consolidated and Systemwide bonds and claims of the other Farm Credit banks arising from their payments pursuant to 12 U.S.C. 2155.

(i) All claims of general creditors.

§ 627.2752 Priority of claims—other Farm Credit institutions.

The following priority of claims shall apply to the distribution of the assets of an institution, other than a bank or association, in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the institution, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the institution.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the institution whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the institution not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor)

for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the institution, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

§ 627.2755 Payment of claims.

(a) All claims of each class described in § 627.2745, § 627.2750, or § 627.2752 of this part, respectively, shall be paid in full, or provisions shall be made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay in full any class of claims described in § 627.2745, distribution on such class shall be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the institution to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the institution.

(c) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2760 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of an institution, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken.

(b) The institution in receivership shall be audited on an annual basis by a certified public accountant selected by the receiver.

(c) With respect to each receivership, the receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the institution in receivership or any member of the public, with a copy provided to the Farm Credit Administration.

(d) Upon the final liquidation of the institution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

§ 627.2765 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated, the charter shall be canceled by the Farm Credit Administration Board if such cancellation has not previously occurred, and the receiver shall be finally discharged and released.

Subpart C—Conservators and Conservatorships

§ 627.2770 Conservators.

(a) The Insurance Corporation shall be appointed as conservator by the Farm Credit Administration Board pursuant to section 4.12 of the Act and § 627.2710 of this part to take possession of an institution in accordance with the terms of the appointment. Upon appointment, the conservator shall direct the institution's further operation until the Farm Credit Administration Board decides whether to place the institution into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration Board that the institution can be returned to normal operations, the Farm Credit Administration Board may turn the institution over to such management as the Farm Credit Administration Board may direct.

(b) The conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in this subpart.

§ 627.2775 Appointment of a conservator.

(a) The Farm Credit Administration Board may appoint ex parte and without notice a conservator for any Farm Credit institution provided that one or more of the grounds for appointment as set forth in § 627.2710 exist.

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the Federal Register. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a Farm Credit institution in conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservator is responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Farm Credit Administration Board.

(e) The Board may, at any time, terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Board may designate, in which event the provisions of this subpart shall no longer apply.

§ 627.2780 Powers and duties of conservators.

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) The conservator may, with respect to Farm Credit institutions, exercise the powers that a receiver of an institution may exercise under any of the provisions of § 627.2725(b) of this part, except paragraphs § 627.2725 (b)(2) and (b)(17). In interpreting the applicable paragraphs for purposes of this section, the terms "conservator" and "conservatorship" shall be read for "receiver" and "receivership."

(c) The conservator may extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship.

(d) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the institution.

§ 627.2785 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a Farm Credit institution the conservator shall make an inventory of the assets and liabilities of the institution as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration in accordance with section 5.19 of the Act. The institution shall also be audited by a certified public accountant in accordance with part 621 of this chapter.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of

part 621 of this chapter. The conservator of the institution shall provide the certification required in § 621.12 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of part 620 of this chapter, and the certifications and signatures of the board of directors or management provided for in §§ 620.2(b), 620.2(c), and 620.5(m)(2) of this chapter shall be provided by the conservator of the institution.

§ 627.2790 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

PART 611—ORGANIZATION

2. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 [Amended]

3. Section 611.1155 is amended by adding two sentences to the end of the existing text to read:

§ 611.1155 General.

* * * Subparts K, L, M, and N of this part shall not apply to conservatorships or receiverships for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver. Such conservatorships and receiverships shall be governed by part 627 of this chapter.

§ 611.1156 [Redesignated]

4. Section 611.1156 is redesignated as § 627.2710, and paragraph (a) of newly designated § 627.2710 is revised to read as follows:

§ 627.2710 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, in its discretion, appoint a conservator or receiver for such institution. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as conservator or receiver.

* * * * *

§ 611.1157 [Amended]

5. Section 611.1157 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (a) and (b).

Subpart L—Liquidation of Associations

§ 611.1160 [Amended]

6. Section 611.1160 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g).

7. Section 611.1168 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1168 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the association in receivership or any member of the public.

* * * * *

Subpart M—Liquidation of Banks

§ 611.1170 [Amended]

8. Section 611.1170 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g); and by removing "the Federal Agricultural Mortgage Corporation," from paragraph (h).

9. Section 611.1175 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the bank in receivership or any member of the public.

* * * * *

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1180 [Amended]

10. Section 611.1180 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (a); and by removing "the Federal Agricultural Mortgage Corporation," from paragraph (f).

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

11. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25; 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

§ 615.5216 [Amended]

12. Section 615.5216 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (b).

Dated: October 2, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–24481 Filed 10–8–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM92–13–000; Order No 544]

Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities

Issued September 21, 1992

AGENCY: Federal Energy Regulatory Commission (Commission) DOE.

ACTION: Final rule.

SUMMARY: The Commission is issuing a final rule that requires companies (1) constructing natural gas facilities to transport natural gas pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA, or (2) replacing natural gas facilities pursuant to § 2.55(b) of the Commission's regulations, to notify the

Commission at least 30 days prior to commencing construction if the cost of the project exceeds the cost limit specified in the Commission's regulations. The purpose of this 30-day advance notification requirement is to enable the Commission to review the environmental impact of extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where warranted, to intervene.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paul W. Schach, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–2245.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabrandt, Elizabeth Anne Moler, Jerry J. Langdon, and Brando Terzic.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule that requires companies (1) constructing natural gas facilities to transport natural gas pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA),[1] or (2) replacing natural gas facilities pursuant to § 2.55(b) of the Commission's regulations,[2] to notify the Commission at least 30 days prior to commencing construction if the cost of the project exceeds the cost limit specified in Column 1 of Table I of § 157.208(d) of the regulations. That cost limit, which in 1992 is $6.2 million, is that applicable to the Part 157, Subpart F automatic authorization. The purpose of this 30-day advance notification requirement is to enable the Commission to review the environmental impact of extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where warranted, to intervene.

The Commission initiated this rulemaking proceeding by Notice of Proposed Rulemaking (NOPR) issued on August 3, 1992.[3] The objective was to re-promulgate regulations adopted in an interim rule, in Order No. 525,[4] and recently vacated on procedural grounds by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), in *Tennessee Gas Pipeline Company* v. *FERC (Tennessee)*.[5] While the NOPR proposed the identical regulations that were vacated, the commentors have persuaded us to modify our proposal substantially.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information required by the final rule's advance notification requirement to average approximately 5 hours per response. This estimate represents a weighted average for § 2.55(b) and section 311 filings. It recognizes the comments of four parties [6] that our previous estimate of 4 hours per response was too low. We anticipate that an average of 15 advance notifications will be filed each year. We thus estimate the annual reporting burden for advance notification filings to be about 75 hours.

We note that CNG, INGAA, and PGT claimed that 15 to 20 hours may be needed to prepare an advance notification. Transco stated that 12 hours was an approximate mean figure for its 1991 filings. No commentor, however, distinguished between § 2.55(b) and section 311 projects. We believe that § 2.55(b) filings cannot reasonably take longer than an average of 4 hours to prepare.

Regarding section 311 filings, we believe that 10 hours is a reasonable and conservative estimate of the time required, on average. We use as a starting point Transco's 12-hour estimate since it, apparently, was based on specific data. (CNG, INGAA, and PGT, we note, did not represent their 15- to 20-hour figures as average, but stated simply that some filings may take that long to prepare.) Additionally, many companies use standard forms for these filings, making data summarization easy. And many section 311 projects are no more extensive than § 2.55(b) projects. Therefore, such filings should not take significantly longer than § 2.55(b) filings.

Examining Transco's 12-hour figure, we note that it states that this estimate includes time to "research the project," internally review, and respond to subsequent inquiries. Since the Commission's § 157.206(d) regulations require certain things to be done and reports to be produced (but not filed), it is inappropriate, we believe, to include time involved with "researching the project" in the burden associated with the final rule. In addition, we have no way or determining whether the efficiency of Transco's internal review process is typical, and we believe that, for most filings for smaller section 311 projects, very little review time should be needed. Finally, Transco's figure is based on the first full year after implementation of the interim rule. We expect the time needed to prepare advance notifications to decrease as experience with the system grows. Thus, we believe 10 hours is a reasonable average burden for section 311 advance notification filings.

Regarding the final rule's annual reporting requirement, the Commission expects the public reporting burden to average approximately 41 hours per response. We anticipate that 55 pipeline respondents will file one annual report per year for a total annual reporting burden of 2,255 hours.

The industry burden associated with advance notification filings (75 hours) and annual report filings (2,255 hours) thus is expected to total approximately 2,330 hours per year. The average burden per filing (including both advance notifications and annual reports) is estimated to average 33.3 hours per filing. This includes the time needed to review instructions, search existing company files, gather and maintain the information needed, complete and review the collection of information, and file the information with the Commission.

[1] 15 U.S.C. 3301–3432 (1988).

[2] 18 CFR 2.55(b).

[3] Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities, IV FERC Stats. & Regs. ¶ 32,486 (1992) (Advance Notification NOPR); 57 *Fed. Reg.* 35,525 (Aug. 10, 1992).

[4] Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,895 (Order No. 525), *clarified*, 52 FERC ¶ 61,252, *reh'g denied*, 53 FERC ¶ 61,140 (1990) (Order No. 525–A).

[5] No. 90–1618 (July 14, 1992). The court's mandate issued on September 16, 1992, vacating the interim rule as of the date of the court's opinion, *i.e.*, July 14, 1992.

[6] CNG, INGAA, PGT, and Transco.

Send comments regarding these burden estimates or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capital Street, NE., Washington, DC 20426 [Attention: Mr. Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

III. Background

Section 2.55(b) of the Commission's regulations permits a natural gas pipeline company to replace existing facilities without prior authorization under section 7(c) of the Natural Gas Act (NGA).[7] Section 284.3(c) of the regulations provides automatic authorization to construct facilities that will be used solely for the transportation of natural gas pursuant to NGPA section 311. Section 284.11 requires any pipeline constructing, or abandoning and removing, facilities under § 284.3(c) to comply with the environmental terms and conditions of § 157.206(d).

On August 2, 1990, the Commission issued an interim rule in Order No. 525, without notice and comment.[8] On the same day, it issued a NOPR in a proceeding that has come to be known as the construction rule proceeding.[9]

The interim rule required natural gas pipelines to notify the Commission 30 days before commencing any replacement of facilities pursuant to § 2.55(b), or any section 311 construction or abandonment with removal of facilities pursuant to § 284.3(c). The notification had to include the following information: (1) A brief description of the facilities; (2) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities; and (3) a description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings. Additionally, for section 311 construction the pipeline also had to provide evidence of having met the Commission's environmental compliance procedure at § 157.206(d).

The purpose of the interim rule was to give the Commission a temporary procedure, pending adoption of a final rule in the construction rule proceeding, for reviewing section 311 construction activities under § 284.3(c), and replacement activities under § 2.55(b), before construction commenced. The Commission believed that the opportunity for prior review would allow it to take appropriate action where necessary to ensure compliance with the applicable environmental statutes and regulations.[10]

On September 20, 1991, the Commission issued a final rule in the construction rule proceeding, in Order No. 555.[11] For § 2.55(b) replacement activities, the Commission eliminated the 30-day advance notification requirement but narrowed the definition of exempt replacement activities, and added two new conditions, that together it believed would adequately minimize any potential adverse environmental impacts.[12] For section 311 construction, Order No. 555 adopted, at § 284.11(b) of the regulations, essentially the same 30-day advance notification requirement previously adopted as an interim rule.

Order No. 555 was scheduled to take effect on November 19, 1991 but, on November 13, 1991, the Commission postponed the effective date of the rule until 30 days after publication in the **Federal Register** of an order on rehearing.[13] This caused the interim rule to remain in effect. Rehearing of Order No. 555 is pending.

On July 14, 1992, as stated, the D.C. Circuit vacated the interim rule in Tennessee. The court found that the Commission had "failed to provide a sufficient basis for invoking the good cause exception" of the APA,[14] which permits an agency to promulgate a regulation without notice and comment under certain circumstances. The court's mandate issued on September 16, 1992, thus reinstating the pre-Order No. 525 regulations as of the date of the court's opinion on July 14, 1992.

IV. The Proposed Regulations

As stated, we instituted this rulemaking proceeding to repromulgate the same regulations vacated by the court in Tennessee. Specifically, we proposed to require a pipeline to notify the Commission 30 days prior to commencing: (1) Any section 311 construction, or abandonment with removal of facilities, pursuant to § 284.3(c) of the regulations; and (2) any replacement of facilities pursuant to § 2.55(b). Such advance notification, we believed, would enable the Commission to review planned activities before construction commenced and, where warranted, to intervene.

In proposing the same regulations vacated by the court, we expounded the identical rationale that the Commission previously adopted in promulgating the interim rule. We explained that originally it was thought that only very minor facilities, such as taps and interconnections, would be constructed under section 311, and that stringent Commission review therefore was unnecessary. As it turned out, however, pipelines viewed section 311 as a vehicle or constructing more extensive projects.[15] We gave two examples of section 311 construction that had proceeded without advance notification to the Commission and which, we believed, had presented serious environmental repercussions.[16] Without advance notification of section 311 construction projects, we stated, the Commission had no means, other than through the press, of being informed of such construction and ensuring environmental compliance.

Further, we stated that, like section 311 construction, the replacement of facilities under § 2.55(b) could be extensive. We noted that when § 2.55(b) was adopted over 40 years ago, [17] there

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[7] 15 U.S.C. 717–717z (1988).

[8] The Commission invoked the good cause exception of the Administrative Procedure Act (APA), which permits rulemaking without public notice and comment when an agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B) (1988).

[9] Revisions to Regulations Governing Certificates for Construction, IV FERC Stats. & Regs. ¶ 32,477 (1990). The construction rule proceeding involved numerous matters in addition to the one addressed by the interim rule.

[10] *See* Order No. 525, FERC Stats. & Regs., Regulations Preambles 1986–1990, at 31,812.

[11] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928 (1991).

[12] Specifically, Order No. 555 defined exempt replacement activities as involving "[f]acilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable to comply with Department of Transportation regulations * * *." In addition, the final rule required that: (1) Service through the replaced facilities not result in a reduction or abandonment of service; (2) the new facilities have a substantially equivalent designed delivery capacity as the old facilities; (3) the replacement occur within the pipeline's existing right-of-way; and (4) the old facilities be abandoned in compliance with the guidelines of the U.S. Environmental Protection Agency for facilities exposed to PCB contamination greater than 50 ppm.

[13] Revision to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928A (1991).

[14] Tennessee, slip op. at 2.

[15] As an example, we cited Arkla Energy Resources, a Division of Arkla, Inc., 54 FERC ¶ 61,033 (1991), where the Commission granted Arkla NGA section 7(c) authority to operate Line AC, a large diameter, 225-mile pipeline that Arkla previously had constructed pursuant to NGPA section 311.

[16] These examples, involving Transco and Questar, are discussed *infra*.

[17] See Order No. 148, 14 FR 681 (Feb. 16, 1949).

were fewer pipeline construction projects and the majority involved relatively short lengths of small-diameter pipeline. Over the years, an integrated and sophisticated national pipeline grid developed. Today, we stated, the replacement of facilities potentially could involve hundreds of miles of large-diameter pipeline. And the environment where a pipeline originally was laid may very well have changed completely by the time replacement occurred: what was once a rural area may now be densely populated. Accordingly, we believed that advance notification of § 2.55(b) replacement activities was as necessary as advance notification of section 311 construction projects.

V. The Commenting Parties

The 23 parties identified in the appendix to this order filed timely comments in response to the NOPR. (Beside the full name of each party is the shorthand name by which we refer to it in this order.)

In general, nearly all of the commenting pipelines and pipelines associations assail the proposed 30-day advance notification requirement for § 2.55(b) replacement activities. While many also oppose an advance notification requirement for section 311 construction, others, while less adamantly opposed to it, still believe it is overly broad as written. Only one pipeline, Texas Gas, states, albeit conditionally, that it does not object to complying with the proposed notification requirement.

Three commentors representing gas distribution companies [18] support a prior notification requirement for section 311 construction but oppose it for § 2.55(b) replacements. Another such commentor has no objection to an advance notification requirement for either type of activity.[19] All of these commentors, however, advocate some form of additional public notice of section 311 construction. We expand on these generalities, and discuss the particulars, in the immediately following section.

VI. Discussion

A. The Need For An Advance Notification Requirement

1. Commentors' Positions

a. *The Commission adduced insufficient data to support a need for the proposed rule.* Most commentors opposing the proposed rule in its entirety point out that the § 2.55(b) regulations were in effect for nearly 40 years, and the section 311 regulations nearly 11 years, with no prior notification requirement. The interim rule was in effect 2 years. The commentors argue that, despite all this experience, the Commission provided only scant evidence documenting either harm that occurred to the environment when no advance notification requirement was in effect, or potential harm that the interim rule averted.

Several commentors point out that the Commission cited just two examples to support the asserted need for the advance notification requirement. Both examples, they note, involved section 311 construction.

One case involved the construction by Transco of 138 miles of 30- and 42-inch pipeline, a compressor station, and other related facilities, at a cost of approximately $83 million.[20] The Commission found that, by failing to comply with the National Historic Preservation Act, Transco had seriously damaged or destroyed 48 archaeological sites. It required Transco to pay $25.5 million in civil penalties and reimbursements.

The other case involved the installation of approximately $75,000 of tie-in, metering, and regulating facilities by Questar at an existing regulation station. [21] The Commission imposed a $5,000 civil penalty on Questar for its inadvertent failure to provide the required 30-day advance notification, under the interim rule, and to consult certain agencies prior to beginning construction.[22]

Many commentors argue that these examples are meager evidence upon which to base a requirement affecting all section 311 construction and all § 2.55(b) replacement activities. Most argue that, even assuming that these examples are adequate to support some form of advance notification requirement for section 311 construction, they do not support the need to impose an advance notification requirement on § 2.55(b) replacement activities. As support, they point to the court's observation in Tennessee that "[i]t goes without saying that evidence of harm resulting from the past construction of a new [section 311] pipeline provides no support for the rule's requirement of advance notification of replacement work performed pursuant to section 2.55(b)." [23]

b. *Replacement activities already are subject to substantial environmental regulations.* In any event, PGT argues that replacement activities already are subject to substantial environmental requirements. For example, common replacement activities such as turbine and driver replacements are subject to rigorous air quality reviews under the New Source Review and Permitting processes of the U.S. Environmental Protection Agency (EPA), the states, and local air pollution control districts. Replacement activities involving PCB contaminated facilities are subject to EPA oversight. And pipelines must obtain individual permits from local districts for stream and road crossings, as well as permission from fish and wildlife agencies for river crossings. PGT argues that additional Commission oversight would only add a duplicative and unnecessary layer of regulatory review.

CNG asserts that one of the Commission's stated concerns for proposing an advance notification requirement for replacement activities—that a formerly rural area may now be densely populated—is assuaged by U.S. Department of Transportation (DOT) regulations. CNG states that DOT has defined class locations to ensure safe pipeline operations in populated areas.[24] The class location of a pipeline segment determines its MAOP. Whenever an increase in population density changes a pipeline segment's class location, the operator must lower the segment's MAOP or replace it with thicker walled pipeline.

c. *An advance notification requirement for replacement activities conflicts with DOT regulations.* Six parties [25] argue that, whereas the

[18] They are AGA (which also represents gas transmission companies), AGD, and So-Cal.

[19] NI-Gas.

[20] Transcontinental Gas Pipe Line Corp., 48 FERC ¶¶ 61,132 and 51,189 (1989), 55 FERC ¶ 61,318 (1991).

[21] Questar Pipeline Co., 57 FERC ¶ 61,058 (1991), 58 FERC ¶ 61,157 (1992).

[22] Questar objects to our citing its case with Transco's as representative of extensive section 311 construction that has "presented potentially serious environmental repercussions." It believes that this wrongly impugns its reputation and character, because: (1) There was never the potential for any environmental harm [all construction occurred on a previously heavily developed, fenced, and graveled site that had been in continuous use by Questar for 25 years]; (2) Questar voluntarily notified the Commission of its inadvertent failure to provide advance notification; (3) it cooperated fully with the Commission to remedy the inadvertent violation; and (4) it did not commence service until corrective regulatory action had been taken. We agree with Questar that its case is a bad example for the proposition cited. We no longer rely on it.

[23] Tennessee, slip op. at 8. The interim rule only cited the Transco Case. The Questar case occurred later and, as we have conceded above, is a poor example.

[24] 49 CFR 192.5 defines four class locations. For example, class 1 is any class location unit that has 10 or less buildings intended for human occupancy. Class 4 is any class location unit where buildings with four of more stories prevail.

[25] AGA, ANR, CNG, Enron, Great Lakes, and INGAA.

Commission stated, in both its clarification of the interim rule [26] and the new NOPR, that it does not intend the 30-day advance notification requirement to conflict with DOT's safety regulations, in fact it does.[27] The commentors point out that no segment of a pipeline may be operated unless it is maintained in compliance with the minimum federal safety standards established by DOT under the Natural Gas Pipeline Safety Act.[28] For example, a pipeline must report a safety-related condition to DOT within 5 working days after it is first determined to exist, and within 10 days after it is identified.[29] If permanent repairs are not feasible at the time of discovery, the operator must take "immediate temporary measures to protect the public * * *." [30] Failure to comply may lead to significant civil or criminal penalties.[31]

INGAA points out that, even assuming that our part 284, Subpart I regulations actually cover emergencies that require replacements, not all the replacements required by DOT constitute emergencies. Specifically, there are eight safety-related conditions that require a prompt report to DOT and immediate remedial action. Of these eight conditions, only one directly refers to an emergency.[32] The others focus on preventing emergencies.[33]

Several commentors,[34] however, argue that our own Part 284, Subpart I regulations do not cover emergencies requiring replacement activities. Thus, these regulations would not override, as the Commission asserted, the proposed 30-day advance notification requirement.

Additionally, the commentors argue that seeking a waiver of the advance notification requirement is not an adequate alternative because the process takes too long. CNG examined the five randomly selected cases that the Commission cited as evidence of its willingness to grant waivers. They took, it states, between 10 and 19 days to process.

d. *Alternatively, minor projects should be exempted from any advance notification requirement.* Many commentors argue alternatively that, if the Commission decides to adopt an advance notification requirement, for either section 311 construction, replacement activities, or both, minor facilities should be excluded from the requirement's scope. In this regard, they allege that the Commission overreacted to its stated reason for proposing the rule—to prevent potential damage to the environment—by seeking to include in the scope of its proposed remedy every section 311 construction project and every § 2.55(b) replacement activity. The commentors focus on the stated reason for the Commission's concern: that, where originally it was believed that only minor facilities would be constructed under section 311 or replaced pursuant to § 2.55(b), today both types of projects may be extensive. Assuming that this concern is valid (and many commentors dispute it with regard to replacement activities),[35] the commentors fault the Commission for not tailoring its proposal to this concern over extensive projects. Instead, the Commission proposed a broad, sweeping approach that would include in its scope all activities regardless of size, type, or potential environmental impact.

These commentors thus argue that if the Commission decides to adopt an advance notification requirement, it should exempt certain projects from it. Various commentors suggest various approaches, including excluding from the scope of the requirement: (1) Emergency replacements; [36] (2) minor replacements (*e.g.*, those less than 2 miles in length, and those inside the fence of an existing compressor station);[37] (3) projects costing less than the cost limit applicable to Part 157, Subpart F automatic authorization; [38] and (4) replacements costing less than $5 million.[39]

2. Commission Response

We conclude that a 30-day advance notification requirement is needed to enable the Commission to review extensive construction projects, under both section 311 and § 2.55(b), before they occur to ensure that they do not adversely affect the environment. The need for this advance notification derives from our mandate under the National Environmental Policy Act of 1969 (NEPA) [40] to weigh carefully the potential environmental impact of activities subject to our jurisdiction.

Section 311 construction activities, as stated, must comply with the environmental requirements at § 157.206(d) of the regulations. Although § 2.55(b) replacement activities are not subject to those environmental requirements, we may, where appropriate, require an environmental review.

Contrary to earlier statements that we first made in Order No. 525–A and repeated in the NOPR to this proceeding,[41] replacement activities are not categorically excluded under § 380.4 of our regulations from the need to prepare an environmental assessment (EA) or environmental impact statement (EIS).[42] Since the Commission thus has a responsibility under NEPA to review replacement activities that pose potentially serious, adverse environmental impacts, we need to be informed of such activities before they occur. The information submitted in the advance notification requirement that we are adopting here will allow us to review extensive replacement projects to determine whether additional environmental review is appropriate in a

[26] Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, 52 FERC at 61,877.

[27] In the NOPR, we emphasize that the proposed 30-day advance notification requirement would not conflict with DOT's regulations that require pipeline operators to take prompt action to correct safety-related conditions. We explained that the proposed rule would not override Commission regulations (at Part 284, Subpart I) that authorize pipelines to act immediately to correct conditions posing a safety hazard. Advance Notification NOPR, IV FERC Stats. & Regs. at 32,618.

[28] 49 U.S.C. 1671–1687 (1988); 49 CFR parts 191 and 192.

[29] 49 CFR 191.25(a).

[30] 49 CFR 192.711.

[31] 49 U.S.C. 1679a (1988).

[32] "A leak in a pipeline or LNG facility that contains or processes gas or LNG that constitutes an emergency." 49 CFR 191.23(6).

[33] Examples include: (1) General corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure; and (2) localized corrosion pitting to a degree where leakage might result. 49 CFR 191.23(1).

[34] AGA, CNG, Enron, and Great Lakes

[35] They acknowledge that while a replacement project could, conceivably, involve hundreds of miles of pipeline, as stated by the Commission, rarely does one involve more than a couple of miles of pipeline.

[36] AGA, CNG, and Great Lakes.

[37] AGA, ANR, CNG, PGT, Southern, and Texas Intrastates.

[38] Arkla, Tennessee, and Transco.

[39] PGT.

[40] 42 U.S.C. 4321–4370c (1988).

[41] See Order No. 525–A, 53 FERC at 61,470–471; Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617.

[42] In Order No. 486, the Commission rejected some commentors' requests to create a categorical exclusion for replacement activities. The Commission stated:

> Merely because land was disturbed when the trench was originally dug does not mean that replacing the old pipe with a new pipe will not disturb the environment. Such an action must be assessed in light of current land use and concerns about erosion, sediment control, impact on streams and soils, threatened and endangered species and potential PCB contamination.

Regulations Implementing the National Environmental Policy Act of 1969, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783, at 30,928 (1987) (Order No. 486), *on reh'g*, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,799 (1988) (Order No. 486–A). Moreover, the replacement of facilities does not appear in the codified list of categorical exclusions at § 380.4.

particular instance. The same holds true for section 311 construction.

Our concern is focused on extensive construction projects. We noted above the example involving Transco that resulted in serious environmental damage. That damage could have been averted had we had the opportunity to review the project's environmental compliance before construction began. That example, coupled with our responsibility under NEPA, is sufficient, we conclude, to require a 30-day advance notification requirement for extensive section 311 projects.

We cannot provide a similar example concerning an extensive replacement project that resulted in serious environmental damage. That is primarily because most facilities are replaced in small increments (often less than 1 mile in length) and, commonly, in previously certificated rights-of-way. As we stated in the NOPR, however, a replacement could, potentially, involve hundreds of miles of large-diameter pipeline.[43] Accordingly, the very real possibility that a replacement activity can be extensive, coupled again with our responsibility under NEPA, is sufficient, we conclude, to require pipelines to notify us in advance of extensive replacement projects.

The commentors thus have convinced us that we framed our proposed rule too broadly to deal with our more limited concern for averting the potentially serious environmental harm that extensive section 311 construction and replacement activities may cause. They thus have persuaded us to exclude from the advance notification requirement non-extensive section 311 construction and § 2.55(b) replacement activities.

The reasons are twofold. First, the construction or replacement of minor facilities does not present the same potential for serious environmental harm as more extensive projects due, simply, to their smaller scale. Second, while the potential for environmental harm is not eliminated in smaller section 311 construction and § 2.55(b) replacement projects, we have to balance the burden on pipelines of an advance notification requirement with the potential benefits of that requirement. For minor facilities, we conclude, the potential benefits do not outweigh the burdens, particularly because, before construction can begin, all section 311 projects must comply with the environmental terms and conditions of § 157.206(d) and all replacement activities must comply with the environmental requirements of other federal, state, and local agencies. We thus are comfortable in limiting our prior review of such projects to those involving the construction or replacement of extensive facilities.

Our task, then, is to translate our concern, which is limited to extensive section 311 construction and replacement projects, into a workable rule—in other words, to define the universe of non-extensive projects that properly should be excluded from the advance notification requirement. It is very difficult to define this universe by identifying every type of facility that properly should be exempted from the requirement, particularly on the existing record. By far the most workable approach, we conclude, is to adopt a project cost limit. Projects falling under that cost limit will be construed as non-extensive, for purposes of this rule, and not subject to the advance notification requirement. Conversely, projects costing more than that cost limit will be considered extensive and subject to the requirement.

We have chosen as the project cost limit for the final rule the cost limit applicable to the NGA section 7, automatic authorization (which also is known as the as the part 157, subpart F automatic authorization). That cost limit, found in Column 1 of Table I of § 157.208(d) of the regulations, is, for 1992, $6.2 million. It is revised annually for inflation. One benefit of adopting that cost limit for this rule's advance notification requirement is that NGA section 7, NGPA section 311, and § 2.55(b) replacement activities all will be treated alike for purposes of advance notification.[44] In short, for purposes of the advance notification requirement, we can find no reason to treat the three types of construction authorizations differently. In fact, we find it desirable, from both our perspective and that of affected pipelines, to treat them alike.

Additionally, we agree with the commentors that the proposed advance notification requirement for replacement activities, if adopted, potentially would conflict with DOT safety regulations and that our own part 284, subpart I regulations would not override it. The purpose of the subpart I regulations is to "exempt[] a person who engages in an emergency natural gas transaction * * * from the certificate requirements of section 7" of the NGA.[45] "Emergency natural gas transaction" is defined as the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to subpart I that is: (1) Necessary to alleviate an emergency; and (2) not anticipated to last more than 60 days.[46]

Thus, a safety related replacement activity does not fall squarely within the codified purpose of the subpart I regulations, since a § 2.55(b) replacement activity is, by definition, already exempt from the requirements of NGA section 7. Nor does it fall within the codified definition of an "emergency natural gas transaction," since it cannot meet the second proviso concerning the expected duration of the emergency. In addition, the preamble [47] adopting the subpart I regulations clearly indicates that the focus of that proceeding was on certain types of supply emergencies resulting, for example, from curtailments or weather induced increases in requirements. The preamble does not mention, directly or indirectly, facility replacements.

However, even assuming that the subpart I regulations do apply to emergency replacement activities, they would not override the 30-day advance notification requirement. Subpart I only would exempt emergency replacement activities from the certificate requirements of NGA section 7. However, by definition a § 2.55(b) replacement activity already is exempt from those requirements.[48] And the 30-day advance notification requirement is a § 2.55(b) requirement, not a section 7 requirement.

Thus, the part 284, subpart I regulations are inapposite to emergency replacement activities. In addition, an advance notification requirement would conflict with DOT safety regulations requiring immediate action to prevent safety related problems not yet

[43] As of September 3, 1992, the Commission received, under the interim rule, 643 advance notifications of replacement activities. Of that figure, 507 filings involved less than 1 mile of pipeline; 90 involved between 1 and 10 miles of pipeline; 19 between 11 and 20 miles of pipeline; and 27 filings involved more than 20 miles of pipeline (including two that involved more than 100 miles of pipeline).

[44] In this regard, we note that construction proceeding under the Part 157, Subpart F automatic authorization, while subject to the environmental requirements of § 157.206(d), is not subject to an advance notification requirement.

[45] 18 CFR 284.261.

[46] 18 CFR 284.262(d). "Emergency," in turn, is defined as "[a]ny situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for the protection of life or health or for maintenance of physical property." 18 CFR 284.262(a)(1)(iii).

[47] Emergency Natural Gas Sale, Transportation and Exchange Transactions, III FERC Stats. & Regs. ¶ 30,693 (1986) (Order No. 449).

[48] Section 2.55 reads, as pertinent, "For the purposes of section 7(c) of the Natural Gas Act, as amended, the word *facilities* as used therein shall be interpreted to exclude: * * * (b) *Replacement of facilities.* * * *"

constituting an emergency. Accordingly, to prevent a possible conflict between the 30-day advance notification requirement and DOT's regulations in the case of an immediately required replacement that costs more than the cost limit specified in Column 1 of Table I of § 157.208(d), we are specifically excluding from the scope of the advance notification requirement replacement activities that are required to be performed immediately under DOT safety regulations.

The general, 30-day advance notification requirement for replacement activities and section 311 construction is found, respectively, at § 2.55(b)(1)(iii) and § 284.11(b)(1) of the final regulations. The exception to that general requirement for projects costing less than the § 157.208(d) cost limit is found at § 2.55(b)(2)(i) and § 284.11(b)(2). And the exception to that requirement for replacement activities that are required to be performed immediately under DOT safety regulations is found at § 2.55(b)(2)(ii) of the final regulations.

B. The Applicability of the Advance Notification Requirement For Section 311 Construction to Intrastate Pipelines

Section 311 was enacted to allow interstate and intrastate pipelines to provide service which, being in interstate commerce, would otherwise fall under the requirements of the NGA, without subjecting those entities to the full panoply of federal jurisdiction. Part 284 of the Commission's regulations governs section 311 transactions. As noted in the NOPR,[49] under § 284.11 an intrastate pipeline constructing facilities to be used for section 311 transactions (which are in interstate commerce by their very nature) always has been held to the same § 157.206(d) environmental standards as an interstate pipeline in like circumstances. Similarly, the advance notification requirement for section 311 construction that we are adopting here applies to both interstate and intrastate pipelines constructing section 311 facilities.

1. Commentors' Positions

The Association of Texas Intrastates asks us to clarify the applicability of the advance notification requirement to intrastate pipelines. It notes that intrastate pipelines may construct three kinds of facilities: (1) Those used solely for intrastate service; (2) those used for intrastate service and for section 311(a)(2) service;[50] and (3) those used solely for section 311(a)(2) service. The Association of Texas Intrastates notes further that the NOPR indicated that the section 311 advance notification requirement would apply to any pipeline constructing under the section 311 construction authorization at § 284.3(c) of the regulations.[51] It asks us to clarify that the only facilities eligible to be built under that authorization are those utilized solely for section 311 transportation.

2. Commission Response

The Association of Texas Intrastates is correct. The final rule makes the section 311 advance notification requirement applicable to any construction or replacement activity performed pursuant to § 284.3(c) of the regulations that exceeds the applicable cost limit. By definition, the § 284.3(c) authorization can be used only to build facilities that will be utilized solely for section 311 transportation.

C. The Information Required in an Advance Notification

We are adopting the proposal set forth in the NOPR concerning the specific information that an advance notification must include. Under § 284.11(c) of the final regulations, an advance notification for section 311 construction must include the following information:

(1) A brief description of the facilities to be constructed or replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each of the environmental terms and conditions contained in § 157.206(d) of the regulations;

(3) Current U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

Under § 2.55(b)(3) of the final regulations, the advance notification for a replacement activity must include the information described in (1), (3), and (4) above. It need not include evidence of having complied with § 157.206(d) because replacement activities are not subject to those regulations.

We do not believe that collecting and collating this information for projects costing more than $6.2 million (for 1992) will be burdensome. All of the required information should be readily accessible to the pipeline. Any inconvenience to the pipeline that might be caused by the preparation of an advance notification should be minor when measured against the potential environmental damage that we are seeking to prevent.

1. Commentors' Positions

ANR and Columbia comment on the second element of the advance notification for section 311 construction that requires a pipeline to demonstrate that it has complied with the environmental terms and conditions of § 157.206(d) before filing the notification with the Commission. Columbia states that a minimum of six weeks is required to obtain clearances from state historic preservation officers for the construction of even minor facilities. Adding that 6-week period to the 30-day notification period thus delays at least 10 weeks the start of construction. Both ANR and Columbia request that we permit a pipeline to file an advance notification prior to its completing the § 157.206(d) environmental compliance process. The pipeline, however, would have to complete that process prior to beginning construction.

2. Commission Response

The very purpose of the advance notification requirement is to enable the Commission to review an extensive project before construction commences and to ensure that the pipeline has in fact achieved compliance with the environmental terms and conditions of § 157.206(d). If we adopted Columbia's and ANR's suggestions, a pipeline could file an advance notification, complete the § 157.206(d) process 29 days later, and begin construction the next day. Under that scenario, we would have no opportunity to review the pipeline's environmental compliance before construction began, thus defeating the very purpose of the requirement. Accordingly, we reject the suggestion.

Additionally, we believe that, particularly for extensive projects costing more than $6.2 million (for 1992), a pipeline is likely to obtain the clearances required by § 157.206(d) prior to entering into contracts for the actual construction or ordering the necessary equipment for the job. Therefore, submitting this information 30 days prior to the start of construction is not unreasonable and should not delay planned activities. In any event, in an unusual situation a pipeline may seek a waiver of the requirement.

[49] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617; *see also* Order No. 525–A, 53 FERC at 61,471.

[50] Section 311(a)(2) service is service by an intrastate pipeline on behalf of an interstate pipeline or an LDC served by an interstate pipeline.

[51] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617.

D. Reporting Requirements

1. One-Time Reports

It is likely that some section 311 construction or § 2.55(b) replacement activities may have commenced, or will commence, during the hiatus when the pre-Order No. 525 regulations are in effect—*i.e.*, between July 14, 1992 (the day the court's opinion in Tennessee issued) and the date this final rule takes effect (*i.e.*, November 9, 1992). Accordingly, to avoid a gap in the Commission's knowledge of projects commenced during that time, we are adopting the proposal set forth in the NOPR, at § 2.55(b)(4)(i) and § 284.11(d)(1) of the final regulations, and requiring pipelines to submit, within 30 days of this rule's effective date, a one-time report informing the Commission of every construction and replacement project costing more than $6.2 million that they commenced during the hiatus. If, for any reason, a pipeline filed an advance notification for a project commenced on or after July 14, 1992, it may reference that filing in its one-time report without repeating the required information.

2. Annual Reports

Additionally, we are adopting an annual reporting requirement at § 2.55(b)(4)(ii) and § 284.11(d)(2) of the final regulations. Under it, a company must file an annual report by May 1 of each year that includes, for each section 311 construction and § 2.55(b) replacement activity that it completed during the previous calendar year that was exempt from the advance notification requirement, the information required for an advance notification.

The annual reporting requirement will serve two purposes. First, it will allow the Commission to verify that pipelines are complying on their own with all applicable environmental requirements and, consequently, that the limited advance notification requirement is working. Second, as it will inform the Commission of all projects not subject to the advance notification requirement, it will bridge a gap in the Commission's knowledge of such activities. We note that this annual reporting requirement parallels a similar reporting requirement for projects authorized under the Part 157, Subpart F automatic authorization.[52]

In preparing this annual report, a company need not repeat information that is common to all projects. For example, if the company uses the same erosion control plan for all projects, it only has to describe it once. This should simplify and make less burdensome the requirement.

E. Matters Not Within the Scope Of This Proceeding

We noted in the NOPR that the proposed regulation at § 2.55(b) was somewhat different from the one adopted in Order No. 555 (which we described above, and which was stayed pending rehearing generally of Order No. 555). Because of the need to react quickly to the court's decision in Tennessee to ensure that some mechanism was in place to enable us to review both section 311 construction and § 2.55(b) replacement activities before construction commenced, we stated that we would not consider in this proceeding any of the issues raised on rehearing of Order No. 555 concerning the § 2.55(b) regulation adopted there.[53] We also should have stated expressly that we would not consider here any section 311 issues raised on rehearing of Order No. 555.

In this regard, we note that AGA, AGD, NI-Gas, and So-Cal have urged here that a pipeline be required to give either public notice of section 311 construction, or at least notice to affected LDCs and state commissions, in addition to Commission notification. That matter not only is at issue on rehearing of Order No. 555 but also is outside the publicly noticed scope of this proceeding. Accordingly, we will not address it here.

F. Conclusion

In sum, we conclude that a 30-day advance notification requirement is necessary to enable the Commission to review extensive section 311 construction and § 2.55(b) replacement activities before they occur. It will enable the Commission, in the case of section 311 construction, to ensue that a pipeline has complied with the environmental requirements of § 157.206(d) of the regulations, and, in the case of § 2.55(b) replacements, to determine whether additional environmental review is needed. For purposes of this rule, only section 311 construction and § 2.55(b) replacement projects costing more than the cost limit specified in Column 1 of Table I of § 157.208(d) of the regulations will be considered extensive and thus subject to the 30-day advance notification requirement.

In practical terms, this should eliminate the vast majority of replacement and section 311 projects from the scope of the advance notification requirement. We note that, in the 25 months between August 2, 1990 (the day the interim rule took effect) and September 2, 1992, the Commission received 699 advance notifications for § 2.55(b) replacement projects and 202 advance notifications for section 311 projects. Only 25 of the former, and 5 of the latter, were for projects costing more than $6.2 million.

Finally, to avert any possible conflict with DOT regulations, § 2.55(b) replacements that are required to be performed immediately under DOT safety regulations will not be subject to the advance notification requirement.

VII. Environmental Analysis

Commission regulations require that an EA or EIS be prepared for any Commission action that may have a significant adverse effect on the human environment.[54] The Commission has categorically excluded certain actions from these requirements on the ground that they do not have a significant effect on the human environment.[55]

The final rule requires pipelines to notify the Commission prior to commencing certain construction activities. However, it does not alter the inherent nature of the activities or their impact upon the human environment. Accordingly, an EA is unnecessary and was not prepared.

VIII. Regulatory Flexibility Act Certification

The Commission certifies, pursuant to the Regulatory Flexibility Act of 1980 (RFA),[56] that the final rule will not have a "significant economic impact on a substantial number of small entities."[57] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens to small entities.

We conclude that this rule will not have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities, largely because we do not believe that most of the entities that will be affected by it fall within the RFA's definition of "small entity." [58] However, even if the

[52] See 18 CFR 157.207.

[53] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,619.

[54] See 18 CFR part 380.

[55] See 18 CFR 380.4.

[56] 5 U.S.C. 601–612 (1988).

[57] 5 U.S.C. 605(b) (1988).

[58] Section 601 of the RFA defines "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. In turn, a "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is

Continued

final rule were to affect a substantial number of small entities, we do not believe that its impact would be substantial. First, a substantial number of section 311 construction and § 2.55(b) replacement projects have been excluded from the scope of the final rule. Second, both the time needed to prepare an advance notification and the cost of doing so should be modest.

IX. Information Collection Requirements

The regulations of the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rules.[59]

The information collection form affected by the final rule's advance notification requirement is FERC–577(A), Gas Pipeline Certificates: Environmental Impact Statement, (1902–161). This information collection is required to enable the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. As previously discussed, the information required by the advance notification requirement will permit the Commission to review extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where necessary, to intervene. In addition, the annual report required by the final rule for projects not subject to the advance notification requirement will enable the Commission to verify pipelines' compliance with all applicable environmental requirements and, further, will bridge a gap in the Commission's knowledge of such projects.

An estimated 55 respondents on average per year will be affected by the final rule. The respondents will consist mostly of large interstate pipeline companies (approximately 50), with a few (approximately 5) medium to large intrastate pipeline companies. As stated, the public reporting burden with respect to the advance notification requirement is estimated to average approximately 5 burden hours per response. The public reporting burden with respect to the annual reporting requirement is estimated to average approximately 41 burden hours per response. The total public reporting burden with respect to the advance notification and annual reporting requirements is estimated to average approximately 33.3 hours per response or approximately 2,330 burden hours per year.

"independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

[59] 5 CFR part 1320.

X. Effective Date

This final rule is effective on November 9, 1992.

List of Subjects

18 CFR Part 2

Administrative practice and procedure; electric power; environmental impact statements; natural gas; pipelines; reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf; natural gas; reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 2 and 284 of chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825r, 2601–2645; and 42 U.S.C. 4321–4361, 7101–7352.

2. In § 2.55, paragraph (b) is revised to read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(b) *Replacement of facilities.* (1) Facilities which constitute the replacement of existing facilities that have or will soon become physically deteriorated or obsolete, to the extent that replacement is deemed advisable, if:

(i) The replacement will not result in a reduction or abandonment of service through the facilities;

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity as the facilities being replaced; and

(iii) Except as described in paragraph (b)(2) of this section, the company files notification of such activity with the Commission at least 30 days prior to commencing construction.

(2) *Advance notification not required.* The advance notification described in paragraph (b)(1)(iii) of this section is not required if:

(i) The cost of the replacement project does not exceed the cost limit specified in Column 1 of Table I of § 157.208(d) of this chapter; or

(ii) U.S. Department of Transportation safety regulations require that the replacement activity be performed immediately;

(3) *Contents of the advance notification.* The advance notification described in paragraph (b)(1)(iii) of this section must include the following information:

(i) A brief description of the facilities to be replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(ii) Current U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities to be replaced; and

(iii) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(4) *Reporting requirements.* (i) *One-time report.* A company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) a one-time report with the Commission, by December 9, 1992, that includes all of the information required in paragraph (b)(3) of this section, for any replacement activity authorized under paragraph (b)(1) of this section that cost more than $6.2 million and was commenced between July 14, 1992 and November 9, 1992.

(ii) *Annual report.* On or before May 1 of each year, a company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) an annual report that lists for the previous calendar year each replacement project that was completed pursuant to paragraph (b)(1) of this section and that was exempt from the advance notification requirement pursuant to paragraph (b)(2) of this section. For each such replacement project, the company must include all of the information described in paragraph (b)(3) of this section.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

4. Section 284.11 is revised to read as follows:

§ 284.11 Environmental compliance.

(a) Any activity involving the construction of, or the abandonment with removal of, facilities that is

authorized pursuant to § 284.3(c) and Subpart B or C of this part is subject to the terms and conditions of § 157.206(d) of this chapter.

(b) *Advance notification*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, at least 30 days prior to commencing construction a company must file notification with the Commission of any activity described in paragraph (a) of this section.

(2) *Exception.* The advance notification described in paragraph (b)(1) of this section is not required if the cost of the project does not exceed the cost limit specified in Column 1 of Table I of § 157.208(d) of this chapter.

(c) *Contents of advance notification.* The advance notification described in paragraph (b)(1) of this section must include the following information:

(1) A brief description of the facilities to be constructed or abandoned with removal of facilities (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each provision of § 157.206(d) of this chapter;

(3) Current U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(d) *Reporting requirements*—(1) *One-time report.* A company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) a one-time report with the Commission, by December 9, 1992, that includes all of the information required in paragraph (c) of this section, for any activity described in paragraph (a) of this section that cost more than $6.2 million and was commenced between July 14, 1992 and November 9, 1992.

(2) *Annual report.* On or before May 1 of each year, a company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) an annual report that lists for the previous calendar year each activity that is described in paragraph (a) of this section, and which was completed during the previous calendar year and exempt from the advance notification requirement pursuant to paragraph (b)(2) of this section. For each such activity, the company must include all of the information described in paragraph (c) of this section.

Appendix—Commentors

1. American Gas Association (AGA)
2. ANR Pipeline Company and Colorado Interstate Gas Company (ANR)
3. Arkla Pipeline Group (Arkla)
4. Associated Gas Distributors, Inc. (AGD)
5. Association of Texas Intrastate Natural Gas Pipelines (Association of Texas Intrastates)
6. CNG Transmission Corporation (CNG)
7. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia)
8. Enron Interstate Pipeline Companies (Enron)
9. Great Lakes Gas Transmission Limited Partnership (Great Lakes)
10. Interstate Natural Gas Association of America (INGAA)
11. K N Energy, Inc. (K N Energy)
12. Northern Illinois Gas Company, The Peoples Gas Light and Coke Company, and North Shore Gas Company (NI-Gas)
13. Pacific Gas Transmission Company (PGT)
14. Pacific Offshore Pipeline Company (Pacific Offshore)
15. Questar Pipeline Company (Questar)
16. Southern California Gas Company (So-Cal)
17. Southern Natural Gas Company (Southern)
18. Tennessee Gas Pipeline Company (Tennessee)
19. Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Algonquin Gas Transmission Company (Texas Eastern)
20. Texas Gas Transmission Corporation (Texas Gas)
21. Transcontinental Gas Pipe Line Corporation (Transco)
22. United Gas Pipe Line Company (United)
23. Williston Basin Interstate Pipeline Company (Williston)

[FR Doc. 92-24522 Filed 10-8-92; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM90-7-001; Order No. 537-A]

Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

Issued September 21, 1992

AGENCY: Federal Energy Regulatory Commission (Commission) DOE.

ACTION: Order on rehearing.

SUMMARY: On September 20, 1991, the Commission issued a final rule to revise its regulations governing transportation of natural gas by interstate and intrastate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA), and interstate pipelines under blanket certificates issued pursuant to Commission regulations. Order No. 537-A addresses requests for rehearing and/or clarification filed by ten parties.

In addition to clarifying various provisions of the final rule, Order No. 537-A grants rehearing with respect to new section 284.227 of the regulations promulgated by the final rule. Specifically, Order No. 537-A clarifies that intrastate pipelines holding limited-jurisdiction blanket certificates under section 284.227 may act in a chain to transport gas gathered by gathers in adjacent state or Federal waters for delivery in the intrastate pipelines' state of operation.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission has made this document available so that all interested persons may inspect or copy its contents during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of Order No. 537-A will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Order on Rehearing

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

Revisions to Regulations Governing Transportation under section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Docket No. RM90-7-001; Hadson Gas Systems, Inc., Docket No. GP88-11-004; Cascade Natural Gas Corp. v. Northwest Pipeline Corporation, *et al.*, Docket No. CP88-286-005; and Texas Eastern Transmission Corporation, Docket Nos. RP88-81-015, RP88-67-048, RP88-175-003.

I. Introduction

On September 20, 1991, the Federal Energy Regulatory Commission

(Commission) issued Order No. 537,[1] a final rule revising the regulations governing transportation by interstate and intrastate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA).[2] The final rule also revised the prior notice and protest procedures applicable to interstate pipelines' activities under part 284 blanket transportation certificates.[3] This order addresses requests for rehearing and clarification filed by Associated Gas Distributors (Gas Distributors), Association of Texas Intrastate Natural Gas Pipelines (Texas Intrastates), Houston Pipe Line Company (Houston), Ozark Gas Transmission (Ozark), United Texas Transmission Company (United Texas), Transcontinental Gas Pipe Line Corporation (Transco), United Distribution Companies (United Distribution), and Washington Gas Light Company, Frederick Gas Company, Inc., and Shenandoah Gas Company (Washington Gas), filing jointly.

II. Background

The final rule adopted a new interpretation of the "on behalf of" standard in section 311 of the NGPA, as applied to both interstate and intrastate pipelines.[4] Under the new rule, a transaction is authorized under section 311 if the "on behalf of" entity (1) has physical custody of and transports the gas at some point, or (2) holds title to the gas at some point for a purpose related to its identity as an intrastate pipeline, interstate pipeline, or local distribution company (LDC).[5] Further, an interstate pipeline's transportation service will qualify for section 311 authorization when the shipper/customer is either located in an LDC's service area or physically capable of receiving gas supplies directly from an intrastate pipeline if that LDC or intrastate pipeline certifies that the interstate pipeline's transportation service is on its behalf.

The final rule also adopted a new § 284.227 to provide limited-jurisdiction, blanket certificate authority under section 7 of the Natural Gas Act (NGA) authorizing intrastate pipelines to deliver directly to end users in their own states gas received by the intrastate pipelines from gatherers that gathered the gas in adjacent Federal waters or onshore or offshore in an adjacent state. Intrastate pipelines operating under this new authority must, with the exception of the "on behalf of" standard, comply with all conditions of subpart C of part 284, with subpart regulates intrastate pipelines performing services under section 311 of the NGPA.

The blanket certificate transportation regulations which apply to interstate pipelines were also revised in the final rule to operate similarly to the regulations in Subpart B of Part 284 governing section 311 transportation services performed by intrastate pipelines. The result of these revisions is that if any party files a complaint regarding an interstate pipeline's commencement of service, the interstate pipeline is able to continue service without interruption until the Commission issues an order requiring that the transportation service cease. These notification requirements applying to interstate pipelines performing service under blanket certificates were also revised to mirror those governing section 311 transportation services. The revised regulations provide that a pipeline that would provide service to a customer located in an LDC's service area is required to give prior written notice only to the LDC and its regulatory agency.

III. Requests for Rehearing and Clarification

A. Section 311 Issues

LDC Certification

In some instances, an interstate pipeline may receive gas that has been transported upstream by an intrastate pipeline. The interstate pipeline may rely on section 311 authority to deliver the gas directly to an end user, if the upstream intrastate pipeline is the designated "on behalf of" entity. In such instances, among others, the interstate pipeline's section 311 transportation authority does not depend on an "on behalf of" certification by an LDC whose service area includes the end user. However, in any instance where an end user is located in an LDC's service area, § 284.106(a)(4) of the regulations requires notification to the LDC prior to an interstate pipeline transporting gas under section 311 in an arrangement that will bypass the LDC.

United Distribution claims that an LDC within whose service area and end user is located should always certify that the transportation is on its behalf in order to prevent contorted transactions designed to avoid giving an LDC notice, or obtaining the LDC's support, and to prevent the construction of duplicative facilities. United Distribution emphasizes that the LDC may have existing facilities in the area and may still be under public service obligations to provide service to the customer.

The Commission's Response

In any situation where an intrastate pipeline is performing a qualifying function and has agreed to be the on behalf of entity, the Commission is unwilling to mandate that an interstate pipeline must always get the LDC's certification when transporting in the LDC's service area. Granting this authority to LDC's would effectively enable them to veto a potential transaction. This would frustrate and distort the market oriented industry structure the Commission is establishing. Section 311 of the NGPA sought to integrate intrastate and interstate gas markets by providing authority for interstate pipelines to transport on behalf of either intrastate pipelines or LDCs; thus, market integration is promoted if the interstate pipeline transports for the end user on behalf of either entity. We note, however, that even if the designated on behalf of entity is the intrastate pipeline, the interstate pipeline must give the LDC notice of the transaction. Notice to the LDC is required even though the LDC's certification is not.

Further, the state authorities have the means to address and adjust an LDC's service obligation to a particular end user served by an interstate pipeline transporting gas on behalf of an intrastate. Additionally, a state commission could adjust an LDC's service obligation to the extent that obligation would require the LDC to construct duplicative facilities. Moreover, the construction of duplicative facilities to permit transportation service by an interstate pipeline on behalf of an intrastate pipeline is not necessarily wasteful, but instead may be an efficient outcome if it is the result of economic pressure created by fair competition.

For instance, the construction of facilities by an interstate pipeline may allow an end user to choose among alternate sources of supply, instead of

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[1] 56 FR 50235 (Oct. 4, 1991), FERC Stats. & Regs., Regs. Preambles, ¶ 30,927 (1991).

[2] 15 U.S.C. 3301–3432 (1988).

[3] 18 CFR 284.221.

[4] On August 2, 1990, the Commission issued a notice of proposed rulemaking (NOPR) stating its intent to revise its interpretation of the "on behalf of" standard of section 311 transportation for interstate pipelines as mandated by the Court in *Associated Gas Distributors* v. *FERC*, 899 F. 2d 1250 (D.C. Cir. 1990), *reh'g denied*, No. 88–1856 (D.C. Cir June 4, 1990). The Commission proposed to revise the standard as applied to intrastate pipelines as well. The Commission also proposed to substitute notification procedures applicable to Part 284 blanket certificates with procedures similar to those applicable to section 311 transportation services.

[5] An interstate pipeline may transport gas under section 311 authorization for services performed on behalf of an intrastate pipeline or an LDC; an intrastate may transport gas under section 311 authorization for services performed on behalf of an interstate pipeline or an LDC.

being limited to an LDC as its single source of potential gas supply. Such duplication in facilities is not wasteful, in our view, if it serves to increase competition among companies to provide gas to an end user, and if the construction is not unfairly subsized by other customers of the pipeline who will benefit from the facilities.

In the absence of unfair competition (*e.g.*, price squeeze or undue discrimination), our policy of permitting interstate pipelines to bypass service provided by, or which may be provided by, an LDC benefits all segments of the natural gas industry by increasing direct access to transportation and supply markets; encouraging responsiveness to supply and price signals; imposing on LDC's (which often have monopoly power) the need to discipline costs to maintain customers bases; and allowing pipelines to compete for markets served inefficiently.

The question of who should bear the cost burden of facilities which bypass LDC's can be resolved by the Commission when a pipeline seeks to recover the costs in a rate case. Any issues of unfair competition can be addressed through complaint proceedings. Under these circumstances, we believe that the rule provides adequate protection for consumers and LDCs alike against unfair competition and any wasteful duplication of facilities.

For the above reasons, we will deny United Distribution's request for rehearing on this issue.

Pipeline Tariff Requirements

United Distribution also requests that the Commission clarify that transactions which qualify as section 311 transportation under the rule's on behalf of standard do not also have to satisfy the "shipper must own" provisions in a pipeline's open access transportation tariff.

The Commission's Response

As noted both in the final rule and here, there are instances in which an interstate pipeline's transportation of gas qualifies as on behalf of an intrastate pipeline or LDC, but which does not involve the on behalf of entity holding title to the gas while it is being transported by the interstate pipeline. Thus, although a pipeline's tariff may require that the shipper hold title to gas while it is in the interstate pipeline's system, the on behalf of entity may hold title at some other point in the gas's journey to an end user or LDC. Therefore, the "shipper must own provisions" of a pipeline's tariff are not necessarily inconsistent with the standards for qualifying under section 311 as an on behalf of entity. However, a pipeline's tariff may not require that the shipper and the on behalf of entity be the same entity.

Section 311 Facilities Used for Converted Transportation

Transco submits that the Commission failed to prescribe a reasonable period of time for interstate pipelines to obtain certificate authority under section 7(c) of the NGA authorizing the operation of facilities built under section 311 authority, but now used for converted transportation service.[6] In the interim rule, the Commission exercised its authority under the exemption provision of section 7 of the NGA to permit the continued use of uncertificated section 311 facilities for converted transactions for the duration of the interim rule without the issuance of NGA certificates. In the final rule, the Commission denied Transco's Entrade's and PSI Marketing's requests to extend the section 7(c) exemption for section 311 facilities affected by the final rule. The final rule did not provide a time period in which interstate pipelines were required to obtain the necessary authorization to operate the facilities under section 7 of the NGA. The result, Transco asserts, is that the temporary authorization for the continued use of section 311 facilities expired upon the effective date of the final rule.

Transco requests that the Commission grant pipelines a three month period after the effective date of the final rule to obtain necessary authorizations. Transco states that the Commission's failure to prescribe a reasonable time period must have been unintentional since the Commission acknowledged in the interim rule that pipelines may need to obtain an NGA certificate authorization for the use of the facilities for converted services.[7] Transco also requests the Commission to extend the authorization necessary for the continued use of these section 311 facilities for converted transportation service until such time as an NGA certificate is obtained, for a period of time not to exceed three months.

The Commission Response

As we noted in the final rule, there are some section 311 facilities constructed prior to the interim rule that would have been eligible under the automatic or prior notice provisions for construction by interstate pipelines under their part 157, subpart F, blanket certificates; and we granted Transco's request for clarification that interstate pipelines may seek NGA certification for qualifying section 311 facilities under Part 157's automatic and prior notice blanket construction procedures.[8] On the other hand, some pipelines may need to file case-specific certificate applications for certain facilities which are not eligible under the automatic or prior notice provisions of Part 157. We conclude that it would have been appropriate to provide for a reasonable time period in which pipelines could apply for appropriate authority to operate facilities constructed prior to the interim rule and now used to provide converted services.

In the time period since the final rule was issued, many pipelines are likely to have applied for and obtained appropriate certificate authority to operate the facilities formerly operated pursuant to section 311 of the NGPA. However, since the final rule did not provide a time frame for doing so and since rehearing on this issue was pending, there may have been uncertainty in the industry as to when pipelines were required to obtain authority to operate facilities constructed prior to the interim rule and now used for converted section 311 service. Some pipelines may have delayed filing for appropriate authority in anticipation of clarification or rehearing of the final rule. To allay any concern regarding whether pipelines which have not yet applied for section 7(c) authority have been authorized to operate section 311 facilities currently used for converted transportation, we clarify that the temporary exemption has continued and will be continued until the pipelines obtain appropriate authority, as discussed below.

Pipelines which have not filed for appropriate certificate authority under the NGA will have three months from the date of issuance of this order on rehearing in which to apply. To the extent such authority has not been obtained within the three-month time period, the Commission will consider

[6] On the same day the NOPR was issued, the Commission issued an interim rule adopting the "hold title or transport" interpretation of the on behalf of standard for section 311 transportation performed by interstate pipelines until a final rule was promulgated. In addition to adopting the safe harbor standard, the Commission established procedures to expedite the conversion of existing section 311 transportation services to blanket certificates authorizations so as to prevent market disruption. FERC Stats. & Regs., Reg. Preambles (1986–1990), ¶30,894, *amended*, FERC Stats. & Regs., Reg. Preambles (1986–1990), ¶30,899, *reh'g denied*, 53 FERC § 61,141 (1990).

[7] FERC Stats. & Regs., Reg. Preambles (1986–1990), ¶30,894 at 31,795 n.7 (1990).

[8] FERC Stats. & Regs. Preambles, ¶30,927 at 30,206 (1991).

extensions of time on a case-by-case basis for pipelines with pending applications or prior notice filings. However, we urge all pipelines that must apply for certificate authority to do so as early as possible within the three-month time period.

B. New Section 284.227 Issues

Chain Transportation

Texas Intrastates, Houston, and United Texas request that the Commission revise new § 284.227 so that an intrastate pipeline may be eligible for a certificate to transport gas received from a qualifying gatherer to another intrastate pipeline in the same state which, in turn, delivers the gas to either another intrastate pipeline or an end user, thereby creating a chain of intrastate pipeline transportation links between the gatherer and the end user.

The parties point out that under the adopted § 284.227, the only transactions that appear qualify for the limited-jurisdiction blanket certificate involve a single intrastate pipeline as the link between the qualifying gatherer and the end user.

The Commission's Response

The final rule addressed circumstances where an intrastate pipeline receives gas from a gatherer who had gathered the gas from an adjacent State or from Federal waters and the intrastate pipeline's state of operation. In such cases, the intrastate does not necessarily transport the gas on behalf of an LDC or an interstate pipeline under the rule's new interpretation of the "on behalf of" requirement; therefore, the transportation is not authorized under section 311 of the NGPA. However, since the gas originates in an adjacent state or Federal waters, the intrastate is transporting the gas in interstate commerce. The question, therefore, arose as to the type of authority necessary to permit this type of transaction to occur without subjecting the intrastate pipeline and all of its facilities and operations to the jurisdiction of the Commission.

Through recognizing that only a small portion of intrastate pipelines' services include such transactions, the Commission concluded that transaction structured in this manner do enable parties to make efficient gas delivery arrangements and, while not authorized under section 311, do promote section 311's purpose of eliminating artificial restraints on the movement of gas supplies between interstate and intrastate markets. Accordingly, the rule adopted a new § 284.227 to provide that an intrastate pipeline would be eligible for a limited-jurisdiction blanket certificate in order to transport gas in the above-described situation.

As noted, the parties requesting rehearing point out that transaction involving gas gathered in an adjacent State or in Federal waters can be structured so that more than one intrastate pipeline provides the links between the gatherer and the end user. The parties emphasize that all of the intrastate pipelines would operate in the same State and the gas received from the gatherer would not leave the State in which the intrastate pipelines operate. Thus, these parties urge the Commission to revise § 284.227 to ensure that each intrastate pipeline's link is authorized in this type of transaction.

We agree that the requested revision of new § 284.227 is appropriate. As with single link transactions involving one intrastate pipeline, arrangements involving more than one intrastate pipeline, also promote section 311's purpose of eliminating artificial restraints on the movement of gas supplies between interstate and intrastate gas markets.

Therefore, in order to ensure that intrastate pipelines will be able to continue their involvement with these types of transactions, § 284.227 will be revised to clarify that more than one intrastate pipeline may rely on § 284.227's blanket certificate authorization to transport gas produced in adjacent Federal waters or onshore or offshore in an adjacent State if 91) the gas was received by the intrastate pipeline from a gatherer or other intrastate pipeline; (2) the intrastate pipeline delivers the gas in the intrastate pipeline's state of operation to an end user or another intrastate pipeline; and (3) the gas is ultimately used by an end user in the same State.

Section 601 Protection

Texas Intrastates and Houston further assert that since the limited-jurisdiction, blanket certificates will be authorized by section 7 of the NGA, rather than section 311 of the NGPA, intrastate pipelines that provide transportation services pursuant to such certificates are not longer afforded the protection of section 601 of the NGPA. Section 601 insulates an intrastate pipeline's section 311(a)(2) activities from the Commission's jurisdiction. They suggest a number of possible solutions to correct this alleged oversight.

The Commission's Response

The Commission stated in the final rule that an intrastate pipeline's acceptance of a blanket certificate under § 284.227, "will not subject the intrastate pipeline to the Commission's jurisdiction under the Natural Gas Act except to the extent necessary to ensure that services provided by the intrastate pipeline under the blanket certificate comply with the terms and conditions of the certificate."[9] The limited jurisdiction of the certificate attaches when the intrastate pipeline receives the gas to transport and ceases when it delivers the gas to its recipient, either an end-user or another intrastate pipeline.

Texas Intrastate's and Houston's concern is based on an assumption that because the gas which is moving in interstate commerce pursuant to an intrastate pipeline's limited-jurisdiction certificate will be commingled with gas moving in connection with the intrastate pipeline's nonjurisdictional activities, all of the gas in the system and the transportation of the commingled gas will become subject to Federal jurisdiction. This might be the result if the intrastate pipeline were undertaking these activities without its limited-jurisdiction certificate; however, the limited-jurisdiction certificate prevents this result. We reiterate that transportation performed pursuant to the limited-jurisdiction certificate authorized in § 284.227 will not affect the jurisdictional status of an intrastate's other activities.

Notice Requirements

United Distribution suggests that the Commission may not have met the notice and comments requirements of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*, since the limited-jurisdiction, blanket certificates were not raised in the NOPR. United Distribution is concerned about the potential use of the new certificates, with respect to both the number of intrastate pipelines using them and the types of services to be provided. To enable it to determine the impact of the new certificates, United Distribution requests clarification that an intrastate pipeline that accepts a limited-jurisdiction, blanket certificate under § 284.227 is subject to the same notice requirements as an interstate pipeline transporting under a part 284 blanket certificate.

The Commission's Response

We disagree with United Distribution's assertion that the APA's notice and comments requirements may not have been met. Although the limited-jurisdiction certificates were not

[9] FERC Stats. & Regs., Regs. Preambles, ¶ 30.927 at 30.203 (1991).

specifically mentioned in the NOPR, § 284.227 is a logical outgrowth of the notice and comments already given.[10] The Commission proposed in the NOPR to revise the regulations governing section 311 transportation by intrastate pipelines. As stated in the final rule, Texas Intrastates and Houston raised in their comments the issue of how to treat transactions previously performed under section 311 involving intrastate pipelines and gatherers that gathered the gas in adjacent Federal waters or onshore or offshore in adjacent states. The adoption of § 284.227 was a logical and rational resolution of this issue.

United Distribution also asks that the Commission clarify that an intrastate pipeline holding a certificate under § 284.227 is subject to the same notice requirements as an interstate pipeline transporting under its part 284 blanket certificate transportation. We note that section 284.227(e) provides that the intrastate pipeline's authority is subject to the intrastate pipeline's compliance with all the terms and conditions of subpart C of part 284, which includes the reporting requirements of § 284.126.

C. Prior Notice and Protest Procedure Issues

Removal of the Prior Notice and Protest Procedures

Gas Distributors, Washington Gas, and United Distribution oppose the revisions to the prior notice and protest procedures applicable to intrastate pipelines performing transportation services under their part 284 blanket certificates. These parties maintain that the notice and protest procedures are an essential element of blanket certificate transportation services and assist the Commission in the administration of its section 7(c) duties. They further argue that the revisions are contrary to the public interest and in conflict with Order No. 436.[11] They contend that the Commission's assertion of administrative burden is unsubstantiated and an inadequate justification for depriving interested parties of notice and an opportunity to be heard.

Gas Distributors, Washington Gas, and United Distribution maintain that, contrary to the Commission's assertions, the complaint procedures are insufficient to handle potential protests of blanket certificate transportation transactions. They contend that the time involved in the processing of complaints is too long for this to be a viable forum for resolution of matters related to open-access transportation. Gas Distributors and Washington Gas suggest that the Commission consider promulgating regulations, such as requiring the resolution of complaints within 60 days, to ensure that the process is more reliable.

They further submit that the Commission erred when it stated in the final rule that LDCs will have sufficient notice of transportation transactions by interstate pipelines when sales and delivery taps are constructed under a pipeline's part 157, Subpart F, blanket facilities certificate because the Commission, in Order No. 555, eliminated any requirement for notice to anyone other than the Commission for certain facilities.[12]

Gas Distributors, Washington Gas, and United Distribution believe that, rather than substituting the section 311 notification requirement for the blanket regulations' notice and protest procedures, the blanket regulations should have been substituted for the section 311 provisions. If the Commission does not impose the notice and protest procedures on section 311 transportation, at a minimum, the Commission should revise the section 311 notice procedures to require thirty days prior public notice, rather than requiring notice to an LDC and its state agency at any time prior to the commencement of the transportation. Thus, even if an LDC is not on behalf of the party, it would receive at least thirty days notice. Such a measure would allot the LDC a sufficient period to respond competitively to the possible changes in service demand and cost.

The Commission Response

As stated in the final rule, every individual blanket transportation service need not be made subject to the notice and hearing requirements of section 7(c) of the NGA. The rulemaking proceeding satisfies the NGA's statutory hearing requirements.

Furthermore, the fact that in Order No. 436 the Commission chose to impose a Federal Register notice requirement and other specific protest procedures for blanket certificate transportation services did not bar the Commission from modifying such procedures at a later date. Although the Commission concluded in Order No. 436 that the notice and protest procedures for blanket transportation services would be an effective mechanism for protecting the interests of parties concerned about specific open-access transactions, even though experience up to that point in time showed that few protests were filed, the Commission was free to reevaluate that conclusion at a later date. It is well established that an administrative agency may depart from prior policy or an earlier interpretation of a regulation if the departure is adequately explained and justified.[13]

In the instant rulemaking, the Commission discussed several reasons why it is reasonable to conclude that the notice and protest procedures at issue here are no longer necessary for blanket certificate transportation services. For example, the Commission found that there continued to be only a relatively few protests filed and that most such protests were really in the nature of complaints. Thus, the issues raised were inappropriate within the context of the notice and protest procedures. It was therefore, reasonable for the Commission to conclude that the remaining pleadings appropriately styled as protests, only 10 since Order No. 436 was issued, could be resolved through the Commission's complaint process.[14]

Additionally, the Commission concluded that the administrative burden and expense associated with notice in the Federal Register of each blanket transportation transaction and the processing of waiver requests could not be justified in light of the fact that so few parties had availed themselves of the previous procedures. Finally, and most importantly, the Commission found that the notice and protest procedures for blanket transportation created a non-market incentive for parties to rely on section 311 authority rather than section 7 blanket authority because of a desire on the part of pipelines to avoid the blanket transportation's notice and protest procedures. In light of the Commission's ongoing commitment to promote market-based decisions in the industry, it is reasonable for the Commission to conclude that the benefits gained by conforming blanket transportation and section 311 notice

[10] Whether an Agency has complied with the notice provisions of the APA depends on whether the final rule is a "logical outgrowth" of the proposed rule and rulemaking proceedings. *Hercules Inc. v. U.S. E.P.A.*, 938 F.2d 276 (citing *Small Refiner Lead Phase-Down Task Force v. E.P.A.*, 705 F.2d 506, 546-47 (D.C. Cir. 1983)) (D.C. Cir. 1991). See also *Chocolate Manufacturer's Association of United States v. Block*, 755 F.2d 1098 (Parties are deprived notice and an opportunity to be heard when a final rule is not a logical outgrowth of the notice and comments) (4th Cir. 1985).

[11] FERC Stats. & Regs., Reg. Preambles 1982-1985, ¶ 30,665 (1985).

[12] FERC Stats. & Regs., Reg. Preambles 1991, ¶ 30,928 (1991).

[13] See, *e.g.*, *Arcadian Gas Pipeline System v. FERC*, 878 F.2d 865 (5th Cir. 1989).

[14] We note that of these 10 complaints, none resulted in a finding in favor of the complainant.

procedures outweigh any benefit to interested parties resulting from retaining the notice and protest requirements.

The Commission reiterates its conclusion that the notice requirements put into place in the final rule will suffice to provide adequate information to interested parties. We disagree with the suggestion that the regulations should require notice 30 days before transportation commences in order to allow LDC's to respond competitively. Such a requirement would unnecessarily delay service and would conflict with our goals of creating an efficient market for natural gas. We think the existing compliant procedures provide adequate safeguards against unfair competition.

We also note that petitioners mischaracterize the affect that Order No. 555 would have had on notice requirements because even under the revised regulations adopted in Order No. 555, prior notice would still have been required for the construction of delivery taps, and the new regulations required public notification in newspapers and notification of state governors and attorneys general prior to any construction of interstate facilities.[15]

Services Commenced After September 20, 1991

Ozark states that it began transporting gas under its blanket transportation certificate on October 1, 1991, after the issuance of the final rule, but prior to the rule's effective date, November 4, 1991. Under § 284.223(a) as it was in effect on October 1, 1991, blanket transportation commenced under the authorization in that section is limited to 120 days. Ozark points out that before the 120 day period will run, the final rule will become effective and the provision for prior notice filings under § 284.223 will be eliminated. To avoid filing duplicate "new" reports if it desires to continue transporting after the 120 day period, Ozark requests that the Commission clarify that transportation authorization obtained through 120 day filings made after the filings made after the final rule's date of issuance, but before its effective date, does not expire at the end of the 120 days, but continues for the term of the underlying transaction.

The Commission's Response

The provisions of the final rule became effective November 4, 1991. Any transportation service commenced under a blanket certificate prior to that date must be performed in compliance with the regulations in effect at the time of commencement. Ozark commenced its service under the previously effective regulations and, therefore, must continue under this scheme. Accordingly, if a transportation service was commenced pursuant to previously effective § 284.223(a) after the issuance of the rule, but prior to the rule's effective date, the service was authorized to continue beyond 120 days only if the pipeline complied with the previously effective prior notice procedures. Therefore, the Commission denies Ozark's request.

D. Technical Amendment

A technical amendment to 284.122(d)(2) is being adopted to change the word "intrastate" to "interstate," as reflected in the appended regulatory text.

IV. Effective Date and Paperwork Reduction Act Statement

The technical revisions to § 284.122, as discussed herein, will become effective retroactively to the date revisions promulgated in Order No. 537 became effective, November 4, 1991. The technical revisions are necessary to clarify that intrastate pipelines may transport gas in a chain from certain gathers to end users pursuant to the certificate authorization issued in that section. Because the existing regulatory language is ambiguous as to whether more than one intrastate pipeline may use such authority in a given transaction, some transactions may already have been or are being conducted in this manner. Retroactive application of the revised § 284.122 is necessary to clarify that such authority was available for intrastate pipelines participating in chain transactions of this type and that the participating pipelines were not operating in violation of the NGA. Accordingly, good cause exists to apply the provisions of revised § 284.122 retroactively. Additionally, we note that the Commission is not required to give prior public notice of a technical amendment of the type discussed here.

Further, we note that the Office of Management and Budget's (OMB) regulations require that OMB approve certain collection and recordkeeping requirements imposed by an agency.[16] In connection with the issuance of the final rule, the Commission fully complied with OMB's regulations. This order on rehearing, however, does not have any impact on the collection and recordkeeping requirements already imposed by the final rule. Therefore, it is unnecessary for the Commission to submit this order on rehearing to the OMB for review.

V. Conclusion

List of Subjects in 18 CFR Part 284

Continential Shelf,
Natural gas,
Reporting and recordkeeping requirements.

For the reasons set forth above, the Commission grants rehearing in part, denies rehearing in part and amends part 284, title 18, chapter I, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Moler dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 284—[AMENDED]

1. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. In § 284.122, paragraph (d)(2) is amended by removing the word "intrastate" after the words "as an" and inserting in lieu thereof the word "interstate."

3. In § 284.227, paragraph (a) is revised to read as follows:

§ 284.227 Certain transportation by intrastate pipelines.

(a) *Blanket certificate.* A blanket certificate shall issue under this section to any intrastate pipeline that receives natural gas produced in adjacent Federal waters or onshore or offshore in an adjacent state, *provided that*:

(1) The gas must be received by the intrastate pipeline from a gatherer or other intrastate pipeline;

(2) The intrastate pipeline delivers the gas in the intrastate pipeline's state of operation to an end user or another intrastate pipeline; and

(3) The gas ultimately used by an end user in the same state.

* * * * *

In the matter of: Revisions of Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Docket No. RM90–7–001; Hadson Gas Systems, Inc., Docket No. GP88–11–004; Cascade Natural Gas Corp. v. and Northwest Pipeline Corp., *et al.* Docket No. CP88–286–005; and Texas Eastern Transmission Corporation, Docket Nos. RP88–81–015, RP88–67–048, RP88–175–003.

Issued September 21, 1992.

MOLER, Commissioner, *dissenting:*

[15] We note that Order No. 555 has been stayed pending rehearing. 57 FERC ¶61,195 (1991). Thus, the notice provisions relating to construction under blanket certificates have not gone into effect.

[16] 5 CFR 1320.13.

This order raises the issue of whether the Commission will provide local distribution companies (LDCs) a reasonable opportunity to respond to the threat of being bypassed. Faced with complaints that the "on behalf of" definition adopted on remand will encourage bypass, and if so what to do about it, the Commission's response is that the interstate pipeline must give notice of the transaction to the LDC. That "notice" is notice in name only; there is no requirement for advance notice with a meaningful opportunity for the LDC to respond. I have argued for a 30-day notice period to give the LDC that opportunity. My arguments have fallen on deaf ears. This decision is one more example of where the majority has taken steps to make bypass easier while, at the same time, continuing to do nothing to address rate consequences. I simply cannot support the result.

In recent years, the Commission has approved numerous applications filed by interstate pipelines to bypass LDCs, and to serve the end-users behind them directly. The Commission's bypass policy is clear. The Commission will approve a bypass—any bypass—in the absence of unfair competition or undue discrimination.[1] The policy is driven by a desire for the LDCs to compete at the local level to retain their industrial load.

The broad policy has been upheld in the courts.[2] However, the courts have told the Commission in clear terms that we cannot blindly approve bypass:

[I]f parties oppose bypass on the ground that it thwarts state efforts to subsidize residential customers with economic rents secured from businesses, the Commission will have to address such claims.[3]

Rather than developing the requisite policy, the Commission is moving in the opposite direction. It should be clear to all that the Commission will approve, without delay, virtually any bypass negotiated between an interstate pipeline and end-user. At the same time the Commission has done nothing to address the concerns about cost shifts which will occur at the local level. The Commission has either refused to recognize that the cost shifts will occur, saying those cost shifts are speculative, or advised state commissions that certain, unspecified steps, could be taken to avoid any cost shifting. All the while the Commission refuses to reduce the contract demand of a bypassed LDC on either a generic, or case specific, basis, or by reallocating ongoing take or pay costs to the end-user.[4] This is no accident. The Commission's policy makes bypass easier, thwarts LDC's efforts to respond, and refuses to adjust rates once the bypass occurs.

The lack of notice problem is exacerbated by other changes the Commission is making in the rules governing construction. Under the regulations in effect today, interstate pipelines constructing bypass facilities under Section 7(c) of the Natural Gas Act must give LDCs notice of the proposed construction and a 30-day period in which to protest.[5] Protests received, and not withdrawn or otherwise resolved, must be acted on by the Commission. There is no comparable notice and protest requirement for construction of facilities under Section 311 of the NGPA. In addition, in the final rule on NGPA 311 construction, [6] the Commission is allowing the construction of facilities costing up to $6.2 million without notice to any party. The rule refuses to address arguments of various parties [7] favoring a 30-day notice period prior to construction of 311 facilities.[8]

What does this complex set of rules and regulations mean when one takes into account the interplay of the instant order on remand, and the section 311 construction rule? I believe the answer is simple: Construction of bypass facilities costing less than $6.2 million under section 311 of the NGPA can and will occur with no Commission review. Service will be able to commence without any meaningful notice; indeed, actual notice to the LDC and state commission of the operation of those facilities can conceivably occur the second before the commencement of service.

That is not good policy if the purpose of our bypass policy is to force LDCs to compete for service. To compete, the LDC and state commission must first have adequate notice so they can respond with appropriate measures.

In conclusion, one can disagree with what should be the proper vehicle for addressing bypass concerns and what the proper approach should be. However, the Commission must first recognize that a problem exists and then be willing to address that problem. I do not see that willingness presently on the part of the Commission. Thus, I dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 92-24521 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[1] *See* Northern Natural Gas Co., 46 FERC ¶ 61,270, *reh'g denied*, 48 FERC ¶ 61,232 (1989).

[2] *Michigan Consol. Gas Co.* v. *FERC*, 883 F.2d 117 (D.C. Cir. 1989); *Kansas Power and Light Company* v. *FERC*, 891 F.2d 939 (D.C. Cir. 1989); *Cascade Natural Gas Corp.* v. *FERC*, 955 F.2d 1412 (10th Cir. 1992).

[3] Kansas Power and Light, 891 F.2d. 939 at 943.

[4] For example, in Order No. 636-A, the Commission stated that it will consider requests for relief relating to LDC bypass on a case-by-case basis in the context of the new regime of this rule, but will not adopt a policy that would grant automatic relief in all circumstances. Order No. 636-A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶30,950 at 30,659 (August 3, 1992). See also Northern Illinois Gas Company v. Natural Gas Pipeline Company of America, 48 FERC ¶61,337 (1989), *order denying reh'g*, 56 FERC ¶61,215 (1991).

[5] 18 CFR 157.205 (1992).

[6] Revisions to Regulations Governing NGPA section 311 Construction and the Replacement of Facilities, RM92-13-000, which is being issued contemporaneously with this Order on Rehearing.

[7] Southern California Gas Company, Northern Illinois Gas Company, Peoples Gas Light and Coke Company, the American Gas Association, and Associated Gas Distributors.

[8] The order says that this matter will be addressed on rehearing of Order No. 555. In Order No. 555, the Commission adopted a rule that would allow sales and delivery taps constructed under section 7(c) to be done without any prior notice and opportunity to comment by the LDC. The effective date of that order has been delayed, pending further action by the Commission. Thus I find it little comfort to tell the LDCs that their bypass arguments will be addressed in that rule.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92-98]

Treatment of Certain Interest Payments Under the United States-Canada Free-Trade Agreement

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: This document amends the Customs Regulations pertaining to the treatment of certain costs includable as direct costs of processing or assembling for purposes of the value-content requirement under the United States-Canada Free-Trade Agreement (CFTA). The change is made to reflect the recent recommendations of a panel convened pursuant to Chapter 18 of the CFTA that Article 304 of the CFTA includes any *bona fide* interest payments on debt of any form, secured or unsecured, to finance the acquisition of fixed assets used in the production of goods in the territory of a Party. Comments are solicited regarding the interim regulation particularly addressing procedures which would provide an objective traceable connection between proceeds of a loan and the acquisition of fixed production assets.

DATES: Interim rule effective October 9, 1992. Comments must be received on or before December 8, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the above location until November 4, 1992, and after November 9, 1992, at 1099 14th St., NW., 4th floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Valentine, International Nomenclature Staff, (202) 566-8530.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1988, the United States and Canada (the Parties) entered into a

bilateral reciprocal free-trade area agreement: The United States-Canada Free-Trade Agreement (CFTA). The objectives of the CFTA are to eliminate barriers to trade in goods and services between the territories of the Parties, facilitate conditions of fair competition within the free-trade area, liberalize significantly conditions for investment within this free-trade area, establish effective procedures for the joint administration of the CFTA and the resolution of disputes, and lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of the CFTA. Article 304 of the CFTA defines the phrases "direct cost of processing" and "direct cost of assembling" for purposes of applying a specific rule of origin requiring a value-content determination; Chapter 18 of the CFTA provides the institutional framework—a binational Commission and dispute resolution panels as required—for avoiding or settling certain disputes under the CFTA regarding the interpretation or application of CFTA provisions.

The CFTA became law on September 28, 1988, with enactment of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Act), Public Law 100–449, 102 Stat. 1851 (codified at 19 U.S.C. 2112 note), and took effect on January 1, 1989. On December 23, 1988, Customs published T.D. 89–3, 53 FR 51762, which set forth interim regulations to implement those portions of the Act which form the basis for determining whether goods imported into the U.S. from Canada are eligible for the preferential duty treatment accorded to goods originating in Canada, and solicited comments regarding the regulations. Sections 10.301–10.311, Customs Regulations (19 CFR 10.301–10.311). Following an analysis of the comments received, the interim regulations became final on January 22, 1992, with the publication of T.D. 92–8, 57 FR 2447.

The final regulations included, at § 10.305(a)(3)(iv), an interpretation of interest expenses that would be treated as a direct cost of processing or assembling for purposes of the CFTA, and provided that "mortgage interest," secured by real property, would be treated as a direct cost of processing or assembling, but only that portion of the interest which is related to real property directly used in the production of exported goods. This interpretation was based in part on an administrative decision dated May 22, 1991, issued in response to an advice request dated November 7, 1989, concerning the treatment of certain interest as a direct cost of processing under Article 304 of the Act.

On January 6, 1992, Canada invoked the dispute settlement mechanism under Chapter 18 of the CFTA. A panel was convened to determine whether the definition of "direct cost of processing" or "direct cost of assembling" set forth in Article 304 of the CFTA included interest payments on debt of any form, secured or unsecured, undertaken to finance the acquisition of fixed assets used in the production of goods in the territory of a Party.

In its Final Report, the Panel concluded that "mortgage interest" includes:

> *bona fide* interest payments on debt of any form, secured or unsecured, undertaken on arm's length terms in the ordinary course of business to finance the acquisition of fixed assets such as real property, a plant, and/or equipment used in the production of goods in the territory of a Party, and that are subject to a determination based on the criteria specified in FTA [CFTA] Annex 301.2, are includable in the 'direct cost of processing' or 'direct cost of assembling' set forth in Article 304 of the FTA [CFTA].

The Panel also determined that the U.S. interpretation of Article 304 contained in the Customs letter and the Customs Regulations relating to interest other than mortgage interest on funds used to acquire real property, equipment and other fixed assets used in the production of the goods was inconsistent with the provisions of the CFTA.

This document amends 19 CFR 10.305(a)(3)(iv) by removing the language limiting the phrase "mortgage interest," thus allowing other forms of interest payments to be includable as the direct cost of processing or assembling for purposes of the CFTA and the Act.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with section 552 of the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC until November 4, 1992, and after November 9, 1992, at 1099 14th St., NW., 4th floor, Washington, DC. Because the governments of the United States and Canada are consulting concerning the establishment of an objective, traceable connection between a loan and production assets, the scrutiny of intra corporation loans, and the ascertainment of ordinary business practices, Customs seeks, in particular, public comments concerning procedures that would provide an objective traceable connection between proceeds of a loan and the acquisition of fixed production assets.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Pursuant to the provisions of 5 U.S.C. 553(a)(1), public notice is inapplicable to this interim regulation because it implements a provision of the CFTA, which constitutes a foreign affairs function of the U.S. The regulation implements commitments made to foreign governmental entities by the Executive Office of the President and is in accordance with the President's statutory authority regarding administration of the CFTA. Further, because this interim regulation is necessary to support the objectives of the existing CFTA, pursuant to 5 U.S.C. 553(b)(A), public notice is not required. Furthermore, for the above reasons, pursuant to 5 U.S.C. 553(d)(2), the requirement for a delayed effective date is inapplicable. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this amendment implements a foreign affairs function of the United States, it is not subject to E.O. 12291; therefore, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, U.S.-Canada Free-Trade Agreement.

Amendment to the Regulations

Accordingly, for the reason stated above, part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. Section 10.305(a)(3)(iv) is revised to read as follows:

§ 10.305 Value content requirement.

(a) * * *

(3) * * *

(iv) *Interest expense. Bona fide* interest payments on debt of any form, secured or unsecured, undertaken on arm's length terms in the ordinary course of business to finance the acquisition of fixed assets such as real property, a plant, and/or equipment used in the production of goods in the territory of Canada or the U.S. are includable in the direct cost of processing or direct cost of assembling. Interest will be treated as a direct cost of processing or assembling, but only that portion of the interest which is related to a fixed asset directly used in the production of the goods exported; thus, where a entire production facility is covered by a mortgage and incorporates both production and administrative or other general expense space, an appropriate allocation must be made in order to ensure that only that portion of the interest allocated to the production area is counted toward the value-content requirement. Interest expenses attributable to general and administrative costs or expenses, including interest on funds borrowed to meet the payroll of personnel directly involved in the production of goods, are not considered direct costs of processing or assembly.

* * * * *

Carol Hallett,

Commissioner of Customs.

Approved: September 25, 1992.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-24364 Filed 10-8-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use In Animal Feeds; Bacitracin and Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A. L. Laboratories, Inc. The NADA provides for the use of separately approved bacitracin zinc and monensin Type A medicated articles in making Type C medicated feeds for increased rate of weight gain, improved feed efficiency, and as an aid in the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8602.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 134-830, providing for combining separately approved Type A medicated articles to make Type C medicated feeds containing 90 to 110 grams (g) per ton of monensin and 4 to 50 g per ton of bacitracin zinc. The feeds are used in broiler chickens as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* for increased rate of weight gain and improved feed efficiency.

The NADA is approved as of September 1, 1992. The regulations are amended in 21 CFR 558.355 by revising paragraph (b)(11) and by adding new paragraph (f)(1)(xxv) to reflect the approval. The basis for the approval is discussed in the freedom of information summary. Monensin and bacitracin zinc are new animal drugs used in Type A medicated articles to make Type C medicated feeds. Both drugs are Category I drugs which, as provided in 21 CFR 558.4(a), do not require an approved FDA Form 1900 for making Type C medicated feeds as in approved NADA 134-830 and in the regulation contained in 21 CFR 558.355(f)(1)(xxv).

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years exclusivity beginning September 1, 1992, because it contains reports of new clinical or field investigations essential to the approval of the application.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by revising paragraph (b)(11) and by adding new paragraph (f)(1)(xxv) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(11) To 046573: 45 and 60 grams per pound, as monensin sodium provided by No. 000986, paragraphs (f)(1)(xviii), (xix), (xxiii), (xxiv), and (xxv) of this section.

* * * * *

(f) * * *

(1) * * *

(xxv) *Amount per ton.* Monensin, 90 to 110 grams plus bacitracin, 4 to 50 grams.

(a) *Indications for use.* For increased rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(b) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; in the absence of coccidiosis, the use of monensin with no withdrawal period may limit feed intake resulting in reduced weight gain; as bacitracin zinc provided by No. 046573 in § 510.600(c) of this chapter, as monensin sodium.

* * * * *

Dated: September 30, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-24629 Filed 10-8-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-90-026]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 8.8, in Chesapeake, Virginia, by restricting drawbridge openings during the morning and evening rush hours, providing one opening for recreational vessels during the evening rush hour period, and allowing commercial vessels passage through the bridge at any time. This is intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: These regulations become effective on November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principle persons involved in drafting this document are Linda L. Gilliam, Project Officer, and CAPT M. K. Cain, Project Attorney.

Regulatory History

On August 6, 1990, the Coast Guard published a notice of proposed rulemaking entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia, in the **Federal Register** (55 FR 31846). It would have closed the Dominion Boulevard Bridge to recreational, commercial and public vessels of the United States during morning and evening rush hours, Monday through Friday, from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., but allow the draw to open on signal at all times for vessels in distress. Based on the comments received from the commercial maritime industry, on July 29, 1991, the Coast Guard published a supplemental public notice entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia in the **Federal Register** (56 FR 35839). As a result of the comments received, on July 10, 1992, the Coast Guard published a second supplemental proposed rule entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia, in the **Federal Register** (57 FR 30705) in the **Federal Register**. A public hearing was not requested and one was not held.

Background and Purpose

Concerned motorists requested that the regulations for the drawbridge across the Southern Branch of the Elizabeth River, mile 8.8 in Chesapeake, Virginia, be amended to restrict openings during the peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. As a result of the second supplemental proposed rule and comments received from the maritime industry and motoring public, the Coast Guard is restricting drawbridge openings to recreational traffic from 7 a.m. to 8 a.m. and from 4 p.m. to 6 p.m. with the exception of one opening at 5 p.m.., Monday through Friday, except Federal holidays. Commercial traffic will be allowed access through the bridge at any time. The original proposal restricted commercial traffic from requesting bridge openings during the morning and evening rush hours; however, after receiving comments from the marine industry and the City of Chesapeake as a result of the last two proposals, the decision to restrict commercial traffic during the restricted times was changed to allow commercial traffic access any time. Providing an opening for recreational vessels at 5 p.m. during the evening rush hour was the result of comments received from concerned marina owners located upstream and downstream of the bridge.

Discussion of Comments

As a result of the proposed rule and the public notice, comments were received from the motoring public and the maritime industry. The motorists were all in favor of closing the bridge to navigation during the morning and evening rush hours since elimination of draw openings would help reduce traffic disruption, delays, congestion and minor accidents. The maritime industry was against such restrictions based on economic impact, and waterway safety concerns.

The comments indicated that the proposed three hour restriction in the morning and the evening was too severe and would cause undue hardships for waterway traffic transiting on the Southern Branch of the Elizabeth River. The Coast Guard issued a supplemental proposed rule with shorter morning and evening rush hour restrictions. The proposed new hours of restriction were from 6:30 a.m. to 7:30 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday. All vessel traffic was still restricted, except vessels in distress. This supplemental proposed rule (56 FR 35839) was published on July 29, 1991, with the comment period ending September 12, 1991. A supplemental public notice was issued September 5, 1991, extending the comment period to October 12, 1991, to allow the maritime industry more time to submit comments on the supplemental proposed rule.

As a result of the supplemental proposed rule and the public notice issued on August 1, 1991, comments were received from the maritime community and the motoring public. The comments from the motorists again were all in favor of the proposed restrictions during peak traffic hours. The majority of the comments from the motorists suggested extending the morning and evening rush hours. All suggestions varied on the appropriate hours of restriction. The comments from the commercial maritime industry were opposed to restricting the drawbridge based on such factors as economic impact concerns and safety. The City of Chesapeake also forwarded a resolution to the U.S. Coast Guard requesting that the proposed regulations for this drawbridge restrict openings to recreational vessels only during hours that better reflect peak highway traffic usage to help reduce traffic congestion, but remain open on signal during the rest of the time.

The second supplemental proposed rule issued July 10, 1992, has resulted in one change to the proposal. The marinas requested that two openings be provided during the afternoon restrictions to allow recreational vessels passage through the bridge. They based this request on business and city economies being negatively impacted by delayed arrivals of recreational vessels. The Coast Guard has decided to include one opening for recreational vessels during the afternoon restrictions to alleviate economic impacts to the marinas and the local cities within the Hampton Roads area. This opening will occur at 5 p.m., Monday through Friday, except Federal holidays.

Regulatory Evaluation

This action is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full

regulatory evaluation is unnecessary. This opinion is based on the fact that commercial traffic will not be restricted during the morning and evening rush hours, and recreational traffic will not be totally restricted since one opening will be provided during the evening rush hour.

Small Entities

No comments were received concerning small entities or on the economic impact this rule would have on small entities. Since the impact on these regulations is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.997, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) and a new paragraph (d) is added to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(d) The draw of the Dominion Boulevard Bridge, mile 8.8, in Chesapeake shall open on signal, except:

(1) From 7 a.m. to 8 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the drawbridge may not be opened for recreational vessels except it may be opened at 5 p.m. for recreational vessels waiting to pass.

(2) Vessels in an emergency involving danger to life or property shall be passed at any time.

* * * * *

Dated: September 28, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard Division.

[FR Doc. 92-24667 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 92-03]

Safety Zone Regulations: Ports of Los Angeles/Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone of the territorial seas of the United States within 100 yards around the barges; St. Thomas, Isla Del Sol, Crowley 020, Crowley 411, Crowley 415, Crowley 417, Crowley 419, and the Crowley 420 and their attending tugs as they navigate in the territorial seas of the United States. The zone is needed to protect the public which may be attracted by the unusual appearance of, and danger posed by, tugs and barges carrying the topside platforms for offshore oil wells as they navigate in the territorial seas of the United States. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 12 midnight, PDT October 2, 1992. It terminates at 12 midnight, PST November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Lt. R.F. Shields at (310) 980-4457.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect the public which may be attracted by the unusual appearance of, and danger posed by, tugs and barges carrying the topside platforms for offshore oil wells as they navigate in the territorial seas of the United States.

Drafting Information

The drafters of this regulation are Lt. R.F. Shields, project officer for the Captain of the Port, and Capt. B.E. Weule, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur between 12 midnight, PDT October 2, 1992 and 12 midnight, PST November 30, 1992. This safety zone is necessary to protect the public which may be attracted by the unusual appearance of, and danger posed by, tugs and barges carrying the topside platforms for offshore oil wells as they navigate in the territorial seas of the United States.

List of Subjects in 33 CFR Part 165

Harbors marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1106 is added to read as follows:

§ 165.T1106 Safety Zone: Port of Los Angeles/Long Beach, CA.

(a) *Location.* The following area is a safety zone: The territorial waters of the United States within 100 yards around the following barges; St. Thomas, Isla Del Sol, Crowley 020, Crowley 411, Crowley 415, Crowley 417, Crowley 419, and the Crowley 420, and their attending tugs as they navigate in the territorial seas of the United States.

(b) *Effective Date.* This regulation becomes effective effective at 12 midnight, PDT October 2, 1992. It terminates at 12 midnight, PST November 30, 1992.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited

unless authorized by the Captain of the Port.

Dated: October 2, 1992.

J.E. Terveen,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 92-24670 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Corpus Christi, TX, Regulation 92-14]

Safety Zone Regulation: Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Gulf of Mexico near the approach to the Aransas Pass Channel. The safety zone is needed to safeguard deep draft vessels from obstructions and shoaling in and near the channel that pose a threat to vessels transiting the area.

EFFECTIVE DATES: This regulation becomes effective at 12:01 a.m., August, 20, 1992. It terminates at 12 p.m. October 15, 1992, or upon the completion of dredging and salvage operations in the Aransas Pass Channel and safety fairway, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: LTJG K.S. Roberts, telephone number, (512) 888-3162.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard vessels transiting the area from hazards in the channel.

Drafting Information

The drafters of this regulation are LTJG K.S. Roberts, Chief Waterways Management section, U.S. Coast Guard Marine Safety Office, Corpus Christi, Texas; CAPT R.J. Reining, Commanding Officer, U.S. Coast Guard Marine Safety Office, Corpus Christi, TX; and LT J.A. Wilson, project attorney, Eighth Coast Guard District, New Orleans, Louisiana.

Discussion of Regulation

The safety zone is needed to ensure the safety of vessels from obstructions and shoaling both in and around the Aransas Pass Channel and safety fairway. On August 6, 1992, the Tank Vessel STENA CONCERTINA, while on the ranges approaching the Aransas Channel, suffered a rapid decrease in speed, in two different areas, indicating that the vessel had come in contact with the bottom or a submerged object. The STENA CONCERTINA was at a draft of 44 feet 9 inches in a channel with a charted dredged depth of 45 feet. After an underwater damage assessment, it was determined that a substantial amount of bottom plating had been damaged, confirming that the vessel had come in contact with the bottom. The Army Corps Of Engineers surveyed the area, using side scan radar, and found an obstruction in the safety fairway, in the vicinity of the three mile territorial sea boundary line, in-line with the ranges at a depth of 44 feet 2 inches. Two other areas of shoaling were also discovered within the maintained channel.

This regulation is issued under 33 U.S.C. 1231, as set out in the authority citation for all of part 165.

Federalism

This proposed action has been analyzed under the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T0857 is added to read as follows:

§ 165.T0857 Safety Zone: Gulf of Mexico.

(a) A stationary safety zone exists in the Gulf of Mexico within that portion of the Aransas Pass Safety Fairway, established in § 166.200(d)(4) of this title, that lies between the COLREGS Demarcation Line established in § 80.850(d) of this title and the seaward limit of the three mile territorial sea of the United States, as indicated on the National Oceanic and Atmospheric Administration chart 11307, 31st edition, March 16, 1991.

(b) *Regulations.* (1) Vessels with drafts exceeding 43 feet may not transit within the safety zone without permission from the Captain of the Port.

(2) Vessels with drafts from 41 feet to 43 feet may only transit within the safety zone at or near high tide.

(3) All other deep draft vessels transiting the safety zone must proceed with extreme caution.

(c) *Effective dates.* This regulation becomes effective at 12:01 a.m., August, 20, 1992. It terminates at 12 p.m. October 15, 1992, or upon the completion of dredging and salvage operations in the Aransas Pass Channel and safety fairway, whichever occurs first.

Dated: August 19, 1992.

Robert J. Reining,

Captain, U.S. Coast Guard, Captain of the Port, Corpus Christi, TX.

[FR Doc. 92-24669 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP HOUSTON: Regulation 92-03]

Safety Zone Regulations; Bayport Ship Channel

AGENCY: Coast Guard, DOT.

ACTION: Temporary final.

SUMMARY: The Coast Guard is establishing a safety zone in the Bayport Ship Channel entrance along the westernmost edge of the Houston Ship Channel between 29°37'16" N, 94°57'31" W and 29°36'34" N, 95°57'13" W, westward to the light 4 (LLN 23330) and light 5 (LLN 23335). The zone is needed to protect the safety of vessels transiting the Bayport Ship Channel due to progressive shoaling, which has reduced the 41 foot project depth. Entry into this zone by any vessel with a draft exceeding 35 feet is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 8 a.m. on July 17, 1992. It terminates at 8 a.m. on November 14, 1992, unless sooner terminated by the Captain of the Port, Houston.

FOR FURTHER INFORMATION CONTACT: LCDR Paul Bergman, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office Houston, P.O. Box 446, Galena Park, TX 77547-0446, Phone (713) 671-5113.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists

for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect marine shipping involved.

Drafting Information

The drafters of this regulation are LCDR Paul Bergman, project officer for the Captain of the Port, and CDR D.G. Dickman, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The situation requiring this regulation is a potential safety hazard associated with progressive shoaling in the Bayport Ship Channel. This shoaling is reported to have caused deep-draft vessels transiting this area to lose forward momentum and reduced steering response. This increases the possibility of a collision between vessels transiting the area, unintentional grounding, fouled cooling water intakes, or other marine casualties. This Safety Zone is a short term solution to this shoaling problem. Unless appropriate remedial action, such as dredging, is undertaken to return the Bayport Ship Channel to its project depth, a longer term solution, such as a Regulated Navigation Area, will be considered. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, and 49 CFR 1.46.

2. A new § 165.T844, is added to read as follows:

§ 165.T844 Safety Zone: Bayport Ship Channel.

(a) *Location.* The following area is a safety zone: The Bayport Ship Channel entrance along the westernmost edge of the Houston Ship Channel between 29°37′–16″N, 94°57′31″W and 29°36′34″N, 95–57′–13″W, westward to the light 4 (LLN 2330) and light 5 (LLN 23335).

(b) *Efective Date.* This regulation becomes effective at 8 a.m. on July 17, 1992. It terminates at 8 a.m. on November 14, 1992, unless cancelled by the Captain of the Port, Houston at an earlier time.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by any vessel with a draft exceeding 35 feet is prohibited unless authorized by the Captain of the Port.

(2) Requests to enter the safety zone shall be made to the Captain of the Port, via Coast Guard Houston/Galveston Vessel Traffic Service.

Dated: July 17, 1992.

A.C. Alejandro,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 92–24668 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Port Arthur, Texas Regulation 92–04]

Safety Zone Regulations: Port Arthur TX Turning Point

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the immediate vicinity of the Port Arthur Turning Point, GIWW MM 284.5 (Sabine-Neches Canal). The zone is needed to protect all vessels in the vicinity from a safety hazard associated with detected shoaling. The U.S. Coast Guard Captain of the Port, Port Arthur TX is establishing a draft restriction for vessels desiring to turn in this area. Vessels with a length exceeding 550 feet shall not attempt to turn in this area without permission of the Captain of the Port unless the vessel's draft is less than 30 feet. Vessels authorized to turn at this location shall effect the turn as close to the channel centerline as possible.

EFFECTIVE DATE: This regulation becomes effective on August 7, 1992. It terminates on February 1, 1993 unless emergency dredging operations are completed prior to this date.

FOR FURTHER INFORMATION CONTACT: The U.S. Coast Guard Captain of the Port, Port Arthur TX representative, LCDR M. R. DeVries at (409) 723–6511.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessels involved.

Drafting Information

The drafters of this regulation are LCDR M. R. DeVries, project officer for the Captain of the Port, and LT J. A. Wilson, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The conditions requiring this regulation were discovered with the apparent grounding of a deep draft vessel turning at the Port Arthur Turning Point. Shoaling was verified by USACE's August 1, 1992 hydrographic survey results. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Safety measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary § 165.T850 is added to read as follows:

§ 165.T850 Safety Zone: Port Arthur Turning Point.

(a) *Location.* The following area is a safety zone: Port Arthur Turning Point,

GIWW MM 284.5 (Sabine-Neches Canal) Port Arthur TX.

(b) *Effective date.* This regulation becomes effective on August 7, 1992. It terminates on February 1, 1993 unless emergency dredging operations are completed prior to this date.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, The Coast Guard Captain of the Port is establishing a safety zone in the immediate vicinity of the Port Arthur Turning Point, GIWW MM 284.5 (Sabine-Neches Canal) requiring a draft restriction for vessels desiring to turn in this area. Vessels with a length exceeding 550 feet shall not attempt to turn in this area without the permission of the Captain of the Port unless the vessel's draft is less than 30 feet. Vessels authorized to turn at this location shall effect the turn as close to the channel centerline as possible.

Dated: August 7, 1992.

J. L. Robinson,

Captain, USCG, Captain of the Port, Port Arthur, Texas.

[FR Doc. 92-24671 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

Concession Contracts and Permits; Correction of Final Rule

AGENCY: National Park Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The National Park Service is correcting an error in the text of the Final Rule on concession contracts and permits, published in the **Federal Register** on page 40503 of the September 3, 1992 edition (57 FR 40503).

FOR FURTHER INFORMATION CONTACT: Lee Davis, Chief, Concessions Division, National Park Service, Washington, DC 20013-7127. Tele. (202) 343-3784.

EFFECTIVE DATE: October 5, 1992.

SUPPLEMENTARY INFORMATION: The National Park Service promulgated regulations on concession contracts and permits on September 3, 1992 (57 FR 40496). These regulations revised 36 CFR part 51. After publication in the **Federal Register** it was noticed that a sentence was inadvertently left out of the text of § 51.4(a) on page 40503. The sentence left out, which should have been the fifth sentence in this paragraph, reads as follows: "In order to encourage minority and women-owned businesses to compete for concession contracts, the National Park Service shall provide maximum allowable information and assistance to minority and women-owned business." This sentence was published substantially the same in the proposed regulations on August 23, 1991 (57 FR 41897). It was also discussed in the preamble to the final regulations on page 40497. The sentence was mistakenly left out of the final rule by the National Park Service, and is corrected by this notice.

The following correction is made to the final regulations for concession contracts and permits published on September 3, 1992 in the **Federal Register** (57 FR 40496):

§ 51.4 [Corrected]

On page 40503, third column, paragraph (a) of § 51.4 is corrected by adding a new sentence after the fourth sentence of the paragraph to read as follows:

"In order to encourage minority and women-owned businesses to compete for concession contracts, the National Park Service shall provide maximum allowable information and assistance to minority and women-owned business."

Dated: October 6, 1992.

David L. Moffitt,

Acting Associate Director, Operations.

[FR Doc. 92-24685 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-756-CN]

RIN 0938-AF79

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: In the September 1, 1992, issue of the **Federal Register** (FR Doc 92-20647) (57 FR 39746), we revised the Medicare inpatient hospital prospective payment systems for operating costs and capital-related costs. Additionally, in the addendum to that final rule, we described changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 1992. This notice corrects errors made in that document.

DATES: The corrections made in this notice are effective October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 996-4529.

SUPPLEMENTARY INFORMATION: In the September 1, 1992, final rule, a portion of a response to a public comment and a portion of the subsequent public comment were inadvertently omitted. The final rule also contained several other typographical and technical errors. Therefore, we are making the following corrections to the September 1, 1992, final rule (56 FR 39746):

The following changes are made in the Supplementary Information:

1. On page 39776, first column, in the ninth line from the bottom of the page, the following text is inserted after the word "to":

take into account any additional funds required by hospitals to provide needed health care to Medicare beneficiaries. The issue of appropriate geographic classification of hospitals within the prospective payment system is clearly one of payment equity across hospitals rather than adequate funding of the system as a whole. We believe that the proper way to address the financial impact of MGCRB reclassifications on urban hospitals is to adopt appropriate guidelines that will ensure payment equity across hospitals. We believe the revised wage guidelines provide a major step in achieving that goal.

With respect to the method for computing the budget neutrality adjustment, we do not believe we have the statutory authority to change the way the budget neutrality adjustment is determined. Section 1886(d)(8)(D) of the Act clearly contemplates that geographic reclassifications will be funded through a uniform reduction in the urban standardized amounts. The suggestion that we compute the budget neutrality adjustment on a State-by-State basis would also violate the statute because it would result in a separate standardized amount for each State.

Comment: A commenter stated that the revised guidelines should be instituted for the reclassification decisions that will be implemented in FY 1993. The House Ways and Means.

2. On page 39786, beginning in the first column, in the first full paragraph, several technical changes are needed to conform the preamble language with the subsequent chart that the language describes. In the second line of the paragraph, the phrase "result in a slight

increase" is revised to read "result in no change". Also, in the same paragraph, beginning in the fifth line, the sentence that reads:

"We estimate that 57.8 percent of cases will be paid using the cost outlier methodology and 42.2 percent will be paid using the day outlier methodology, compared to 57.8 percent of cases being paid using the cost outlier methodology without the FY 1993 day outlier payment change."

is revised to read:

"We estimate that 57.8 percent of cases will be paid using the day outlier methodology and 42.2 percent will be paid using the cost outlier methodology."

3. On page 39786, third column, in the twentieth line of the first full paragraph, the operating cost-to-charge ratio is changed from "0.632770" to "1.285496".

The following changes are made in the regulatory text:

§ 412.1 [Corrected]

4. On page 39818, third column, in § 412.1(a), in the eighth line from the bottom of the page, a comma and the phrase "the costs of qualified nonphysician anesthetists' services, as described in § 412.113(c)," are inserted after the word "centers".

§ 412.2 [Corrected]

5. On page 39819, second column, in the introductory text of § 412.2(e), in the fourth line, the word "for" is inserted after the word "paid".

§ 412.302 [Corrected]

6. On page 39827, third column, paragraph (c)(1)(v) of § 412.302 is correctly revised to read as follows:

(c) * * *

(1) * * *

(v) The hospital must submit to its intermediary the binding agreement and supporting documents that relate to the obligated capital expenditure by the later of October 1, 1992, or within 90 days after the start of the hospital's first cost reporting period beginning on or after October 1, 1991. This documentation must include a project description (including details of any phased construction or financing) and an estimate of costs that were prepared no later than December 31, 1990.

The following changes are made in the addendum to the rule:

7. On page 39836, third column, beginning in the second line from the bottom of the page, the phrase "August 30, 1993 final rule" is revised to read "August 30, 1991 final rule."

8. On pages 39989 and 39990, in Table 1, under "Outlier Payment Changes", the heading "Proposed policy" is revised to read "Revised policy".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 5, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92-24631 Filed 10-8-92; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 711176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the fourth quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), October, 5, 1992, through 12 midnight, A.l.t., December 31 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The fourth quarterly allowance of pollock TAC for statistical area 63 is 10,103 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined that the 1992 fourth quarterly allowance of pollock TAC for statistical area 63 will soon be reached. Therefore, in accordance with § 672.20(c)(2)(ii), NMFS is establishing a directed fishing allowance for the fourth quarter of 9,603 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 63, effective from 12 none A.l.t., October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24595 Filed 10-5-92; 4:18 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 911176-2013]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by the offshore component in the Eastern Regulatory Area (statistical areas 64 and 65) of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod total allowable catch (TAC) to the offshore component in this area.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery

Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

Amendment 23 to the FMP (57 FR 23321, June 3, 1992) allocated ten percent of the Pacific cod TAC to the offshore component. When Amendment 23 became effective on June 1, 1992, the balance of the Pacific cod TAC available for harvest in the Eastern Regulatory Area GOA was 700 metric tons (mt). In accordance with § 672.20(a)(2)(v)(B), NMFS has determined that the offshore allowance of the remaining TAC is 70 mt.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(2)(ii), that the entire 70 mt will be needed as bycatch to support other groundfish fisheries. Therefore, NMFS is establishing a directed fishing allowance of 0 mt and is setting aside 70 mt as incidental catch in directed fishing for other species. Consequently, NMFS is prohibiting directed fishing for Pacific cod in the Eastern Regulatory Area of the GOA by the offshore component effective from 12 noon, A.l.t., October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24596 Filed 10-5-92; 4:18 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing by operators of vessels using non-travel gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1992 limit of Pacific halibut for non-trawl gear in the BSAI has been caught.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Pursuant to § 675.21(a)(9), the prohibited species catch (PSC) limit of Pacific halibut caught while conducting any non-trawl gear fishery for groundfish in the BSAI Management Area during 1992 is an amount of Pacific halibut equivalent to 750 metric tons of halibut mortality.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(d), that operators of U.S. fishing vessels using non-trawl gear have taken the limit of Pacific halibut PSC. Therefore, NMFS is prohibiting directed fishing for groundfish with non-trawl gear in the BSAI from 12 noon, A.l.t., October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24597 Filed 10-5-92 4:18 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 837, 841, 842, 844 and 846

RIN 3206-AD60

Reemployment of Annuitants

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations governing the reemployment of Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) annuitants, and the effect of reemployment on future CSRS and FERS benefits. The proposed regulations would implement section 134 of Public Law 100-238 and consolidate all the rules governing reemployed annuitants into a single part of OPM regulations.

DATES: Comments must be received on or before December 8, 1992.

ADDRESSES: Send comments to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Office of Personnel Management, P.O. Box 884, Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street, NW., Washington, DC.

Comments on the information collection requirements contained in this regulation also should be filed with the office of Management and Budget. (See below under Paperwork Reduction Act.)

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford, (202) 606-0299.

SUPPLEMENTARY INFORMATION: Section 134 of Public Law 100-238, January 8, 1988, enacted provisions governing the reemployment of FERS annuitants, and CSRS annuitants who elect FERS coverage—provisions very similar to those in 5 U.S.C. 8344, which governs the reemployment of CSRS annuitants. The great similarity of these provisions, as well as the minor, technical differences that could cause confusion if they were dispersed throughout a number of different parts of title 5 of the Code of Federal Regulations, has led OPM to conclude that agencies and employees governed by the regulations would best be served by the promulgation of a new part of the regulations, part 837 of title 5, that would consolidate all the rules governing reemployed CSRS and FERS annuitants.

With the new part 837, OPM is proposing to express the determining factors governing the status of reemployment in the form of regulations, rather than relying strictly on the statutory provisions. In addition, these proposed regulations would require a mandatory exchange of information between the annuitant, the reemploying agency, and OPM. With this mandatory exchange of information, each party will be able to properly determine the reemployment status of the annuitant, and develop a more appropriate expectation of how reemployment will affect future annuity benefits.

This new part 837 will not, however, incorporate the rules governing the reemployment of annuitants without reduction in pay or annuity as provided by section 108 of the Federal Employees Pay Comparability Act of 1990. Those rules will remain codified in part 553 of title 5, Code of Federal Regulations. Also, waivers of annuity offset for annuitants employed by the judicial and legislative branches, as provided by section 655 of Public Law 102-190, December 5, 1991, will be governed by such rules and regulations as are promulgated by the waiving officials.

Reemployed Annuitants Generally

When a CSRS annuitant is reemployed by the Federal Government, his or her right to annuity may, by operation of law, be terminated, or it may continue during the period of reemployment, with the pay of the annuitant being offset by the amount of annuity allocable to the period of reemployment. A number of factors determine whether the annuity continues or terminates: type of annuity, type of appointment the annuitant receives, type of position to which the annuitant is appointed, and the annuitant's disability status. When FERS annuitants are reemployed, except for disability annuitants who have been found recovered or restored to earning capacity, their annuities generally continue during reemployment—without regard to the type of appointment used. Whether or not a CSRS or FERS annuitant is actually receiving annuity on the date of reemployment—for instance, when an annuitant has waived payment of annuity, or is receiving Federal Employees Compensation under chapter 81 of title 5, United States Code, in lieu of annuity—has no bearing on his or her status as an annuitant, or how future annuity benefits will be computed.

Whether annuitant status and right to annuity continue upon the reemployment of a disability annuitant depend on whether the disability annuitant has been found recovered or restored to earning capacity. Such findings can only be made by OPM. A disability annuitant who is reemployed at a lower grade or pay level than the position from which retired, or on a part-time basis when the previous employment was full time, or continues to receive partial compensation for loss of earning capacity due to a work-related injury during reemployment, generally cannot be found recovered form the disability strictly on the basis of the reemployment.

When the Right to Annuity Continues on Reemployment

Reemployed FERS annuitants whose annuities continue during reemployment (which includes reemployed CSRS annuitants who elect FERS) are subject, unless the employment is on an intermittent basis, to regular FERS deductions (currently 0.8 percent of basic pay). Reemployed CSRS annuitants are not automatically subject to CSRS deductions (7.0 percent for most employees), but may elect to have deductions taken from their pay. Since any future additional benefits are based on the total amount of basic pay, before the offset of annuity, both CSRS and FERS deductions are computed on the total amount of basic pay, before the offset of annuity. If, on separation from reemployment, the annuitant is not entitled to increased annuity benefits based on the period of employment, any CSRS or FERS deductions withheld during the period of reemployment will be refunded at the annuitant's request.

Except for certain circumstances involving receipt of Federal employees compensation in lieu of annuity, annuity is offset from pay even when the

annuitant is not in immediate receipt of annuity, or has waived receipt of annuity. The amount of annuity that the agency offsets from pay must be forwarded to OPM for deposit to the Civil Service Retirement and Disability Fund. While an annuitant's lump-sum credit (the total amount of contributions the annuitant had paid to the retirement fund at the time he or she retired, plus any accrued interest, where applicable) is ordinarily reduced by all annuity payments until it is expended, it is not reduced by any portion of any annuity payment that is offset from pay.

A supplemental annuity is an annuity earned through reemployment subject to certain statutory conditions: The retiree's entitlement to annuity must have continued during reemployment and his or her pay must have been offset by the amount of annuity. The supplemental annuity is added to the annuity previously awarded, effective upon separation from reemployment. However, the individual must apply for supplemental annuity before the supplemental annuity may be paid.

The statutes require the reemployment service be of a certain type and duration before title to a supplemental annuity is established. A reemployed annuitant who separates after completing at least 1 year of continuous, full-time reemployment service subject to offset of annuity, or periods of actual, continuous part-time and/or full-time reemployment service subject to offset of annuity and equivalent to 1 year of actual, continuous, full-time service, is entitled to a supplemental annuity.

Creditable full-time and part-time service only includes service performed during a regularly scheduled tour of duty. Intermittent employment, that is, employment without a regularly scheduled tour of duty, cannot be credited in determining title to, and in the computation of, a supplemental annuity. Only actual service, that is, service for which the employee was paid, may be credited for these purposes. Also, service as a judge or justice of the United States, as defined by section 451 of title 28, United States Code, or service as the President of the United States, does not qualify for supplemental annuity purposes.

All of the service credited in the computation of a supplemental annuity must be continuous. Continuous service is service that is not broken by a period of separation of more than 3 days, or by a conversion to an intermittent status. Leave without pay is not actual service, but does not break continuity of service.

In a supplemental annuity, reemployment subject to CSRS and CSRS Offset is credited under the CSRS formula; reemployment subject to FERS is credited under the FERS formula. This treatment of CSRS-Offset service is a special statutory rule for supplemental annuities—see section 302(a)(12) of Public Law 99–335, June 6, 1986, as amended by section 134 of Public Law 100–238, January 8, 1988—and is different from the rule that applies to the annuity computation of an employee who elects FERs. The average salary is the average rate of basic pay for all periods of service credited in the computation of the supplemental annuity. If the annuitant's basic annuity is reduced for a survivor benefit, the supplemental annuity will be reduced by 10 percent to provide an additional survivor benefit, unless the annuitant makes a timely filed written request to the contrary. For a CSRS annuitant, the additional survivor benefit is 55 percent of the unreduced supplemental annuity; for a FERS annuitant, it is 50 percent.

A reemployed annuitant who separates after completing at least 5 years of actual, continuous, full-time reemployment service subject to offset of annuity, or periods of actual, continuous, part-time and/or full-time reemployment service subject to offset of annuity and equivalent to 5 years of actual, continuous, full-time service, may elect, in lieu of his or her prior annuity and supplemental annuity entitlements, a redetermined annuity. A redetermined annuity is an annuity computed as if the annuitant had not previously retired, that is, all creditable service is used in a computation made under the provisions of law in effect at the time of separation from reemployment service.

When a reemployed annuitant who meets the service requirements for a supplemental annuity dies in service, any widow(er) (and former spouse under FERS) who is entitled to a survivor annuity is also entitled to supplemental survivor benefits.When a reemployed annuitant who meets the service requirements for a redetermined annuity dies in service, any widow(er) (and former spouse under FERS) who is entitled to a survivor annuity is entitled to elect redetermined survivor benefits.

Credit for service in the computation of a supplemental annuity or supplemental survivor benefit is subject to any deposit or deduction requirement that would otherwise apply to service of that nature.

When Annuity Terminates During Reemployment

Generally, former annuitants whose annuities were terminated on reemployment have their future annuity benefits redetermined on the basis of their subsequent separations from Federal service. However, there are certain exceptions to this rule.

An annuitant whose annuity was terminated on reemployment, and who, on once again separating from employment, is not entitled to either an immediate or deferred annuity on the basis of the most recent separation, and still meets the entitlement requirements to an immediate annuity based on a prior separation, may have that prior annuity reinstated. For example, if a CSRS annuitant who retired involuntarily has his or her annuity terminated on reemployment under the provisions of 5 U.S.C. 8344(b), but on separation from this reemployment, did not meet the 1-year-out-of-2 coverage requirement of 5 U.S.C. 8333(b), the annuitant would be entitled to have the prior annuity reinstated. A CSRS disability annuitant whose annuity had terminated during reemployment because of a finding of recovery or restoration to earning capacity, who on separation did not meet the 1-year-out-of-2 coverage requirement, would be entitled, before age 62, to reinstatement of the disability annuity, should both the disabling medical condition and lack of earning capacity reoccur. The reinstated annuity is equal in value to the terminated annuity, that is, it is not increased by cost-of-living adjustments that occurred during the period of termination.

Also, a CSRS annuitant, other than a former Member of Congress, whose annuity terminated when appointed by the President to a position covered by CSRS, or upon election as a Member of Congress, is guaranteed an immediate, redetermined annuity at least equal in amount to the annuity surrendered reemployment, increased by cost-of-living adjustments during the period of reemployment. If the former annuity was a disability annuity, however, the individual must still be disabled, or over age 60, when the individual is separated from the Presidential appointment. Also, if the individual elects FERS coverage during the period of reemployment, the guaranteed CSRS annuity is forfeited, and the individual's future annuity benefits are determined under FERS conversion rules (Section 302 of Pub. L. 99–335, June 6, 1986, the Federal Employees Retirement System Act of 1986, as amended, and part 846 of title 5, Code of Federal Regulations).

When Annuity Is Suspended During Reemployment

When a CSRS or FERS annuitant is appointed as a justice or judge of the United States, the annuity is suspended

because offset from salary of such employees is not permitted. Also, if a former Member who retired under the special CSRS provisions for Members is reemployed under certain conditions, the annuity is suspended. Suspension is different from termination, in that the individual retains annuitant status, and, consequently, the annuity benefit may be reinstated on termination of employment without the individuals meeting any additional entitlement requirements. Also, if the suspended annuitant dies while reemployed, death benefits are payable under CSRS as if he or she died as an annuitant. The amount of the reinstated annuity, or survivor annuity, includes cost-of-living adjustments that occurred during the period of reemployment.

Annuity Entitlements Based on Reemployment

On some occasions, reemployment may result in an individual's being potentially entitled to two annuity benefits under CSRS or FERS, based in part on the same service, or an annuity benefit under CSRS or FERS and another annuity benefit under another retirement system.

Neither CSRS or FERS contemplates simultaneous entitlement to two annuity benefits. However, this can occur, for example, when an individual entitled to a deferred annuity becomes reemployed before filing an application for benefits. These regulations would require an individual so situated to elect between the two possible benefits.

In regard to dual entitlement under two different retirement systems for Federal employees, these regulations provide that no individual can receive two annuity benefits based on the same period of service, or when dual receipt of the benefits is barred by other statute or regulation.

Part 837, as proposed, would also incorporate, without substantive amendment, certain portions of the regulations promulgated to implement the Whistleblower Protection Act of 1989.

Section Analysis

1. Section 837.101

This section describes the kinds of service to which part 837 apples—reemployment of CSRS and FERS annuitants in positions with the Federal Government and, with certain exclusions, the government of the District of Columbia.

2. Section 837.102

This section defines terms used in part 837.

3. Section 837.103

This section details information that must be provided by the annuitant to the agency, by the agency to the annuitant, and by the agency to OPM.

4. Section 837.201

This section states the rule that, unless the right to annuity is explicitly terminated on reemployment under the provisions of part 837, the individual's status as an annuitant continues, irrespective of whether the individual actually receives annuity during the period.

5. Section 837.202

This section details the types of annuity that terminate on reemployment.

6. Section 837.203

This section details what circumstance result in suspension of annuity during reemployment.

7. Section 837.301

This section details what circumstances result in the withholding of retirement deductions from the pay of reemployment annuitants

8. Section 837.302

This section details what circumstances require the reemploying agency to pay contributions to the retirement fund, and the amount of agency contributions due.

9. Section 837.303

This section states the circumstances that require the pay of the reemployed annuitant to be offset by the amount of annuity.

10. Section 837.304

This section provides that the reemploying agency must transfer to OPM the amount of funds that should have been withheld from the pay of the annuitant, whether or not it was withheld from the pay of the annuitant.

11. Section 837.305

This section states that an annuitant's lump-sum credit (of retirement deductions and deposits) shall not be reduced by the amount of annuity offset from pay under the provisions of § 837.303.

12. Section 837.306

This section provides that annuitants who are reemployed as justices and judges, as those terms are defined under 28 U.S.C. 451, may receive a refund of their unexpended lump-sum credit. Receipt of that payment will forfeit all rights to annuity based on the CSRS and/or FERS service.

13. Section 837.401

This section states that a disability annuitant may be reemployed in any position for which he or she is qualified.

14. Section 837.402

This section details additional information, over and above the requirements of § 837.103, that the agency must provide to a reemployed disability annuitant and OPM.

15. Section 837.403

This section states what action must be taken by the agency when the annuity of a reemployed disability annuitant is terminated during reemployment.

16. Section 837.404

This section provides rules controlling pay and annuity when OPM reinstates the disability annuity of an individual employed in a position not subject to CSRS or FERS.

17. Section 837.501

This section implements the statutory provision permitting a refund of retirement deductions withheld during reemployment when the reemployed annuitant is not entitled to a supplemental annuity on the basis of the reemployment.

18. Section 837.502

This section states that the circumstances under which an annuity terminated or suspended on the basis of reemployment will be reinstated on termination of the reemployment, and the rule for computation of the amount of the reinstated annuity.

19. Section 837.503

This section details the service requirements for supplemental annuity, what service may be credited in the computation of a supplemental annuity, and how a supplemental annuity is computed.

20. Section 837.504

This section details the title requirements, and computation, of a redetermined annuity.

21. Section 837.601

This section states the rule for determining whether a reemployed annuitant who dies while reemployed dies as an employee or as an annuitant.

22. Section 837.602

This section provides for a lump-sum payment of retirement deductions

withheld during reemployment when the reemployed annuitant dies in service, and there is no survivor annuitant, or the reemployment service did not establish entitlement to an increased survivor benefit under the provisions of § 837.602.

23. Section 837.603

This section details the service requirements, and computation, of increased survivor benefits based on reemployment service.

24. Section 837.701

This section details the circumstances that will result in the reduction of a supplemental annuity based on CSRS-Offset service because of simultaneous entitlement to social security old-age benefits based, in whole or in part, on the same service.

25. Section 837.702

This section details the circumstances that will result in the reduction of a supplemental survivor annuity based on CSRS-Offset service because of simultaneous entitlement to social security survivor benefits based, in whole or in part, on the same service.

26. Section 837.801

This section governs the simultaneous entitlement to two or more annuity benefits under CSRS, resulting from an employee's failure to apply for a benefit to which he or she is entitled prior to reemployment, or by applying for a benefit that would commence during a later period of employment.

27. Section 837.802

This section governs the reemployment of a CSRS or FERS annuitant under another retirement system for Federal employees.

28. Section 837.803

This section governs the reemployment of an annuitant when the retirement action has been canceled by the final order of a judicial or administrative authority.

29. Section 837.804

This section details the duration of elections made under 837.801 and 837.802.

Paperwork Reduction Act

The information collection requirement contained in § 837.103(c) has been submitted to the Office of Management and Budget for approval in accordance with the requirements of the Paperwork Reduction Act. It is estimated that there will be approximately 3000 responses annually, with an estimated average burden of 1 minute per response, for a total annual burden of 50 hours. Comments regarding these proposed collections of information at the time of reemployment should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Joseph Lackey, Desk Officer for the Office of Personnel Management. Comments should be received on or before December 8, 1992. All other comments should be sent to OPM as instructed above under "**ADDRESSES.**"

E.O. 12991. Federal Regulation

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

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees, retirees and survivors.

List of Subjects in 5 CFR Parts 831, 837, 841, 842, 844, and 846

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the Office of Personnel Management proposes to amend parts 831, 837, 841, 842, 844 and 846, as follows:

PART 831—RETIREMENT

1. The general authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; * * *

§ 831.502 Disability retirement.

2. Paragraph (f) and (g)(5) of § 831.502 are removed and paragraph (g) is redesignated (f).

Subpart H—[Removed and reserved]

3. Subpart H, consisting of §§ 831.801–831.804, of part 831 is removed and reserved.

4. Part 837 is added to read as follows:

PART 837—REEMPLOYMENT OF ANNUITANTS

Subpart A—General Provisions

Subpart B—Annuitant and Employee Status

Subpart C—Coverage and Contributions

Subpart D—Reemployment of Disability Annuitants

Subpart E—Retirement Benefits on Separation

Subpart F—Death Benefits

Subpart G—CSRS Offset

Subpart H—Alternative Entitlements and Canceled Retirements

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468.

Subpart A—General Provisions

§ 837.101 Applicability.

This part prescribes—

(a) The rules governing the reemployment of an annuitant by the Federal Government.

(b) The rules governing reemployment of an annuitant by the government of the

District of Columbia when the annuitant had been employed subject to CSRS by the District of Columbia prior to October 1, 1987, or was appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act.

(c) The rules governing the payment of retirement and death benefits based on reemployment covered by this part.

§ 837.102 Definitions.

Actual service means the period of time during which an annuitant is reemployed, excluding periods of separation and nonpay status.

Annuitant means a former employee or Member who is receiving, or meets the legal requirements and has filed claim for, annuity under either CSRS or FERS based on his or her service.

Another retirement system or *other retirement system* means a program created by Federal or District of Columbia statute or regulation and administered by an agency of the Federal Government or District of Columbia that provides retirement and/or death benefits to Federal or District of Columbia employees whose employment would otherwise be subject to the provisions of CSRS or FERS, or that credits service in the computation of benefits that would otherwise be credited in the computation of a CSRS or FERS benefit, or that provides a death benefit when a death benefit is payable from CSRS or FERS.

CSRS means the Civil Service Retirement System, as described in subchapter III of chapter 83 of title 5, United States Code.

CSRS annuitant means an annuitant retired under CSRS.

CSRS-Offset service means service by a reemployed CSRS annuitant that is subject to the OASDI tax by operation of section 101 of Public Law 98–21. It does not include any service performed before January 1, 1984.

CSRS-Offset wages means basic pay, as defined under 5 U.S.C. 8331(3), of an employee or Member performing CSRS-Offset service, but not to exceed the contribution and benefit base for the calendar year involved.

Continuous service means reemployment without a period of separation from service, or conversion to intermittent status, of more than 3 days.

Contribution and benefit base means the contribution and benefit base in effect with respect to the period involved, as determined under section 230 of the Social Security Act.

FEC means Federal Employees Compensation, that is, benefits paid on the basis of a work-related disease or injury under the provisions of chapter 81 of title 5, United States Code, but does not include a scheduled award under the provisions of 5 U.S.C. 8107, or medical services under 5 U.S.C. 8103.

FERS means the Federal Employees Retirement System, as described in chapter 84 of title 5, United States Code.

FERS annuitant means an annuitant who retired under FERS, or a reemployed CSRS annuitant whose election of FERS coverage under part 846 of this title is effective on or after January 8, 1988.

Full-time equivalent to part-time service means the amount of actual service that would result if the total hours worked on a part-time basis had been performed on a full-time basis, and the remaining portion of the period of reemployment was in a non-pay status.

Full-time service means actual service in which the reemployed annuitant is scheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

Fund means the Civil Service Retirement and Disability Fund as described at 5 U.S.C. 8348.

Intermittent service means any actual service performed on a less than full-time basis with no prescheduled regular tour of duty.

Lump-sum credit has the same meaning as the term is defined at section 8401(19) or section 8331(8) of title 5, United States Code, as may be applicable under the circumstances.

OASDI tax means, with respect to Federal wages, the Old Age, Survivors, and Disability Insurance tax imposed under section 3101(a) of the Internal Revenue Code of 1986.

Part-time service means actual service performed on a less than full-time basis under a pre-scheduled regular tour of duty.

Pay means the basic pay of the position to which the reemployed annuitant is appointed, prior to reduction for retirement contribution and annuity offset, and excludes any other benefits or compensation the reemployed annuitant receives, such as benefits authorized under the provisions of chapter 81 of title 5, United States Code.

Reemployed means reemployed in an appointive or elective position with the Federal Government, or reemployed in an appointive or elective position with the District of Columbia (when the annuitant was first employed subject to CSRS by the District of Columbia before October 1, 1987, or was appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeth Hospital and District of Columbia Mental Health Services Act), whether the position is subject to CSRS, FERS, or another retirement system, but does not include appointment as a Governor of the Board of Governors of the United States Postal Service, or reemployment under provisions of law that exclude offset of pay by annuity, that is, sections 8344(i), (j), or (k), or 8468(f), (g), or (h) of title 5, United States Code.

Retired Member means a former Member of Congress, as defined by 5 U.S.C. 2106, who has met the requirements for Member retirement as specified at sections 8336(g), 8337(a), 8338(b), 8412, 8413, and 8451(b) of title 5, United States Code, and who has filed claim therefor.

Suspension, in regard to payment of annuity, means that payment of annuity stops but annuitant status continues.

Termination, in regard to payment of annuity, means that both payment or annuity and annuitant status cease.

§ 837.103 Notice.

(a) *To OPM.* On or before the date a reemployed annuitant is appointed, the appointing agency must notify OPM in writing of the appointment, and provide OPM with the following information—

(1) The annuitant's name, date of birth, social security number (if applicable), and retirement claim number;

(2) A description of the kind of appointment;

(3) Whether the amount of annuity allocable to the period of reemployment is, or will be, withheld from the reemployed annuitant's pay, in accordance with § 837.303; and

(4) When the appointment is an interim appointment under § 772.102 of this chapter, an explicit statement that the appointment is required by the Whistleblower Protection Act of 1989.

(b) *To annuitant.* The agency should advise the annuitant in writing, generally, of the effect reemployment has on annuitant status and/or the continued receipt of annuity, the possible future retirement benefits that may be payable to an annuitant on the basis of reemployment and for CSRS annuitants, whether the annuitant may elect to have retirement deductions withheld from his or her basic pay.

(c) *Obligation of annuitant to provide information.* Before appointment, and as a condition of reemployment, the annuitant must provide the employing agency with the following information—

(1) Whether the annuitant is then in receipt of annuity;

(2) The gross monthly amount of annuity the annuitant is then receiving;

(3) Whether the annuitant is a disability annuitant, and if so, whether OPM has found the annuitant recovered from his or her disability, or restored to earning capacity; and

(4) If the annuitant is a CSRS annuitant, whether the annuitant's retirement was based on an involuntary separation, not for charges of misconduct or delinquency.

Subpart B—Annuitant and Employee Status

§ 837.201 Annuitant status.

Unless his or her annuity is terminated under the provisions of §§ 837.202 or 837.403, an annuitant continues to be an annuitant throughout the period of reemployment, whether or not he or she continues to receive annuity payments during the period of reemployment.

§ 837.202 Annuities that terminate on reemployment.

(a) *FERS annuitants.* (1) The annuity of a FERS annuitant who is a disability annuitant whom OPM has found recovered or restored to earning capacity prior to reemployment terminates on reemployment.

(2) The annuity of a FERS annuitant who is a former military reserve technician awarded a disability retirement annuity under 5 U.S.C. 8456, in addition to being subject to paragraph (a)(1) of this section, shall terminate on the date the annuitant declines an offer of employment with a department or agency, where the employment is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

(b) *CSRS annuitants.* (1) The annuity of a CSRS annuitant terminates on reemployment if—

(i) The annuitant is a disability annuitant whom OPM has found recovered or restored to earning capacity prior to reemployment, or whose disability annuity was awarded under the provisions of 5 U.S.C. 8337(h) because the annuitant was a National Guard Technician who was medically disqualifed for continued membership in the National Guard;

(ii) The annuitant is not a retired Member and the annuity is based on an involuntary separation (other than a separation that was mandated by statute based on the annuitant's age and length of service, or a separation for cause on charges of misconduct or delinquency) where the reemployment would, if the individual were not an annuitant, be covered by CSRS;

(iii) The annuitant is not a retired Member and is appointed by the President to a position that would, if the individual were not an annuitant, be covered by CSRS; or

(iv) The annuitant is not a retired Member and is elected as a Member.

(2) A disability annuity awarded a former National Guard Technician under the provisions of 5 U.S.C. 8337(h) shall terminate on the date the annuitant declines an offer of employment with a department or agency, where the employment is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

§ 837.203 Annuities that are suspended during reemployment.

(a) *All annuitants.* Payments of annuity is suspended when—

(1) The annuitant is appointed as a justice or judge of the United States, as defined by section 451 of title 28, United States Code; or

(2) The annuitant receives an interim appointment under § 772.102 of this chapter.

(b) *CSRS annuitants only.* Payment of annuity is suspended when the annuitant is a retired Member and becomes employed in an elective position, or is appointed to a position that is not intermittent or without pay.

Subpart C—Coverage and Contributions

§ 837.301 Coverage.

(a) *When annuity terminates on, or is suspended during, reemployment.* Retirement coverage under either CSRS or FERS is governed by subpart B of part 831 or subpart A of part 842 of this chapter, as is appropriate.

(b) *When annuity continues.* (1) Unless a reemployed FERS annuitant's employment is on an intermittent basis, as an employee subject to another retirement system, or as President, deductions for the Fund shall be made under 5 U.S.C. 8422(a).

(2) A CSRS annuitant is not subject to deductions, unless he or she is serving in an other-than-intermittent status (except as President), is not covered by another retirement system, and elects to have retirement deductions made from his or her pay. Generally, deductions are made no later than the beginning of the first pay period immediately following the date the reemployed annuitant files the election with the employing agency. When the annuitant elects to have deductions made, he or she may not change the election during continuous service with that agency.

(3) The amount of basic pay prior to offset of annuity under § 837.303 is used in computing the amount of deductions. The rate of retirement deductions is that which attaches to the position under the provisions of sections 8334(a), 8334(k), or 8422(a) of title 5, United States Code, as is applicable.

§ 837.302 Agency contributions.

(a) *FERS annuitants.* An agency that reemploys a FERS annuitant subject to retirement deductions under § 837.301(b)(1) shall make contributions, as specified in 5 U.S.C. 8423, to the Fund, based on the reemployed annuitant's pay prior to offset of annuity under the provisions of § 837.303.

(b) *CSRS annuitants.* An agency that reemploys a CSRS annuitant is required to make an agency contribution when—

(1) The annuity is suspended or terminated under the provisions of subpart B of this part; and

(2) The appointment is subject to CSRS deductions under the provisions of subpart B of part 831 of this chapter.

§ 837.303 Annuity offset.

(a) *Applicability.* When the right to receive annuity continues during reemployment (even though actual receipt of annuity may have been waived under 5 U.S.C. 8345(d) or 8465(a)), the pay of the reemployed annuitant shall be offset by the amount of annuity allocable to the period of reemployment, except that—

(1) No amount shall be offset from pay in accordance with this section for a period for which the annuitant has elected to receive FEC benefits in lieu of annuity; and

(2) No amount shall be offset from a lump-sum payment of annual leave, made on or after termination of the reemployment period.

(b) *Payment.* The employing agency shall pay to the Fund the full amount required to be offset from a reemployed annuitant's salary under this section in accordance with instructions issued by OPM. Payment in full to the Fund is not contingent on actual offset from the reemployed annuitant's salary.

(c) *Computation.* To compute the amount of the annuity offset for any particular pay period, divide the amount of annuity for the calendar days included in the pay period by the number of hours that would constitute a full-time tour of duty for that pay period, then multiply the result by the number of hours actually paid for the pay period, not to exceed the number of hours that constitutes a full-time tour of duty.

§ 837.304 Agency liability for payments.

(a) The agency will remit funds properly withheld from the pay of a reemployed annuitant in accordance with this subpart to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(b) When the employing agency fails to withhold from the pay of the reemployed annuitant some or all of the amounts required to be withheld from that pay by this subpart, the employee has received an overpayment of pay. The employing agency must collect the overpayment of pay (unless it is waived under 5 U.S.C. 5584 or some other applicable statute) and remit the proper funds to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(c) If the employing agency waives the annuitant's repayment of the salary overpayment, it must submit—on behalf of the reemployed annuitant—an amount equal to the correct deduction from pay (or the balance due in the case of a partial deduction) to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

§ 837.305 Lump-sum credit not reduced.

When annuity continues during the period of reemployment, and the reemployment is subject to annuity offset under the provisions of § 837.303, or any similar provision of law or regulation, the amount of an annuitant's lump-sum credit to the Fund shall not be reduced by the amount of annuity allocable to the period of reemployment.

§ 837.306 Refund of lump-sum credit.

An annuitant serving as a justice or judge of the United States, as defined by section 451 of title 28, United States Code, may apply for and receive payment of the annuitant's lump-sum credit, less the amount of annuity or other benefits previously paid on that account. Receipt of a refund under this section will irrevocably terminate the right to annuity, and the annuitant status, of the recipient, based on any prior separations from employment covered by CSRS or FERS.

Subpart D—Reemployment of Disability Annuitants

§ 837.401 Generally.

A disability annuitant may be reemployed in any position for which he or she is qualified.

§ 837.402 Special notice.

(a) *To annuitant.* In addition to the advice described in paragraph 837.103(b), the agency should generally also advise a disability annuitant, in writing, prior to reemployment, that—

(1) Reemployment on a permanent basis in a position equivalent in grade and pay to the position from which the annuitant retired may constitute the basis for an OPM finding of recovery from disability;

(2) Reemployment subject to medical and physical qualification standards equivalent to those of the position from which the annuitant retried may constitute the basis for an OPM finding of recovery from disability;

(3) The pay of the position in which the annuitant is reemployed, prior to the offset of annuity, or the pay of an interim appointment under § 772.102 of this chapter, as may be applicable, will be included as earnings in determining whether the disability annuity will be terminated due to restoration to earning capacity;

(4) Receipt of, or continued entitlement to receive, full or partial FEC benefits during reemployment, when those benefits are based on the same injury or medical condition that is the basis for OPM's award of disability retirement, is conclusive evidence (unless there is contravening medical evidence) that the annuitant has not recovered from the disability; and

(5) A disability annuitant age 60 or over cannot be found by OPM to be restored to earning capacity, and can only be found recovered at the annuitant's request.

(b) *To OPM.* On reemployment of a disability annuitant, the employing agency shall, in addition to the notice required by § 837.103(a), notify OPM in writing of—

(1) The physical and medical requirements of the position (providing a copy of the employee's position description);

(2) The position's grade level and/or rate of pay;

(3) Whether the employment is full-time, part-time, or intermittent;

(4) Whether, to the best of the agency's knowledge, the reemployed annuitant is receiving, or entitled to receive, FEC benefits; and

(5) Whether any medical evidence was used in making the employment decision, and if so, provide OPM with a copy of the medical information.

§ 837.403 Termination of annuitant during reemployment.

(a) *Agency action.* When a reemployed disability annuitant is found recovered from disability or restored to earning capacity by OPM, OPM shall terminate the annuity as of the date of the finding, and the employing agency shall cease reducing pay by the amount of annuity allocable to the period of reemployment effective that same date. If the appointment is subject to retirement deductions, retirement deductions will begin or continue, as the case may be.

(b) *Subsequent Benefits*—(1) *CSRS.* If, on separation from a period of reemployment during which the disability annuity was terminated because of recovery or restoration to earning capacity, the former disability annuitant is entitled to either an immediate or deferred annuity based on the most recent separation, any right to an annuity based on a prior separation is permanently extinguished. If no such right to immediate or deferred annuity accrues based on this most recent separation, however, any right to immediate or deferred annuity will be determined on the basis of the next prior separation.

(2) *FERS.* If a disability annuity is terminated during a period of reemployment because of recovery or restoration to earning capacity, any right to an annuity based on a prior separation is permanently extinguished, except as otherwise provided by § 844.405(b)(2) of this chapter.

§ 837.404 Reinstatement of annuitant during a period of employment not subject to CSRS or FERS.

When OPM reinstates the disability annuity of an individual employed in a position not subject to CSRS or FERS, the employing agency shall withhold retirement deductions and offset pay subject to the provisions of subpart C of this part, as of the date of OPM's administrative determination of reinstatement. OPM shall offset from any retroactive payment of annuity for a period that is also a period of employment an amount equal to the amount of annuity, or the pay for the period of employment, whichever is the lesser.

Subpart E—Retirement Benefits on Separation

§ 837.501 Refund of retirement deductions.

A reemployed annuity who separates from reemployment without title to either a supplemental annuity or a redetermined annuity under this subpart is entitled to have any retirement deductions withheld from pay during the period of reemployment refunded without interest.

§ 837.502 Reinstatement of annuity.

(a) *When Appropriate.* (1) when an annuity was terminated because of reemployment under the provisions of § 837.202, or any similar provision of statute or regulation in effect prior to the promulgation of this part, the annuity that was terminated will be reinstated effective the date immediately following the date the reemployed annuitant separated from reemployment, if—

(i) The reemployed annuitant's right to annuity has not been terminated under any other provision of regulation or statute; and

(ii) The reemployed annuitant is not entitled to either an immediate or deferred CSRS or FERS annuity based on the separation from reemployment.

(2) when an annuity was suspended because of reemployment under the provisions of § 837.203, the annuity that was suspended will be reinstated effective the date immediately following the date the reemployed annuitant separated from reemployment.

(b) *Amount of Reinstated Annuity.* The amount of an annuity reinstated under the provisions of paragraph (a)(2) of this section will be the amount of the annuity at the effective date of termination, adjusted by such adjustments as would have occurred had the annuity remained payable during the period of reemployment.

§ 837.503 Supplemental annuity.

(a) *Title Requirements.* A reemployed annuitant is entitled, on separation, or conversion to intermittent service, to a supplemental annuity if—

(1) The annuity is not terminated or suspended on reemployment;

(2) The pay during reemployment was subject to offset by the amount of annuity allocable to the period of reemployment; and

(3) The annuitant performs—

(i) At least 1 year of actual, continuous, full-time service;

(ii) Actual, continuous part-time service equivalent to 1 year of actual full-time service, or;

(iii) A combination of part-time and full-time actual, continuous service that is equivalent to 1 year of actual full-time service.

(4) An annuitant separating from an interim appointment made under the provisions of § 772.102 of this chapter need not meet the requirements of paragraphs (a) (1) and (2) of this section to establish title to a supplemental annuity under this section.

(b) *Computation of supplemental annuity—(1) CSRS.* (i) That portion of a supplemental annuity that is based on the total years and full months of creditable reemployment service performed while covered under CSRS is computed under the provisions of 5 U.S.C. 8339 (a), (b), (d), (e), (h), (i), (n) and (q).

(ii) A supplemental annuity computed in whole or in part under the provisions of this paragraph, using CSRS-Offset service, is subject to reduction under subpart G of this part.

(2) *FERS.* That portion of a supplemental annuity that is based on the total years and full months of creditable reemployment service performed on and after the effective date of FERS coverage is computed under the provisions of 5 U.S.C. 8415 (a) through (f).

(3) *Average pay.* The average pay used in the computation of a supplemental annuity is the average basic pay for the entire period of actual continuous reemployment service, excluding intermittent service.

(4) *Survivor reduction.* If the reemployed annuitant's annuity, at the time he or she applies for supplemental annuity, is reduced to provide a survivor benefit for a spouse, (or, for FERS annuitants only, a former spouse), the supplemental annuity will be reduced by 10 percent, and the survivor annuities increased, if the annuitant was retired under CSRS, by 55 percent of the supplemental annuity, and if the annuitant was retired under FERS, by 50 percent of the supplemental annuity, unless the reemployed annuitant notifies OPM at the time of application that he or she does not wish to have such reductions and increases effected.

(c) *Creditable service.* (1) All actual reemployment service performed after the date of retirement on a full-time or part-time basis may be credited in the computation of a supplemental annuity provided—

(i) When the reemployment service was performed on or after October 1, 1982, retirement deductions were withheld or, for CSRS annuitants, a deposit has been paid under the provisions of 5 U.S.C. 8334;

(ii) The reemployment service was not performed subject to another retirement system, except when the deductions under the other retirement system have been refunded and a deposit paid to OPM, where the law so permits, or benefits under the other retirement system have been waived in favor of CSRS or FERS benefits; and

(iii) The reemployment service has not been used in the computation of another supplemental or redetermined annuity.

(2) A period of reemployment service during which annuitant status continues and annuity is paid, and which is excluded from the normal annuity offset from pay by special statutory provision, cannot be credited in the computation of a supplemental annuity or any subsequent annuity entitlement.

(d) *Commencing date.* (1) Except as provided in clause (2) of this subparagraph, the supplemental annuity commences on the earlier of the first day of the month following—

(i) The day the annuitant is separated from reemployment; or

(ii) The day the annuitant is converted to an intermittent status.

(2) The supplemental annuity of a FERS annuitant, and the supplemental annuity of a CSRS reemployed annuitant who has not elected FERS coverage and who was—

(i) Involuntarily separated from the reemployment service (except by removal for cause on charges of misconduct or delinquency);

(ii) Involuntarily converted to an intermittent status, or;

(iii) Separated from reemployment service, or converted to intermittent status, after serving 3 days or less in the month of such separation or conversion—shall commence on the earlier of the day after separation from reemployment service, the effective date of conversion to intermittent status, or the day after the date pay ceases.

§ 837.504 Redetermined annuity.

(a) *Title Requirements.* (1) A reemployed annuitant is entitled, on separation, or conversion to intermittent service, to a redetermined annuity if—

(i) The annuity was not terminated or suspended during reemployment;

(ii) The pay during reemployment was subject to offset by the amount of annuity allocable to the period of reemployment;

(iii) The annuitant performs—

(A) At least 5 years of actual, continuous, full-time service;

(B) Actual, continuous part-time service equivalent to 5 years of actual full-time service, or;

(C) A combination of part-time and full-time actual, continuous service that is equivalent to 5 years of actual full-time service.

(iv) Retirement deductions are withheld, or a deposit is paid, for the entire period of continuous reemployment service immediately preceding the most recent separation from reemployment service; and

(v) The reemployed annuitant elects the redetermined annuity in lieu of his or her prior annuity and the supplemental annuity that would be payable under § 837.503 of this subpart.

(vi) An annuitant separating from an interim appointment made under the provisions of § 772.102 of this chapter need not meet the requirements of paragraph (a)(1) (i) and (ii) of this section in order to establish title to a redetermined annuity under this section.

(2) An employee whose annuity was terminated under the provisions of § 837.202(b)(1)(iii), and who has not elected FERS coverage, is entitled to a redetermined annuity on separation.

(b) *Computation.* (1) A redetermined annuity is computed using all the reemployed annuitant's creditable service, under the provisions of law in effect governing the payment of CSRS and/or FERS annuities, as may be applicable, at the time of separation from reemployment service, or conversion to intermittent status.

(2) The amount of the redetermined annuity of an individual whose previous annuity was terminated under the provisions of § 837.202(b)(1)(iii) will at least equal the amount of the terminated annuity plus any increases under section 8340 of title 5, United States Code, occurring after the termination of the previous annuity and before the commencement of the redetermined annuity, adjusted by any annuity increase or reduction resulting from additional or different elections made by the reemployed annuitant.

(c) *Commencing date.* The commencing date of the redetermined annuity is the same as the law and/or regulations would provide in the case of a retiring employee.

Subpart F—Death Benefits

§ 837.601 Generally.

Except as otherwise provided by this subpart, when an annuitant who is reemployed under circumstances that provide for continuation of annuitant status during reemployment dies, death benefits are payable under CSRS or FERS as if the individual died as an annuitant, and not as an employee.

§ 837.602 Lump-sum payment of retirement deductions.

If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would not have been entitled to a supplemental annuity, had the separation been for reasons other than death, or if there is no supplemental spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS) the amount of retirement deductions withheld during the period of reemployment will be paid in a lump sum to the person entitled under the provisions of 5 U.S.C. 8342(c) or 8424(d), as appropriate.

§ 837.603 Increased survivor benefits.

(a) *Supplemental Survivor Annuity.* (1) If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would have been entitled to a supplemental annuity, had the separation been for reasons other than death, and there is a spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS) the amount of the spousal survivor annuity will, if any necessary deposit for service credit is made, be increased by 55 percent of the supplemental annuity, if the reemployed annuitant was retired under CSRS, or 50 percent of the supplemental annuity, if the reemployed annuitant was retired under FERS.

(2) Supplemental survivor annuity benefits payable under this paragraph, computed in whole or in part under the provisions of § 837.503(b)(1)(i), using CSRS-Offset service, are subject to reduction under subpart G of this part.

(b) *Redetermined Survivor Annuity.* If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would have been entitled to elect a redetermined annuity, had the separation been for reasons other than death, and if there is a spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS), a person entitled to a spousal survivor annuity may elect to have his or her survivor annuity computed as if the annuitant had elected a redetermined annuity, provided any necessary deposit for service credit is made.

Subpart G—CSRS Offset

§ 837.701 Offset from supplemental annuity.

(a) OPM will reduce the supplemental annuity of an individual who has performed CSRS-Offset service, if the individual is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(b) The reduction required under paragraph (a) of this section is effective on the first day of the month during which the reemployed annuitant—

(1) Is entitled to a supplemental annuity under this part; and

(2) Is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(c) Subject to paragraphs (d) and (e) of this section, the amount of the reduction required under paragraph (a) of this section is the lesser of—

(1) The difference between—

(i) The social security old-age benefit for the month referred to in paragraph (b) of this section; and

(ii) The old-age benefit that would be payable to the individual for the month referred to in paragraph (b), excluding all CSRS-Offset wages as a reemployed annuitant, and assuming the annuitant was fully insured (as defined by section 214(a) of the Social Security Act); or

(2) The product of—

(i) The old-age benefit to which the individual is entitled or would, on proper application, be entitled; and

(ii) A fraction—

(A) The numerator of which is the annuitant's total CSRS-Offset service as a reemployed annuitant, rounded to the nearest whole number of years not exceeding 40 years; and

(B) The denominator of which is 40.

(d) Cost-of-living adjustments under 5 U.S.C. 8340 occurring after the effective date of the reduction required under paragraph (a) of this section will be based on only the supplemental annuity remaining after reduction under this subpart.

(e) The amounts for paragraphs (c)(1)(i), (c)(1)(ii), and (c)(2)(i) of this section are computed without regard to subsections (b) through (1) of section 203 of the Social Security Act (relating to reductions in social security benefits), and without applying the provisions of the second sentence of section 215(a)(7)(B)(i) or section 215(d)(5)(ii) of the Social Security Act (relating to part of the computation of the social security windfall elimination provisions).

(f) OPM will accept the determination of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to socal security benefits and the beginning and ending dates thereof.

§ 837.702 Offset from supplemental survivor annuity.

(a) OPM will reduce a supplemental survivor annuity (an annuity under 5 U.S.C. 8341) based on the service of an individual who performed CSRS-Offset service, if the survivor annuitant is

entitled, or on proper application would be entitled, to survivor benefits under section 202(d), (e), or (f) (relating to children's, widows', and widowers' benefits, respectively) of the Social Security Act.

(b) The reduction required under paragraph (a) of this section begins (or is reinstated) on the first day of the month during which the survivor annuitant—

(1) Is entitled to a disability or survivor annuity under CSRS; and

(2) Is entitled, or on proper application would be entitled, to survivor benefits under the Social Security Act provisions mentioned in paragraphs (a) and (c) of this section, respectively.

(c) The reduction under paragraphs (a) of this section will be computed and adjusted in a manner consistent with the provisions of § 837.701 (c) through (e).

(d) A reduction under paragraph (a) of this section stops on the date entitlement to the disability or survivor benefits under title II of the Social Security Act terminates. In the case of a survivor annuitant who has not made proper application for the social security benefit, the reduction under paragraph (a) of this section stops on the date entitlement to such survivor benefits would otherwise terminate. If a social security benefit is reduced under any provision of the Social Security Act, even if reduced to zero, entitlement to that benefit is not considered to have terminated.

(e) OPM will accept the determination or certification of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to social security survivor benefits and the beginning and ending dates thereof.

Subpart H—Alternative Entitlements and Canceled Retirements

§ 837.801 Unperfected entitlement to CSRS benefits based on a prior separation.

(a) An employee who meets the age and service requirements for title to a non-disability annuity under CSRS on the basis of a prior separation, but did not apply for that annuity before a subsequent separation from service to which a different annuity entitlement attaches, may elect, on application, to receive either—

(1) The annuity based on the later separation; or

(2) The annuity based on the prior separation, with payment of annuity suspended during the period(s) of employment subsequent to the commencing date of annuity, and such benefits as would be payable had the subsequent period(s) of employment been performed under the provisions of this part.

(b) When an individual who has applied for a deferred annuity under CSRS is reemployed under CSRS before the commencing date of that annuity, the application is deemed to have not been made.

§ 837.802 Benefits under another retirement system for Federal employees based on the most recent separation.

(a) *Generally.* An annuitant who has performed reemployment service after the commencing date of annuity under the provisions of another retirement system, and who is entitled to an annuity benefit from the other retirement system during a period in which he or she is also entitled to an annuity benefit under CSRS or FERS, may receive both benefits simultaneously, or for the same period, except that the annuitant may not receive both benefits simultaneously, or for the same period, if—

(1) The provisions of law or regulation governing the other retirement system do not permit the annuitant to receive both benefits simultaneously, or for the same period of time; or

(2) Entitlement to the annuity from the other retirement system is based on service credited in the computation of the CSRS or FERS annuity, or service credited in the computation of the annuity from the other retirement system was used in the computation of the CSRS or FERS annuity.

(b) *Election of Alternative Benefits.* (1) Where simultaneous receipt of, or entitlement to, both annuities is barred under the provisions of paragraph (a)(1) of this section, the annuitant must elect to receive either the annuity under the other retirement system, or the CSRS annuity.

(2) Where the annuitant, under the provisions of paragraph (b)(1) of this section, elects to receive annuity from the other retirement system in lieu of the CSRS or FERS annuity, the CSRS or FERS annuity terminates as of the commencing date of the other annuity, and any overpayment of CSRS annuity will be offset from the other annuity and paid to OPM.

(c) *Recomputation.* Where simultaneous receipt of annuities from more than one retirement system is barred by paragraph (a)(2) of this section, but not by paragraph (a)(1) of this section, the CSRS or FERS annuity may be recomputed to exclude credit for service credited in determining entitlement to, or the amount of, the annuity from the other retirement system, effective as of the commencing date of the annuity from the other retirement system for Federal employees, and the recomputed CSRS or FERS annuity may be paid simultaneous with, or for the same period as, the annuity from the other retirement system for Federal employees.

(d) *Forfeiture.* Where an annuitant's coverage as an employee under another retirement system, whether by election or by operation of law or regulation, results in forfeiture of annuity rights under CSRS or FERS, the CSRS or FERS annuity will terminate as of the effective date of coverage.

(e) *Survivors.* The rules detailed in this section in regard to dual entitlement to annuity benefits under CSRS or FERS and other retirement system also apply to dual entitlement to survivor benefits under CSRS or FERS and another retirement system, unless the particular circumstance is otherwise governed by specific provision of statute or regulation.

(f) *Agency Responsibilities.* The agency responsible for administering another retirement system must—

(1) Promptly notify OPM of an election of coverage under that retirement system by a reemployed CSRS or FERS annuitant, or the coverage of a reemployed CSRS annuitant under that retirement system by election or operation of law or regulation, when such coverage affects the annuitant's entitlement to CSRS annuity;

(2) Promptly notify OPM when a reemployed annuitant separates with entitlement to an annuity under the other retirement system that cannot, under the provisions of paragraph (a) of this section, be paid simultaneous with, or during the same period as, the CSRS annuity; and

(3) Reimburse OPM for overpayments of annuity resulting from a failure to comply with paragraphs (b) (1) and (2) of this section.

§ 837.803 Cancellation of retirement by judicial or administrative authority.

(a) *Cancellation of retirement action.* A separation from employment on which an application for retirement is based may only be canceled by the former employing agency in response to a direct and final order of a judicial or administrative body charged with the responsibility of reviewing the legality of the separation, and authorized to make such order, or by agreement between the annuitant and the former employing agency in resolution of a grievance, complaint, dispute, appeal or other action, involving an allegedly erroneous separation, before such authority.

(b) *Agency notification to OPM.* Upon receiving a final order requiring cancellation of the annuitant's separation or after the annuitant and the agency agree to cancel the separation, the employing agency must notify OPM and request the amount of the erroneous payment to be recovered under § 550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(c) *Collection of erroneously paid retirement benefits.*—(1) If OPM determines that an overpayment of annuity or lump-sum credit has occurred and the employee is entitled to receive back pay because of the canceled separation, the overpaid retirement benefits must be deducted to the extent they can be recovered from the back pay adjustment as required by § 550.805(e) of this chapter.

(2) Amounts recovered from back pay will not be subject to waiver consideration under the provisions of 5 U.S.C. 8346(b) or 8470(b). If there is no back pay or the back pay is insufficient to recover the entire payment, the employee may request that OPM waive the uncollected portion of the overpayment. If waiver is not granted, the employee must repay the erroneous payment.

§ 837.804 Finality of elections under this subpart.

Except as otherwise provided by this subpart, an election of coverage under, or annuity from, another retirement system, in lieu of CSRS or FERS coverage or annuity, or the election between simultaneous entitlements under CSRS or FERS, is final and conclusive for the period of simultaneous entitlement to coverage or annuity.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

Subpart E—Employee Deductions and Government Contributions

5. The general authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461(g); * * *

§ 841.506 [Amended]

6. In § 841.506, paragraphs (b), (d), and (e) are removed, and paragraph (c) is redesignated (b).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart A—Coverage

7. The general authority citation for part 842 and the specific authority for § 842.104 continue to read:

Authority: 5 U.S.C. 8461(g); Section 842.104 * * * also issued under 5 U.S.C. 8641(n) * * *

§ 842.104 [Amended]

8. In § 842.104, paragraph (a) is removed, and paragraphs (b) through (g) are redesignated (a) through (f).

PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT

9. The authority citation for part 844 continues to read:

Authority: 5 U.S.C. 8461.

Subpart D—Termination and Reinstatement of Disability Annuity

§ 844.403 [Removed]

§§ 844.404 and 844.405 [Redesignated as §§ 844.403 and 844.404]

10. Section 844.403 is removed, and §§ 844.404 an 844.405 are redesignated as §§ 844.403 and 844.404; and newly redesignated § 844.404, paragraph (e) is removed and paragraph (f) is redesignated (e).

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

11. The general authority citation for part 846 continues to read:

Authority: 5 U.S.C. 8461(g); * * *

Subpart C—Effect of an Election to Become Subject to FERS

§ 846.305 [Removed]

§ 846.306 [Redesignated as § 844.305]

12. Section 846.305 is removed, and § 846.306 is redesignated § 846.305.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Medical Use of Byproduct Material; Training and Experience Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing an Advance Notice of Proposed Rulemaking (ANPRM) on the training and experience criteria for all individuals who use byproduct material for clinical procedures in the practice of medicine.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-504-3417.

SUPPLEMENTARY INFORMATION: On May 25, 1988, the Commission published an ANPRM on the training and experience criteria for all individuals who use byproduct material for clinical procedures in the practice of medicine (53 FR 18845). In the ANPRM, the Commission explained that it was considering amending its training and experience criteria to reflect the realities of the evolution of medical practice, without compromising public health and safety. Rather than simply examining training and experience criteria for the diagnostic use of radiopharmaceuticals, NRC took that opportunity to request public comment on training and experience criteria for all individuals who participate in any type of medical use of byproduct material.

The comment period expired on August 24, 1988. The Commission received 94 letters of comment. Thirty-six were from hospital-based physicians; 16 from professional societies; 13 from technologies; 8 from State regulatory agencies; 8 from medical physicists; 5 from radiopharmacists; 4 from nuclear medicine training programs; 3 from private physicians; and 1 from a hospital administrator. Nineteen letters were received in support of a recommendation from the American College of Cardiology and the American Heart Association that the current 1000-hour requirement described in Subpart J be reduced for those practitioners performing only "single organ" imaging. Another 27 letters said that the training and experience requirements should be the same for every physician, and that the term "single organ" imaging was a misnomer, since cardiac imaging requires the use of various radioisotopes and radiopharmaceuticals, sophisticated instrumentation, and safe handling of radioactive material. Of the 41 letters addressing board certification, all were in favor of certification, but 27 letters stressed that the only satisfactory training was certification through an accredited program. Many letters addressed the shortage of professional

personnel. Several letters said that training and experience criteria for radiopharmaceutical and sealed source therapy were not sufficient.

In 1989, the staff received a contract report that characterized the training and experience criteria for personnel involved in the medical use of byproduct material. The final report was entitled: "Study on Training and Experience Criteria for Personnel Involved in the Medical Use of Byproduct Material," by S. Cohen and Associates, Inc. The report addressed the exact nature of the duties and responsibilities of all persons working in nuclear medicine departments, nuclear pharmacies, and radiation oncology departments; the degree to which current professional organizations already have criteria for educating and certifying individuals in these specialties; the degree to which States are already regulating persons working with radiation in medical institutions; and the existing Federal and State regulations for individuals working with radiation in medical institutions.

Using information from the public comments and the contracted report, the NRC staff prepared an analysis that was presented to NRC's Advisory Committee on Medical Uses of Isotopes (ACMUI) during its July 10, 1990, meeting. The ACMUI recommended against NRC modifying its requirements for physicians desiring to perform only limited nuclear procedures, and recommended that NRC do nothing about required training and experience criteria for technologists and other non-physician workers, unless additional information indicated that the deficient training of these groups contributed to misadministration reported to NRC.

On January 27, 1992, the Quality Management (QM) Program and Misadministration Rule became effective. NRC believes that implementation of this rule will result in increased direction and oversight by the authorized user, thus mitigating the need for NRC to specify training and experience criteria for technologists and other non-physician workers who handle byproduct material. Further, with the implementation of the QM Rule, the revised 10 CFR 35.25(a)(2) more clearly defines the requirements of adequate supervision.

The NRC staff continues to review and evaluate the adequacy of existing training and experience criteria for medical uses. The staff also continues to monitor the role of inadequate training or experience as a contributing factor to misadministration events reported to the NRC. Specific activities include: reviewing the preceptor process for documentation of training received by physician applicants, and establishing a new category of authorized individual, the "authorized nuclear pharmacist." Further, the NRC staff currently has studies underway using human factors and risk analysis techniques to examine reported misadministrations and brachytherapy and teletherapy practices. The staff hopes to gain insight regarding the design of equipment and the essential elements of training for these practices. The results of these studies may be used to develop guidance or proposed rulemaking, as appropriate, for medical personnel using byproduct material in these applications.

The Commission has concluded that the development of comprehensive training and experience criteria for the medical use of byproduct material, as described in the ANPRM, is not indicated at this time. The review of training and experience criteria for the medical use of byproduct material is an ongoing process, and revisions will be proposed as needed. Therefore, the Commission is withdrawing this ANPRM.

Dated at Rockville, Maryland, this 2d day of October 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-24630 Filed 10-8-92; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy; Pledging or Sale of Unguaranteed Portion of Loan

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 7(a) of the Small Business Act (Act) 15 U.S.C. 636(a), the Small Business Administration (SBA) makes loans and other financings (hereinafter referred to collectively as loans) on a deferred (guaranteed) basis with banks or other lending institutions. SBA can guaranty up to 90 percent of such loans depending upon the loan amount. As such, there is an unguaranteed portion of every SBA guaranteed loan. This proposed rule would permit, under prescribed procedures, on a case by case basis, and with SBA's prior written consent, either the transfer of the unguaranteed portions of SBA guaranteed loans or the pledge of the notes which evidence SBA guaranteed loans. The intent of this regulation is to make this procedure available only to those participating lenders who are financially secure, who have a history of being in compliance with applicable regulations, and who regularly use commercial lines of credit as a way to finance their lending operations.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Comments should be mailed to: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, AA/FA, (202) 205-6490.

SUPPLEMENTARY INFORMATION: Section 7(a) of the Small Business Act (Act) 15 U.S.C. 636(a) authorizes SBA to make loans on a deferred (guaranteed) basis with banks or other lending institutions. Historically, since its enactment in 1953, section 7(a) has contained various limitations on the amount of guaranty SBA may make available to a bank or other lending institution in furtherance of the statutory objectives expressed elsewhere in that provision. As a result, there remains an unguaranteed portion of every SBA guaranteed loan, the minimum size of which is dependent upon the statutory provision under which the loan is made.

The legislative history of these limiting provisions makes it clear that Congress did not intend for SBA to guarantee 100% of a given loan, and that it did intend for the bank or lending institution making a guaranteed loan to retain a sufficient economic interest in the loan to ensure its diligence in the making, servicing and liquidating of that loan. To that end, SBA historically has promulgated various regulations and utilized various contractual provisions designed to enforce the statutory requirement that the lender of a guaranteed loan retain an economic interest in the loan reasonably commensurate with the unguaranteed portion.

In most instances, that requirement for retention of economic interest has translated into a requirement for retention of at least a part of the unguaranteed portion of the guaranteed loan by the lender. (See for example 13 CFR 120.403-7(d)) However, SBA has permitted under prescribed procedures, on a case by case basis, and with its prior written consent both the transfer by some lenders of the unguaranteed portions of loans and the pledge by other lenders of the notes which evidence SBA guaranteed loans for the

purpose of financing transactions for the benefit of those lenders. (See paragraph 12(a) of Blanket Guaranty Agreement, SBA Form (750)). The regulations proposed herewith will codify the procedures SBA has followed in those transactions so as to give its community of lenders clear guidance on when and how such financing transactions can be consummated. They are intended to facilitate the financing of the unguaranteed portions of SBA guaranteed loans only in circumstances where the lender regularly used commercial lines of credit as a way to finance its lending operations.

In this regard, SBA is considering adopting a change to its regulations applicable only for two types of Nondepository Lenders. Nondepository Lenders that would be covered under this proposal are Small Business Lending Companies which are licensed and regulated by SBA (See 13 CFR Part 120), and Business and Industrial Development Companies which are chartered under state statutes. SBA is reserving the right to deny a lender's request for its consent under these regulations if such lender is not, or in the past not been, in compliance with regulations governing SBA lending activities or any other applicable state or Federal statutory or regulatory requirements.

The procedures that would be established pursuant to this proposed regulations will be available only to those non-depository lenders which meet certain criteria. First, as a threshold matter, the lender must be financially secure. Next, the lender must presently be, and historically have been, substantially in compliance with SBA regulations. The underlying premise of the proposal is that some non-depository lenders who meet these criteria are in a good position, through the transfer or pledge of their unguaranteed portions, to generate new funds that will enable them safely to expand the number of small businesses to which they can provide financing. That purpose can only be served when SBA is satisfied that the lender has demonstrated the financial and programmatic ability to service its loans.

These proposed regulations are intended to cover either a situation in which a lender wants to pledge the notes evidencing SBA guaranteed loans, or to transfer for value the unguaranteed portions of such notes or the right to the income stream from such unguaranteed portions for the purpose of obtaining financing. The documents necessary to effectuate any such financing arrangement will differ from case to case. SBA will attempt to accommodate any reasonable proposal for such financing. However, the regulatory requirements set out below are designed to provide general conditions which must be satisfied in all such cases before SBA will accommodate any proposal with its prior written consent.

In this regard, under these proposed regulations, only a party agreeable to SBA will be permitted to hold the notes evidencing SBA guaranteed loans. Normally, SBA requires the lender to retain custody of such notes. (See 13 CFR 120.200–2) However, SBA recognizes that parties to the types of financing transactions contemplated by these proposed regulations may sometimes not be willing to permit a lender to retain the notes for reasons peculiar to the transactions. In this case, SBA will either hold the notes itself or allow an agreed upon third party, but not the party providing the credit to the non-depository lender, to hold the notes in custody under agreed upon terms and conditions.

The proposed regulations require all parties to the financing transaction to enter into a written agreement which protects SBA's interests as guarantor of a major portion of the repayment of the notes, as a precondition to SBA's prior written consent to the transaction. Any such agreement will have to indicate the mechanism by which the notes will be held and safeguarded, contain an acknowledgment of SBA's interest in the notes, and reflect the agreement by all relevant parties to recognize and uphold that interest in a way consistent with the Small Business Act, the relevant regulations promulgated thereunder and the provisions of the contractual agreement under which SBA's guaranty was given. In this regard, SBA has developed a recommended format for the requisite agreement which it will make available to any parties who wish to proceed under the regulations.

Finally, under these proposed regulations, SBA will precondition its prior written consent upon the demonstration by the participating lender of a continuing economic interest in the unguaranteed portions of the loans. In the case of a pledge, that interest is demonstrated by retention of all economic interest in the actual unguaranteed portions. In the case of a transfer, a participant lender will be required to make a satisfactory showing that it continues to be economically at risk for the unguaranteed portions in a degree sufficient in SBA's sole judgment to warrant SBA's consent. The ultimate risk of loss on the unguaranteed portions must continue to be borne by the participating lender. The proposed regulation cites a number of non-exclusive means which may be employed singly or in combination by a lender to demonstrate such risk retention.

Compliance With Executive Orders 12291, 12612, and 12778, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. ch. 35

For purposes of Executive Order 12291, SBA certifies that this proposed rule, if promulgated in final, would not be considered a major rule because it would not have an annual economic effect in excess of $100 million, it would not lead to a major increase in costs, and it would not have adverse effects on competition. SBA believes this proposed rule will lead to additional funds being made available for the purpose of lending to small business concerns. SBA is of the opinion that such increased amounts will be approximately $50 million annually.

For purposes of the Regulatory Flexibility Act, SBA certifies that this proposed rule, if promulgated in final, would not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of Executive Order 12612, SBA certifies that this proposed rule, if promulgated in final, will not have federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, SBA certifies that this proposed rule,if promulgated in final, will not have new or additional reporting or recordkeeping requirements.

For purposes of Executive Order 12778, SBA certifies that this proposed rule, to the extent practicable, is drafted in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—businesses, Small businesses.

For the reasons set forth above part 120 of title 13, Code of Federal Regulations, is proposed to be amended as follows:

PART 120—[AMENDED]

1. The authority cite for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Subpart C of part 120 is amended by adding a new § 120.301–7 to read as follows:

§ 120.301–7 Financings by Nondepository Lenders.

(a) A Nondepository Lender may pledge the notes evidencing loans or financings (hereinafter collectively loans), a portion of the repayment of which are guaranteed by SBA, or transfer for value the unguaranteed portions of loans, a portion of the repayment of which are guaranteed by SBA, if SBA gives its prior written consent to such pledging or transfer. In order for SBA to exercise its discretion under this section, the lender must be financially secure and must presently be, and historically have been, substantially in compliance with SBA's regulations or any other applicable state or Federal statutory or regulatory requirements. SBA's written consent to such a transaction will be given in SBA's sole discretion, and will be given only if the following conditions are agreed to in writing by SBA, the Nondepository Lender and all third parties whose interests are involved in such a transaction:

(1) The lender of the loans, SBA or a third party custodian agreeable to SBA, will hold all pertinent loan instruments as defined by 13 CFR 120.200–2 and SBA's blanket Guaranty Agreement (SBA Form 750), and the lender will continue to service the loans after the pledge or transfer is made.

(2) The ultimate risk of loss on the unguaranteed portions must continue to be borne by the participating lender. The lender of the loans will continue to retain an economic risk in the unguaranteed portions. Retention of such economic risk must be demonstrated to SBA's satisfaction. Such demonstration may include, but is not limited to, agreement to the following undertaking(s) and must be sufficient in SBA's sole discretion to satisfy SBA's requirement that the lender remains at economic risk for the unguaranteed portions:

(i) In the case of a sale of unguaranteed portions:

(A) Establishment of a reserve fund; and/or

(B) Retention of insurance; and/or

(C) Agreement to reacquire any unguaranteed portion of a guaranteed loan or the note evidencing in SBA guaranteed loan if the underlying loan goes into default pursuant to SBA's regulations.

(ii) In the case of a pledge of notes, retention by the lender of all economic interest in the unguaranteed portion of any loans which the notes evidence.

(3) SBA, the lender and all relevant third parties, as determined by SBA in its sole discretion, must enter into a written agreement satisfactory to SBA under which SBA's interest as guarantor of the subject loans is acknowledged and all relevant third parties agree to recognize and uphold those interests pursuant to the Small Business Act, the regulations promulgated thereunder and the contractual provisions under which SBA agreed to guaranty the loans (SBA Form 750).

(b) For purposes of this regulation the term Nondepository Lender shall mean one of the following two types of Loan Participant as that term is defined at 13 CFR 120.300:

(1) Small Business Lending Company regulated by SBA.

(2) Business and Industrial Development Company.

3. Section 120.200–2 is amended by revising the second sentence thereof to read as follows:

§ 120.200–2 Servicing guaranteed loans.

* * * Unless provided otherwise, an agreement developed pursuant to 13 CFR 120.301–7, the Lender shall hold the note, instruments of hypothecation and all other agreements, documents and instruments required in connection with such loans. * * *

4. Section 120.403–7(d) is amended by revising the first sentence thereof to read as follows:

§ 120.403–7 Limitations on preferred lenders; SBA access.

* * * * *

(d) *Sale of all or part of unguaranteed portion.* Except as otherwise agreed to by SBA pursuant to agreement developed under 13 CFR 120.301–7, a Preferred Lender is prohibited from selling all or part of any part of the unguaranteed portion of a PLP loan when such unguaranteed portion is 20 percent of the loan. * * *

Dated: September 24, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–24530 Filed 10–8–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–101–91]

RIN 1545–AQ28

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments relating to the taxation and valuation of fringe benefits under section 61 of the Internal Revenue Code. These proposed amendments update previous guidance concerning the valuation of an employee's personal use of employer-provided fuel when an employer-provided automobile is valued pursuant to the automobile lease valuation rule. The proposed regulations affect employees receiving this fringe benefit and provide guidance to employers and employees to help determine their federal tax liability.

DATES: Written comments and requests for a public hearing must be received by November 9, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–101–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Marianna Dyson, at 202–622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 61 of the Internal Revenue Code of 1986 (Code). The amendments pertain to the valuation of employer-provided fuel under the automobile lease valuation rule of § 1.61–21(d) of the regulations.

Explanation of Provisions

The final fringe benefit regulations issued in July 1989 and effective for benefits furnished on or after January 1, 1989, provide that in valuing the personal use of automobiles under § 1.61–21(d) of the regulations, the Annual Lease Values do not include the fair market value of fuel provided by the employer. Thus, fuel consumed for any personal miles driven must be valued separately for inclusion in income. Section 1.61–21(d)(3)(ii)(A).

Under § 1.61–21(d)(3)(ii)(B), employer-paid fuel provided in kind to employees for personal use may be valued at fair market value or, in the alternative, at 5.5 cents per mile. If the cost of the fuel is reimbursed by or charged to an employer, the value of the fuel is its fair market value, which is generally the amount of the actual reimbursement or

amount charged, provided the purchase of the fuel is at arm's-length. Section 1.61–21(d)(3)(ii)(C).

For employers with fleets of at least 20 automobiles, § 1.61–21(d)(3)(ii)(D) sets forth two additional methods for valuing fuel for personal use. The general method provides that employers who reimburse employees for the cost of fuel or allow employees to charge the employer for the cost of fuel may value the fuel by reference to the employer's "fleet-average cents-per-mile fuel cost." The fleet-average cents-per-mile fuel cost is equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The average per-gallon fuel cost and the miles-per-gallon rate are determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period. Section 1.61–21(d)(3)(ii)(D).

In lieu of calculating the "fleet-average cents-per-mile fuel cost" under the general method of paragraph (d)(3)(ii)(D) of § 1.61–21, employers with fleets of at least 20 automobiles that use the fleet-average valuation rule of paragraph (d)(5)(D) may use the 5.5 cents-per-mile option of paragraph (d)(3)(ii)(B), if determining the amount of the actual reimbursement or the amount charged for the purchase of fuel would impose unreasonable administrative burdens on the employer ("the alternative method").

In no event, however, may an employer with a fleet of at least 20 automobiles use either the general or alternative method of paragraph (d)(3)(ii)(D) of § 1.61–21 unless the requirements of paragraph (d)(5)(v)(D) are also met. This paragraph contains the rules for using a fleet-average value in calculating the Annual Lease Values of the automobiles in the fleet. In particular, it specifies that the fair market value of each vehicle in the fleet may not exceed $16,500 (as adjusted pursuant to section 280F(d)(7) of the Code).

For calendar years prior to 1991, Notice 89–110, 1989–2 C.B. 447, expanded the availability of the 5.5 cents-per-mile option to employers with fleets of at least 20 automobiles that satisfy the requirements of paragraph (d)(5)(v)(D), regardless of whether they are actually using the fleet-average valuation rule of paragraph (d)(5)(v). Notice 91–41, 1991–51 I.R.B. 63, provides that the 5.5 cents-per-mile option as provided in Notice 89–110 is available in calendar year 1991.

Notice 89–110 did not eliminate the requirement that the employer must demonstrate that it is using the 5.5 cents-per-mile option because determining the amount of the actual reimbursement or the amount charged for the purchase of fuel would impose unreasonable administrative burdens on the employer. As a practical matter, however, it is believed that fleet operators with at least 20 automobiles would have little difficulty in demonstrating the existence of unreasonable administrative burdens.

The proposed amendments to § 1.61–21(d)(3)(ii) provide that, for calendar year 1992, employers with fleets of at least 20 automobiles may continue to use the 5.5 cents-per-mile rate as provided in Notice 89–110 and extended in Notice 91–41. In addition, the proposed amendments provide that employers with fleets of at least 20 automobiles may value fuel that is reimbursed by or charged to the employer by reference to the alternative cents-per-mile rate without regard to the rules in paragraph (d)(5)(v)(D) concerning the value of automobiles in the fleet, and without the necessity of demonstrating the existence of administrative burdens.

Finally, the proposed amendments provide that for calendar years subsequent to 1992 the Service will announce the appropriate cents-per-mile rate for valuing fuel that is provided in kind or that is reimbursed by or charged to employers with fleets of at least 20 automobiles. The announcement will appear in the annual revenue procedure concerning the optional standard mileage rates used in computing deductible costs for operating a passenger automobile for business.

The rules under paragraph (d)(3)(ii) of § 1.61–21, as amended by this Notice, will enable employers with fleets of at least 20 automobiles to value the personal use of employer-paid fuel in any of the following ways: (1) Fuel provided in kind may be valued at fair market value based on all the facts and circumstances; (2) fuel that is provided in kind may be valued at the cents-per-mile rate applicable to the particular year; (3) fuel, the cost of which is reimbursed by or charged to the employer, may be valued based on the amount of the actual reimbursement or the amount charged; (4) fuel, the cost of which is reimbursed by or charged to the employer, may be valued based on the fleet-average cents-per-mile fuel cost; or (5) fuel, the cost of which is reimbursed by or charged to the employer, may be valued based on the applicable cents-per-mile rate without regard to the fair market value of any automobile in the fleet or the administrative burdens requirement.

The amendments are proposed to be effective for benefits provided in calendar years beginning after December 31, 1992. However, because of the number of inquiries the Service has received from taxpayers expressing uncertainty as to the scope of the guidance in Notice 89–110 concerning employer-provided fuel, the amendments may be relied upon as if they had been included in the final regulations published on July 6, 1989.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. Written comments and requests for a hearing must be received by November 9, 1992. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marianna Dyson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61–1 through 1.67–4T

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.61–21 is amended by revising paragraphs (d)(3)(ii) (A), (B), and (D) as follows:

§ 1.61–21 Taxation of fringe benefits.

* * * * *

(d) * * *

(3) * * *

(ii) *Fuel excluded*—(A) *In general.* The Annual Lease Values do not include the fair market value of fuel provided by the employer, whether fuel is provided in kind or its cost is reimbursed by or charged to the employer. Thus, if an employer provides fuel for the employee's personal use, the fuel must be valued separately for inclusion in income.

(B) *Valuation of fuel provided in kind.* Fuel provided in kind may be valued at fair market value based on all the facts and circumstances or, in the alternative, may be valued at 5.5 cents per mile for all miles driven by the employee in calendar years 1989 through 1992. For subsequent calendar years, the applicable cents-per-mile rate is the amount specified in the annual Revenue Procedure concerning the optional standard mileage raes used in computing deductible costs of operating a passenger automobile for business. However, fuel provided in kind may not be valued at the alternative cents-per-mile rate for miles driven outside the Unied States, Canada, or Mexico.

* * * * *

(D) *Additional methods available to employers with fleets of at least 20 automobiles*—(*1*) *Fleet-average cents-per-mile fuel cost.* If an employer with a fleet of at least 20 automobiles (regardless of whether the requirements of paragraph (d)(5)(v)(D) of this section are met) reimburses employees for the cost of fuel or allows employees to charge the employer for the cost of fuel, the fair market value of fuel provided to those automobiles may be determined by reference to the employer's fleet-average cents-per-mile fuel cost. The fleet-average cents-per-mile fuel cost is equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The averages described in the preceding sentence must be determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period, such as a two-month period.

(*2*) *Alternative cents-per-mile method.* In lieu of determining the fleet-average cents-per-mile fuel cost under paragraph (d)(3)(ii)(D)(*1*) of this section, an employer with a fleet of at least 20 automobiles may value the fuel provided for these automobiles by reference to the cents-per-mile rate set forth in paragraph (d)(3)(ii)(B) of this section (regardless of whether the requirements of paragraph (d)(5)(v)(D) of this section are met).

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–24551 Filed 10–8–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 300 and 308

[Docket No. 115 CCR; FRL–4520–7]

Recovery of Costs for CERCLA Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is extending the public comment period on the proposed rule entitled, "Recovery of Costs for CERCLA Response Actions," which appeared in the Federal Register at 57 FR 34742–34755 (August 6, 1992). This extension of the public comment period is provided to allow commenters an opportunity to complete their review of and comments on the Agency's proposed rule.

DATES: EPA will accept public comments on the proposed rule postmarked on or before November 4, 1992. Comments postmarked after the close of the extended comment period will be stamped "late" and will be considered only to the extent practicable in the final rule.

ADDRESSES: Comments should be addressed to Francis J. Biros, CERCLA Enforcement Division (Mail Code: 5502–G), Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: Copies of all materials relevant to this rulemaking, including comments received during the public comment period, are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 115 CCR). The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding federal holidays. The public must make appointments to review the docket materials and should call the docket clerk at 202–260–3046 for appointments.

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rulemaking, contact Sally Martiny, U.S. Environmental Protection Agency (5502–G), at 703–603–8920, or the RCRA/CERCLA Hotline 1–800–424–9346 tollfree (703–920–9810 in the Washington, D. C. metro area).

SUPPLEMENTARY INFORMATION: On August 6, 1992, EPA proposed amendments to certain provisions of the National Contingency Plan, 40 CFR part 300, and proposed new regulations related to cost recovery actions authorized under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposed regulation would clarify for purposes of response actions taken by EPA: what costs are recoverable, including direct costs, indirect costs, and interest; how these costs are determined; what information will support EPA's cost recovery efforts by describing the response action taken and providing an accurate accounting of all costs incurred; and, certain terms in the CERCLA statute of limitations for cost recovery actions.

The proposed regulation is intended to clarify certain aspects of the cost recovery process and thereby avoid unnecessary costs and delays involved in that process whether they occur during settlement negotiations or administrative or judicial proceedings with potentially responsible parties. See 57 FR 34742–34755 for a more detailed explanation of the Agency's proposal.

Since publication, the Agency has received requests from several commenters to extend the comment period. These requests noted that additional time is needed to review the proposed regulation and related docket materials. The Agency considered these requests and has decided to extend the comment period for 30 days. The public comment period for the proposed regulation was originally scheduled to end on October 5, 1992. Today's notice extends the public comment period for the proposed regulation for 30 calendar days until November 4, 1992 to allow commenters an opportunity to finalize their review and comments on the Agency's proposed cost recovery regulation.

Dated: September 30, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER).

[FR Doc. 92–24672 Filed 10–8–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Plant Astrophytum Asterias (Star Cactus) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the plant *Astrophytum asterias* (star cactus), as an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This cactus is known from only two sites, one in Starr County, Texas, and the other in Tamaulipas, Mexico. Only about 2100 plants are known in the wild. The species is threatened by collecting, conversion of its habitat to agriculture or improved pasture, and habitat alteration from severe overgrazing. This proposal, if made final, would implement Federal protection provided by the Act for star cactus. Critical habitat is not being proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 8, 1992. Public hearing requests must be received by November 23, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Cooper, at the above address (Telephone 512/888-3346).

SUPPLEMENTARY INFORMATION:

Background

Star cactus was first collected in Tamaulipas, Mexico, by Baron von Karwinsky in 1843, and was named *Echinocactus asterias* by Joseph Zuccarini in 1845. In 1868, C.A. Lemaire described *Astrophytum prismaticum* and included *Echinocactus asterias* and several other Mexican species in the new genus *Astrophytum*. Thus, *Echinocactus asterias* Zuccarini became *Astrophytum asterias* (Zuccarini) Lemaire. Since these initial treatments, various taxonomic experts have placed star cactus in one genus or the other. The Service takes no position on the correct generic placement of star cactus, but will use the name *Astrophytum asterias* because of its prevalence in most current horticultural cactus literature.

Astrophytum asterias is a small spineless cactus. It is disk- or dome-shaped, 2–15 cm (1–6 in) across, up to 7 cm (3 in) tall, brownish or dull green, and often speckled with a covering of tiny white scales. Vertical grooves divide the main body into eight vaguely triangular sections, each section marked with a central line of circular indentations filled with straw-colored to whitish wooly hairs. Flowers are yellow with orange centers, and up to about 5 cm (2 in) in diameter. Fruits are green to grayish-red, about 1.25 cm (0.5 in) long, oval, and fleshy (Damude and Poole 1990).

Star cactus is a strikingly attractive plant that has been a favorite in the cactus and succulent trade for many years. Plants are easily grown from seed and propagation techniques have been studied in detail (Martin *et al.* 1971, Backeberg 1977, Pilbean 1987, Minnich and Hutflesz 1991). In a greenhouse environment, plants grown from seed are consistently hardier and more disease resistent than plants taken from the wild, which tend to be highly sensitive to cold and excess moisture. Cultivated plants of star cactus probably outnumber those in the wild many times. Despite relatively easy propagation and the superior quality of cultivated plants for horticultural purposes, field collected plants of star cactus still enter the commercial market. In a recent survey of the cactus trade in Texas, approximately 400 field collected star cactus plants were found at one nursery (Damude and Poole 1990).

The star cactus grows at low elevations in the grasslands and shrublands of the Rio Grande Plains or the Tamaulipan thornshrub. Originally the vegetation in this area was likely a subtropical grassland, perhaps with scattered trees. Now, because of fire suppression and severe overgrazing, much of the area has been invaded with thorny shrub and tree species. The habitat of star cactus in the original grassland is unclear. Today the species is found in sparse, fairly open brushland. It is most often found in the partial shade of other plants or rocks, growing on gravelly, saline clays or loams overlaying the Tertiary Catahoula and Frio formations. The Texas site is in a creek drainage (Damude and Poole 1990).

Much of the probable native habitat of star cactus has been converted to agriculture or improved pasture. In the area where plants presently occur, pasture improvement is done by clearing the shrubs and then planting buffelgrass (*Cenchrus ciliaris*). This aggressive non-native grass forms dense stands for several years after which the grass is reduced by grazing and shrubs begin returning. The landscape is, therefore, a mosaic of buffelgrass pasture and shrub stands of various ages. It is unlikely star cactus could survive this land management regime. Much of the probable suitable habitat in Mexico has been converted to corn fields or orange groves (Sanchez-Mejorada, *et al.* 1986).

Historically, star cactus occurred in Cameron, Hidalgo, and Starr Counties in south Texas, and the adjacent states of Nuevo Leon, and Tamaulipas in Mexico. Presently, star cactus is known from only one locality in Texas and one in Tamaulipas, both privately owned, with only about 2,100 plants known in the wild (Damude and Poole 1990). The Nuevo Leon site is believed to have been extirpated by collectors, and the Tamaulipas site has been reduced to very few individuals (Sanchez-Mejorada, *et al.* 1986).

Star cactus was included (under the name *Echinocactus asterias*) in category 2 in the September 27, 1985, and February 21, 1990, **Federal Register** notices (50 FR 39526 and 55 FR 6184) of plants under review for threatened or endangered classification. Category 2 includes those taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. A status report on star cactus was completed December 1, 1990 (Damude and Poole 1990). This report provided sufficient information on the biological vulnerability and threats to star cactus to support a category 1 status and proposal to list the species as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Astrophytum asterias* (Zuccarini) Lemaire are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Several common range management practices threaten the present habitat of star cactus. Root-plowing or other mechanical or chemical brush clearing activities, introduction of aggressive exotic grass species such as buffelgrass, suppression of the natural fire cycle, and excessive livestock numbers may all destroy or significantly alter the natural habitat (Damude and Poole 1990). Brush has been mechanically cleared in the past on the site of the Texas population, altering the habitat and possibly destroying many plants. Part of the Texas population is bisected by a paved road, and plants may have been destroyed during construction. Any potential road widening would present a threat to the population, as would the management practice of roadside pesticide or herbicide use (Damude and Poole 1990). Most of the historic range of star cactus in Mexico no longer contains suitable habitat because the natural vegetation has been destroyed and the land is under cultivation for oranges or corn. In Mexico today, the plant is restricted to rockier sites less threatened by cultivation and these sites are usually heavily grazed. Observers have noted that grazing practices are slowly altering the natural vegetation (Sanchez-Mejorada, *et al.* 1986).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Star cactus is highly prized by cactus enthusiasts for its rarity and unusual appearance. Though the plant has been in cultivation since the 1930's, and propagated material is available for sale, wild collected plants remain on the market. A recent survey of the cactus trade in Texas revealed 400 field dug specimens of star cactus at a Texas nursery, these presumably from Mexico. In addition to its desirability for horticultural collections, the plant has been reported to be used as a hallucinogen and to be actively sought in the wild for this purpose (E. Haner, Soil Conservation Service, Habbronville, Texas, *in litt.* 1992). The one known population in Nuevo Leon, Mexico is believed to be extirpated due to collecting. The known population in Tamaulipas, Mexico had many large individuals up to 15 cm (5 in) in diameter in 1978, but when visited in 1985 no plants remained over 7 cm (3 in) in diameter, and fewer than 100 individuals could be found in an extensive search (Sanchez-Mejorada, *et al.* 1986). Fewer than 2,100 individuals are known in the wild (Damude and Poole 1990).

C. Disease or Predation

Occasionally plants in deteriorated condition have been observed, but disease has not been confirmed in the known populations. No evidence of predation has been noted (Damude and Poole 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

Commercial trade in field collected material of star cactus is not presently prohibited in the United States by Federal or Texas State law. Star cactus is listed in appendix I of the Convention on International Trade in Endangered Species of wild Fauna and Flora (CITES), 50 CFR 23.23, but protection under this treaty is limited to international trade. Mexico also has laws prohibiting the export of its native cacti. However, enforcement of Mexican export laws and CITES protections in this near-border area can be difficult. Listing under the Act would provide protection by prohibiting interstate commerce in this species without a permit, and would make it a Federal violation to collect this plant in knowing violation of any State law or regulation, including State criminal trespass law.

E. Other Natural or Manmade Factors Affecting its Continued Existence

With fewer than 2,100 individuals known in two populations, the species may well be vulnerable to extinction because of lowered viability and genetic variability in the wild.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astrophytum asterias* as endangered. The status of endangered is appropriate because of the species' limited distribution, low population numbers, and imminent threats of collecting and habitat destruction.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary proposed critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the "Summary of Factors Affecting the Species," star cactus is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make star cactus more vulnerable and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent or beneficial to the species to determine critical habitat for star cactus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibition against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its

critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some Federal actions that may affect this species include soil conservation and range improvement recommendations by the Soil Conservation Service to private landowners, the funding of these activities by the Agricultural Stabilization and Conservation Service, and the registration of herbicides and pesticides for rangeland use by the Environmental Protection Agency.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to move and reduce to possession the species for areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Star cactus is a popular species with cactus and succulent enthusiasts and considerable commercial trade exists. The vast majority of trade involves plants artificially propagated from seed. However, some field collected plants are also being offered for sale (Damude and Poole 1990). Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

On October 22, 1987, *Astrophytum asterias* was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 50 CFR 23.23. The effect of this action is that both export and import permits are generally required before international shipment of this species may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the import or export cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to: Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Backeberg, C. 1977. Cactus Lexicon, Blandford Press, Poole, Dorset, United Kingdom.

Damude, N. and J. Poole. 1990. Status Report on *Echinocactus asterias (Astrophytum asterias)*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Lemaire, C.A. 1868. Les Cactees. Librairie Agricole de la Maison Rustique, Paris.

Martin, M.J., P.R. Chapman, and H.A. Auger. 1971. Cacti and their cultivation, Winchester Press, New York.

Minnich, W.S. and F. Hutflesz. 1991. Cacti and succulents for the Amateur. Cactus and Succulent Journal (U.S.) 63:122–123.

Pilbean, J. 1987. Cacti for the Connoisseur: A guide for growers and collectors. Timber Press, Portland, Oregon.

Sanchez-Majorada, H., E. Anderson, N. Taylor, and R. Taylor. 1986. Succulent Plant Conservation Studies and Training in Mexico. World Wildlife Fund, Washington, DC.

Zuccarini, J.G. 1845. Act. Acad. monac.: *Echinocactus asterias*. Abh. Bayer. Akad. Wiss. Munchen 4(2):13.

Authors

The primary authors of this proposed rule are Tim Cooper, U.S. Fish and Wildlife Service, Ecological Services Corpus Christi Field Office (see ADDRESSES) Telephone 512/888–3346 and Kathryn Kennedy, U.S. Fish and Wildlife Service, Ecological Services Austin Field Office, 611 East 6th Street, Austin, Texas 78701, Telephone 512/482–5436.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Cactaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

* * * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Cactaceae—Cactus family:						
*	*	*	*	*	*	
Astrophytum asterias (=*Echinocactus asterias*).	Star cactus	U.S.A. (TX); Mexico	E		NA	NA
*	*	*	*	*	*	

Dated: September 14, 1992.

Bruce Blanchard

Director, Fish and Wildlife Service.

[FR Doc. 92-24664 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 2, 1992.

The Department of Agricultural has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

Extenion

• Forest Service
Forest Industries Data Collection System
Annually
Businesses or other for-profit; 2,694 responses; 2,143 hours
Eric H. Wharton, (215) 975–4052

Extension

• National Agricultural Statistics Service
Mink Survey
Annually
Farms; 700 responses; 117 hours
Larry Gambrell, (202) 720–5778

New Collection

• Animal Plant & Health Inspection Service
Retrospective Study on Repopulation of Scrapie Contaminated Premises
One time only
State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations;
55 responses; 110 hours
Daniel E. Harpster, (301) 436–6954

Reinstatement

• Farmers Home Administration
7 CFR 1980–E, Business or Industrial Loan Program
FmHA 449–1, 2, 4, 22, 1980–68, 70, 71, 73
Recordkeeping; On occasion; Monthly; Quarterly
State or local governments; Businesses or other for-profit; Small businesses or organizations; 9,297 responses; 55,638 hours
Jack Holston, (202) 720–9736

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92–24588 Filed 10–8–92; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Isco, Inc.; Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Isco, Inc., 4700 Superior Avenue, Lincoln, Nebraska, on U.S. Patent Application Serial No. 07/536,861, "Supercritical Fluid Extraction Enhancer," filed June 12, 1990. Notice of Availability for licensing this invention was given in the **Federal Register** on January 31, 1991.

DATES: Comments must be received within 60 calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301–504–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 92–24660 Filed 10–8–92; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 92–110–2]

Veterinary Services Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice

SUMMARY: We are advising the public of the proposed scope of study of a programmatic environmental impact statement (EIS) we intend to prepare for the Veterinary Services Program of the Animal and Plant Health Inspection Service. This notice identified potential issues to be analyzed in the EIS, and requests public comment on these and other issues.

DATES: Consideration will be given only to comments received on or before November 23, 1992.

ADDRESSES: Please send an original and three copies of your comments to Mr. Carl Bausch, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–110–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Bausch, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, intends to prepare a programmatic environmental impact statement on the Veterinary Services Program. A Notice of Intent was published in the **Federal Register** on July 23, 1992 (57 FR 32771–32772, Docket No. 92–110–1).

The Veterinary Services Program, which is responsible for protecting livestock and poultry from certain diseases, comprises four major activities: prevention, surveillance, control, and eradication. Implementation is in accordance with applicable Federal, State, and local authorities. The disease prevention activities administered by Veterinary Services are designed to reduce or prevent certain diseases from entering the United States or spreading to other States. Cooperation with States also prevents intrastate movement of infected and exposed animals. Most diseases for which Veterinary Services administers programs are listed by the U.S. Animal Health Association or the Office of International Epizootics.

The programmatic environmental impact statement will focus on the environmental effects of activities designed to deal with communicable diseases of livestock and poultry and to examine alternatives and the effects of those alternatives on the environment. The environmental impact statement also will serve as the document to which APHIS can tier an environmental assessment, and others may use as legally permissible, should the need arise to make decisions on program plans or a site-specific emergency.

Producers of livestock and poultry, land use planners, financiers, and others interested in animal production should actively participate in the environmental impact statement process. They will find it useful for raising disease issues to be considered when planning and designing production facilities and management strategies. States should find this process useful in their planning for management of diseases (including outbreaks and Federal-State cooperative disease eradication programs) and, insofar as legally permissible, will be able to tier their disease program to the environmental impact statement.

This notice of proposed scope of study identifies potential issues to be analyzed in the environmental impact statement. Public input regarding the issues discussed and the identification of any other issues is requested.

The Scoping Process

The initial step in the process of developing an environmental impact statement (EIS) is issue scoping. Scoping includes the solicitation of public comments in scoping meetings or by written comments. APHIS is inviting written comments from the interested public; Federal, State and local agencies; industry; environmental groups; and Federal and State agencies that have either jurisdiction by law or special expertise regarding any program issue or environmental impact that should be discussed in this EIS. The comments should identify those Veterinary Services activities believed to have consequential impact on the environment. Information obtained from scoping will be evaluated and used to target issues, including alternative means of accomplishing program goals, for study in the context of the EIS process. Information obtained by the scoping process also will be used to identify any environmental statute, regulation, policy, or custom of other interested parties or State or Federal agencies that might conflict with APHIS regulations, policies, or procedures related to disease prevention, surveillance, control, or eradication.

The Veterinary Services Program

If animal diseases are not continuously abated by public and private interests, the effects on the human environment could be severe. There are over 100 diseases and pests that can spread from animals to man and an even larger number that can spread from livestock and poultry to wild animals. When certain diseases are discovered in the United States, it sometimes is necessary to control or eradicate the disease by: destroying all infected and exposed animals; disposing of carcasses, manure, and waste in a biologically safe manner; and cleaning and disinfecting the premises using chemicals approved by the Environmental Protection Agency (EPA) or other appropriate devices. Insects and other animals capable of transmitting the disease (i.e., vectors and reservoirs) may need to be eliminated with pesticides, poison baits or other appropriate means.

In general, disease prevention and surveillance practices are less likely to affect the environment than control measures. Prevention and surveillance measures minimize the spread of diseases and pests. To this end, Veterinary Services regulates the movement of animals and animal products. Requirements for inspection, testing, treatment, quarantine and other similar procedures are designed to detect as many of the infected/infested carrier animals as possible. It is not possible to detect all animals that are infected with pathogenic microorganisms or infested with parasites. Some products derived from these carrier animals also may contain viable pathogens which can be responsible for the further spread of disease. Therefore, there is always a risk of spreading diseases with the movement of animals and animal products that have not been treated in a manner that would inactivate all microorganisms.

Information obtained in the scoping process will be carefully examined for ideas, concepts, and strategies that will enhance prevention and surveillance without increasing environmental impact.

In addition to adhering to all Federal statutes, APHIS has identified the following issues for closer scrutiny to determine whether they should be analyzed in the EIS:

- Pesticides used for vector and reservoir control. The pesticides used are those registered by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and used according to the label. Nevertheless, pesticides or their degradation products could accumulate over time, and/or run off or leach into surface and ground waters near dipping and spraying operations. Additionally, there may be concern for the safe storage and disposal of pesticides.
- Cleaning and disinfecting compounds. These chemicals could accumulate near cleaning and disinfecting sites if the rate of use is greater than the rate of degradation. Runoff and leaching of these compounds

could contaminate surface and ground water. Areas potentially susceptible to environmental accumulation include areas where animals have been destroyed and that have subsequently been cleaned and disinfected, and areas where trucks, planes and other vehicles used in the transport or holding of animals are cleaned and disinfected. There also may be concern for the safe storage and disposal of these compounds.

• Disposal of carcasses and contaminated manure and debris. This may be of particular concern when disposal is on the farm-of-origin. Such disposal must ensure that the decomposing materials do not contribute to the further spread of disease or to environmental degradation or contamination. These activities must be conducted in accordance with all appropriate Federal, State, and local statutes.

Comments on this notice are welcome. Following the comment period, a notice of final scope, reflecting, as appropriate, views and opinions submitted for consideration, will be published in the **Federal Register**. Any additional opportunities for public participation will be announced in the **Federal Register**.

Done in Washington, DC, this 5th day of October 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-24661 Filed 10-8-92; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

RIN 0560-AC41

1992 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Binder (Types 42-44, 53-55) Tobaccos

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of determination of 1992 price support levels for five kinds of tobacco.

SUMMARY: This notice sets forth the levels of price support for (1) fire-cured (type 21), (2) fire-cured (types 22-23), (3) dark air-cured (types 35-36), (4) Virginia sun-cured (types 37), and (5) cigar-filler and binder (types 42-44; 53-55) tobacco for the 1992 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: February 28, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller or Kenneth Robison, Tobacco and Peanuts Analysis Division, USDA, ASCS, room 3754-S, P.O. Box 2415, Washington, DC 20013, or call (202) 720-3734.

A Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1, and has been classified as "not major." The provisions of this notice will not 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 governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This notice has been reviewed in accordance with Executive Order 12778. The provisions of this notice do not preempt State law, are not retroactive, and do not involve administrative appeals.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3105, subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determination of Levels of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1992 crop of the five kinds of tobacco which are the subject of this notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the Act).

Section 106(f)(6)(A) of the Act provides that the level of support for the 1992 crop of a kind of tobacco shall be the level in cents per pound at which the 1991 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1992 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1991 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1992 crop of such kind of tobacco will be the 1991 level, adjusted by the difference between (plus or minus) the 1991 "basic support level" and the 1991 "basic support level."

In addition, section 106(f)(6)(B) of the Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers ("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco. Accordingly, the price support level for a kind of tobacco set forth in this notice could be reduced if such a request is made.

The levels of price support for the 1991 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A), are as follows:

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	113.2
KY-TN fire-cured (types 22-23)	136.7
Dark air-cured (types 35-36)	116.9
Virginia sun-cured (type 37)	117.7
Cigar-filler and binder (types 42-44, 53-55)	101.4

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year. For the 1992 crop year:

(1) Average parity indexes for calendar years 1988–1991 are:

Year	Index	Year	Index
1988	1167	1989	1221
1989	1221	1990	1265
1990	1265	1991	1298
Average	1218	Average	1261

(2) Average parity index, calendar year 1959=298.

(3) 1991 ratio of 1218 to 298=4.09; 1992 ratio of 1261 to 298=4.23.

(4) Ratios times 1959 support levels are:

Kind and type	Support level 1959 ¢/lb.	Ratio 1991	Ratio 1992	Basic support level		Increase from 1991 to 1992	
				1991 (¢/lb.)	1992 (¢/lb.)	100%	65%
VA 21	38.8	4.09	4.23	158.7	164.1	5.4	3.5
KY-Tenn 22–23	38.8	4.09	4.23	158.7	164.1	5.4	3.5
KY-Tenn 35–36	34.5	4.09	4.23	141.1	145.9	4.8	3.1
VA 37	34.5	4.09	4.23	141.1	145.9	4.8	3.1
Cigar-filler and binder 41–44, 54–55	28.6	4.09	4.23	117.0	121.0	4.0	2.6

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind to tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

For the 1992 crops, burley and flue-cured support levels were increased by 100 percent of the formula increase to within 13 percent of average market prices. For the remaining five kinds of tobacco, prices are further above the support level, and loan receipts remain low. However, loan placements rose sharply to 14 percent of sales compared with 0.3 percent in 1990/91 for fire-cured (type 21). For five-cured tobacco (type 21), and Virginia sun-cured (type 37), the 1992 support levels consist of the 1991 support levels increased by 65 percent of the difference between the 1992 "basic support level" and the 1991 "basic support level." The supply-use ratios suggest adequate supplies, except for dark air-cured (type 35–36) tobacco, for which supplies are tight. For fire-cured (types 22–23), dark air-cured (types 35–36), and cigar filler and binder (types 42–44; 53–55) tobaccos, the 1992 support level for each kind consists of the 1991 level of support increased by the difference between the 1992 "basic support level" and the 1991 "basic support level."

Determinations

Accordingly, the Secretary of Agriculture has determined, in accordance with section 106(f)(6)(A) and 106(f)(8)(A) of the 1949 Act, the following price support levels for the 1992 crops of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar filler and binder (types 42–44, 53–55).

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	136.7
Kentucky-Tennessee fire-cured (types 22–23)	142.1
Dark air-cured (types 35–36)	121.7
Virginia sun-cured (type 37)	120.8
Cigar filler and binder (types 42–44, 53–55)	105.4

Authority: (15 U.S.C. 714b, 714c); (7 U.S.C. 1441, 1445).

Signed at Washington, DC on October 2, 1992.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–24590 Filed 10–8–92; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) has conducted administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The reviews cover nine manufacturers/exporters which exported the subject merchandise to the United States, and the periods April 1, 1983 through March 31, 1984 and April 1, 1984 through March 31, 1985. We determine dumping margins to range from 0.02 percent to 43.29 percent for the period April 1, 1983 through March 31, 1984 and 0.00 percent to 43.29 percent for the period April 1, 1984 through March 31, 1985.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1991, the Department published in the **Federal Register**, its preliminary results of the administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (56 FR 34174). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). We have reviewed the following companies for the periods April 1, 1983 through March 31, 1984 and April 1, 1984 though March 31, 1985: Caddy Corporation of America (Caddy); Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd. (Hitachi); Izumi Chain Manufacturing Co., Ltd. (Izumi); Kaga Kogyo K.K. (Kaga); Kaga/APC; Pulton Chain Co., Inc. (Pulton); Pulton/HIC; Pulton/I&OC; and Takasago RK Excel Co., Ltd. (Takasago).

Scope of Review

Imports covered by these reviews are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle" as used in these reviews includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

The reviews also cover leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitchers. The reviews further cover chain model numbers 25 and 35. From 1983 through 1985, roller chain, other than bicycle, was classified under item numbers ranging from 652.1300 through 652.3800 of the Tariff Schedules of the United States Annotated (TSUSA). This product is currently classified under item numbers 7315.11.00 through 7315.12.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS categories are provided for convenience and customs purpose only. The written description remains dispositive.

These reviews cover the above nine manufacturers/exporters of roller chain, other than bicycle, from Japan to the United States for the periods April 1, 1983 through March 31, 1984 and April 1, 1984 through March 31, 1985.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments and/or rebuttal comments from the American Chain Association (ACA), the petitioner in these proceedings, Hitachi, Kaga Kogyo, Pulton and Takasago.

A. General Comments

Comment 1: Takasago argues that the age of these reviews and the long delay between the initial questionnaire response and the supplemental questionnaires should be taken into consideration when the Department calculates the dumping margins or makes any determination with regard to the use of best information available (BIA).

Department's Position: The Department considered both the age of these reviews and the delay in sending out supplemental questionnaires in conducting several aspects of these reviews. As stated in our preliminary results, the age of these reviews was one of the factors we considered in deciding to calculate annual foreign market values (FMVs). Each response was carefully reviewed before sending out any supplemental request for information, and the Department, for the convenience of the responding companies, increased the number of sales that could be submitted on diskette rather than computer tape.

Nonetheless, the Department must properly and consistently administer the antidumping law, and the failure of certain respondents to provide questionnaire responses, or to otherwise participate in these reviews, cannot be dismissed because of the delay in completing the reviews. The failure of certain respondents to supply the relevant prices and any information necessary for the proper calculation of a possible margin cannot be ignored. In such cases, the Department must resort to the use of BIA in accordance with section 776(c) of the Tariff Act.

Comment 2: Hitachi argues that companies that cooperated with the Department should not be subject to the same punitive BIA rate as those which failed to participate in the proceeding or respond to Departmental requests. Petitioner argues that, even for firms that do participate in the proceedings, certain glaring deficiencies or the omissions of large amounts of data should only be dealt with by using a punitive BIA.

Department's Position: We agree that, in general, companies that cooperate with the Department during the proceeding need not always be subject to the same BIA rate as those that do not. However, we disagree with any inference that BIA need not be adverse. The courts have consistently recognized that the Department may use the BIA rule as a necessary tool in order to complete its administrative reviews and encourage cooperation by respondents. (See *Atlantic Sugar, Ltd.* v. *United States*, 744 F.2d 1556 (Fed. Cir. 1984)). As a result, the best information rule is basically a rule of reasonable adverse inference, and by definition, requires the use of adverse assumptions. (See *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990)).

Section 776(c) of the Act requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." In deciding what to use as best information available, the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine on a case-by-case basis what best information available is.

The Department generally applies the following two tier approach to BIA:

1. When a company substantially cooperates with the Department's requests for information, but fails to provide all of the information necessary to perform the required calculations, or fails to provide all of the information in a timely manner or in the form requested, as BIA we generally assign to that company the higher of: (a) The highest rate calculated for a responding firm with shipments during that period, or (b) the highest rate for that company for any previous review or the original investigation.

2. When a company refuses to cooperate with the Department or otherwise significantly impedes the proceedings, as BIA we generally assign the higher of: (a) The highest rate for any firm in any previous review or the original LTFV investigation, or (b) the

highest rate for any firm in this review. See, *e.g.*, Final Results of Antidumping Duty Administrative Review and Partial Termination: Roller Chain, Other Than Bicycle, From Japan (57 FR 6808, February 28, 1992), and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review (56 FR 31692, July 11, 1991).

When a company initially cooperates with the Department, but later will not supply the information needed for the Department to perform the necessary calculations, we consider the company to be uncooperative and apply the second tier of the BIA hierarchy. In this review, although Izumi initially cooperated with the Department by responding to the original questionnaire, their response was so deficient as to render it unusable. Izumi subsequently refused to respond to the supplemental questionnaire and our request for data on computer tape, citing the Department's delay in sending out the supplemental questionnaire, and the company's belief that its earlier submission was usable. Accordingly, the Department had no choice but to treat Izumi as an uncooperative firm.

As BIA for Izumi we have used the 43.29 percent rate calculated by the Department in the first completed roller chain review. (See, Roller Chain, Other Than Bicycle, From Japan, Final Results of Administrative Review of Antidumping Finding (46 FR 44488, September 4, 1981)).

When a company substantially cooperated with our requests for information, and only failed to provide certain requested information, the Department may find it necessary to use some form of partial BIA to ensure that a company does not benefit from its failure to supply requested information. In this review, for companies with missing data that prevented the Department from calculating margins or making product comparisons, we used the companies' weighted-average rate for sales with dumping margins during the review period as BIA for those sales for which we were unable to make proper comparisons. For those companies with missing data but no sales with dumping margins, we used the highest rate for that company from any previous review as BIA for those sales for which we were unable to make proper comparisons.

B. Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd.

Comment 3: Hitachi claims that the Department improperly used BIA to calculate margins on seven of Hitachi's sales. Hitachi argues that two of these sales were returns and should not have been included in the margin calculation. Two other sales did not match because of typographical input errors made by Hitachi. The remaining three sales could not be matched because supplier price information was unavailable and there were no sales of similar products in the home market. Hitachi contends that should the Department decide to use a BIA rate for these sales, the rate applied should be Hitachi's total weighted average margin for the period.

Department's Position: We agree with Hitachi that the two returns listed in their supplemental response should not be included in the margin calculation and have made the appropriate adjustments. However, we disagree with Hitachi that the five remaining sales should not be subject to BIA rates, because the missing or incorrectly reported information prevented the Department from calculating margins, and an adverse inference must be drawn. We also disagree with Hitachi's contention that should the Department use BIA, the proper rate for these sales would be the final weighted average margin for the period. As discussed above in the general comments, we have applied the weighted average rate for Hitachi's sales with dumping margins.

Comment 4: Hitachi claims that the Department improperly applied the 20 percent difference-in-merchandise (DIFMER) test to its similar matches. Hitachi argues that the use of this test is purely discretionary and should not apply to products such as roller chain. Hitachi claims that roller chain is "a fairly simple product which involves straightforward manufacturing operations," and should not be subjected to the DIFMER test, citing as support the Department's position in the Korean cookware case. (Certain Stainless Steel Cooking Ware from the Republic of Korea: Final Results of Antidumping Duty Administrative Review (56 FR 38114, August 12, 1991)). Hitachi also argues that because these reviews predate the use of the DIFMER test, the Department is unfairly applying a standard which Hitachi could not have considered when making its submission of similar matches.

Petitioner argues that the Department properly applied the 20 percent DIFMER test in this case. In fact, because the test reflects the Department's standard practice, only its non-use in this case would require Departmental justification. Petitioner contends that the Korean cookware case did not provide a general exception to the DIFMER test for basic commodity products. The Department has, and continues to apply this test to other basic commodity products such as tapered roller bearings. Rather, the exception in the Korean cookware case addressed a very specific set of facts which included a product inspection that allowed the Department to verify that the products were similar even though their costs differed by more than 20 percent. The facts in this case do not justify an exception to the DIFMER test standard.

Petitioner argues further that although Hitachi did submit similar products in its questionnaire response, it never submitted any factual argument as to its selection of these products. In fact, Hitachi's assertions of similarity were raised for the first time after the preliminary determination, and based on information submitted after that determination. As such, the information is untimely and cannot be taken into account in this review. Petitioner notes, furthermore, that the disparity in the cost differences being measured in this case (*i.e.;* the differences in Hitachi's cost of acquiring roller chain from its suppliers), is one of types of distortions that the Department was trying to avoid when it established this test.

Department's Position: We agree with petitioner. The Department has developed its practice of applying a 20 percent cost differential cap in order to ensure that the home market model chosen is "similar" within the meaning of subparagraphs (B) and (C) of section 771(16) of the Act. The Department believes that if the costs of two products are greatly different due to physical differences in the merchandise, then the products can neither be deemed to be of approximately equal value, within the meaning of subparagraph (B), nor can they reasonably be compared, within the meaning of subparagraph (C). The application of the 20 percent cap as a benchmark serves to provide needed guidance and certainty to parties who are or may be involved in antidumping proceedings. In this regard, we agree with petitioner that Stainless Steel Cooking Ware from Korea did not provide a general exemption for so-called "basic commodity products," and that the fact pattern in that case is not present here.

We do not agree that the Department's application of its 20 percent DIFMER practice is discretionary in the sense that the Department may apply it or not apply it as it chooses. This practice represents the Department's current interpretation of section 771(16) of the Act, and the Department must apply this interpretation consistently from case to

case. The Department has followed this practice in cases involving similar industrial commodity products, and has applied it in proceedings much older than the instant proceeding. See, *e.g.*, Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan; Final Results of Antidumping Duty Administrative Review (55 FR 22369, June 1, 1990).

Comment 5: Hitachi claims that if the Department decides to apply the test, we should use the U.S. acquisition price rather than the net home market price as the denominator when calculating the 20 percent DIFMER test. Petitioner contends that the use of net home market prices is well within the Department's discretion and has been used in prior proceedings.

Department's Position: Although we agree with petitioner's contention that it is within the Department's discretion to use net home market prices in the DIFMER test, we agree with Hitachi that the U.S. acquisition price more accurately reflects the Department's standard practice with regard to the calculation of the 20 percent DIFMER cap and is the most reasonable choice for a denominator in this case. We have, therefore made the appropriate corrections.

Comment 6: Hitachi contends that the Department incorrectly deducted an imputed credit expense from the U.S. price. In addition, Hitachi argues that the Department double-counted the credit expense by also deducting the interest expense provided by Hitachi in its SG&A and interest expense calculations. Hitachi requests that the Department recalculate the SG&A and omit itemized interest expense data from the SG&A ratios if it continues to deduct an imputed credit expense.

Department's Position: We disagree with Hitachi that our use of an imputed credit expense is incorrect. However, we do agree that the itemized interest expense listed by Hitachi in its submission should be deducted from its SG&A ratios and have made the appropriate adjustments. See, Final Results of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan (55 FR 42608, October 22, 1990).

Comment 7: Hitachi claims that the Department incorrectly used the average home market credit days when calculating U.S. credit expense.

Department's Position: We agree and have made the appropriate adjustment.

Comment 8: Petitioner argues that the Department must make an inventory carrying cost adjustment to Hitachi's exporter's selling price (ESP) sales. Since Hitachi did not supply inventory carrying costs, the Department should make a BIA adjustment for both reviews.

Department's Position: We agree that inventory carrying costs should be deducted from Hitachi's ESP sales. We have imputed this cost for both reviews using the inventory turnover rate supplied by Hitachi in its 1983/84 submission.

Comment 9: Hitachi claims that the Department incorrectly applied certain 1984/85 home market expense ratios in the 1983/84 review. Hitachi claims that the home market expenses listed in its response were based on the home market unit price less discounts, and should be used by the Department in its calculation of the FMV without further recalculation.

Department's Position: We agree and have made the appropriate adjustments.

Comment 10: Hitachi argues that the Department incorrectly deducted as an expense the bad debt reserve allowance for the U.S. selling expense. Hitachi claims that this allowance is not an actual expense, but merely a reserve account used for covering future default payments by customers, and that this fund was not drawn upon during either review period. Hitachi maintains that this should preclude the deduction of the allowance as an expense.

Department's Position: We agree with respondent. The Department considers bad debt that is actually incurred on the sale of subject merchandise during the period of review to be either a direct or indirect selling expense depending on the relationship between the bad debt expense and the sale. See, Final Results of Antidumping Duty Administrative Review: Color Television Receivers from the Republic of Korea 56 FR 12705 (March 27, 1991). The figure for bad debt in Hitachi's submission is not an actual expense; rather it is a reserve account set aside by Hitachi in case an actual expense for bad debt is incurred in the future. Since no actual bad debt expense was incurred by Hitachi during the period of review, we are not deducting this expense from Hitachi's indirect selling expenses. See, Final Results of Antidumping Duty Administrative Reviews; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts From France, et. al. (57 FR 28412 June 24, 1992).

Comment 11: Hitachi claims that the Department incorrectly recalculated advertising and inland insurance expenses by applying the expense ratios to dollar-denominated unit prices, rather than accepting Hitachi's yen-denominated expenses which were based on F.O.B. values.

Department's Position: We disagree. Hitachi stated in its response to the Department's supplemental questionnaire that "the F.O.B. price for each type of roller chain product is not available." Therefore, although the Department may agree that the ratios presented in the submission were calculated on an F.O.B. basis, we are forced to apply them to the dollar-denominated gross unit price as the best information available since Hitachi did not supply the yen-denominated F.O.B. prices necessary to calculate these expenses.

Comment 12: Hitachi contends that the Department incorrectly used ESP ratios when calculating purchase price (PP) movement and commission ratios.

Department's Position: We disagree. Hitachi did not submit any explanation regarding the calculation of their PP movement or commission ratios. Unlike other variables listed in appendix C of the supplemental questionnaire response, such as the gross unit price (GRSUPRIP) or foreign brokerage (FBROKP), there is no indication in the definition column that these are actual expenses. Furthermore, Hitachi states in its response to the supplemental questionnaire that an average rate for each movement expense was calculated based on all entries of roller chain during the review period. Hitachi has not provided sufficient information to separately break out and calculate PP and ESP movement and commission expenses. The Department believes that because these ratios, which Hitachi contends should only apply to ESP sales, were based on all U.S. sales of roller chain during the period, they provide the best information available for calculating both ESP and PP movement and commission expenses.

Comment 13: Hitachi claims that the Department made incorrect adjustments for U.S. commissions and credit expenses in the preliminary margin calculation.

Department's Position: We agree and have made the appropriate adjustments.

Comment 14: Hitachi claims that the Department failed to properly adjust for differences in circumstances of sale when using constructed value in the preliminary margin calculation.

Department's Position: We agree and have made the appropriate adjustments.

C. Kaga Kogyo K.K. and Kaga/APC

Comment 15: Kaga Kogyo claims that the Department incorrectly applied BIA rates to certain U.S. sales with identical matches in the home market. The rejection of most of these identical matches came about from the slight

difference in product nomenclature for riveted roller chain in the U.S. and Japanese markets. In markets where both riveted and cottered versions of a chain model are commonly sold (e.g., the United States), the model number is always followed by a "C" or an "R". In markets where only the riveted version is commonly sold (e.g., Japan), the model number stands alone for sales of riveted chain and is followed by a "C" for cottered chain. The lack of an "R" on home market models caused the computer to reject certain U.S. sales even though there was an identical match in the home market. Additional non-matches also occurred because of data entry errors made by Kaga Kogyo in its tape submission. Petitioner contends that since Kaga Kogyo is addressing errors and deficiencies in its own submission, its clarification and list of corrections amount to an untimely submission of new data and should therefore be rejected.

Department's Position: The Department agrees with petitioner that any untimely submission of new data must be rejected. Therefore, we have only considered Kaga Kogyo's comments regarding matches to the extent that such information can be confirmed by information already on the record. We have been able to deduce from previously submitted information already on the record that Japanese models of riveted chain without an "R" in their product nomenclature are identical to U.S. models of riveted chain with an "R" (e.g. Japanese model 100H is identical to U.S. model 100HR).

Corrections and clarifications that could not be confirmed by information submitted prior to the issuance of the preliminary results were not taken into account in our margin calculation. Such new factual information is untimely under section 353.31 of the Department's regulations.

D. Pulton Chain Co., Inc., Pulton/HIC, and Pulton/I&OC of Japan Co., Ltd.

Comment 16: Petitioner states that based on Pulton's response, packing costs for roller chain sold to a customer in the United States should exceed the packing costs for the same roller chain sold to a customer in Japan. Petitioner suggests that if discrepancies in Pulton's response exist, that BIA be used for these costs.

Department's Position: We disagree. We have examined Pulton's response and found no reason to believe that Pulton's packing costs are not accurately reported.

Comment 17: Petitioner asks that the Department review Pulton's purchase price calculations to ensure that Department properly adjusted for commissions in both periods.

Department's Position: We have examined Pulton's response and our calculations and have determined that the proper adjustments were made in both periods.

Final Results of the Review

As a result of our review, we determine the margins to be:

Manufacturer/exporter	Margin percent	
	04/01/83–03/31/84	04/01/84–03/31/85
Caddy Corporation of America	NA	[1] 0.000
Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd.	0.33	5.60
Izumi Chain Manufacturing Co.	43.29	43.29
Kaga Kogyo K.K.	5.89	0.41
Kaga/APC	5.89	0.41
Pulton Chain Co., Inc.	0.02	0.29
Pulton/HIC	0.02	NA
Pulton/I&OC	0.02	0.29
Takasago RK Excel Co., Ltd.	1.46	8.91

[1] Caddy's one-time sale is actually a sale by Tsubakimoto, a company for which the effective date of revocation of the antidumping finding was prior to these review periods.

The Department will instruct the Customs Service to assess antidumping duties at the above rates on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service. Because the Department has already completed and published the final results of reviews for subsequent, intervening review periods, the dumping margins determined in these reviews will have no impact on cash deposit rates.

As provided by section 751(a)(1) of the Tariff Act, the Customs Service shall continue to require a cash deposit based on each firm's rate calculated in the most recent administrative review period. For any future entries of this merchandise from a new producer and/or exporter, not covered in these or prior administrative reviews, and who is unrelated to any previously reviewed firms, a cash deposit of estimated antidumping duties, equal to the highest non-BIA rate for any firm with shipments during the most recently completed review period, shall be required.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 1, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–24679 Filed 10–8–92; 8:45 am]

BILLING CODE 3510–DS–M

[C–559–001]

Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Countervailing Duty Administrative Review.

SUMMARY: On July 14, 1992, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We gave interested parties an opportunity to comment on the preliminary results. We received no comments, therefore we have not changed the final results from those presented in our preliminary results of review.

We have now completed this review and determine that the Government of Singapore, Matsushita Refrigeration Industries (Singapore) Pte. Ltd. and Asia Matsushita Electric (Singapore) Pte. Ltd., the signatories to the suspension agreement, have complied with the terms of the suspension agreement during the period April 1, 1990 through March 31, 1992.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 31174) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167; November 7, 1983). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. During the period of review, such merchandise was classifiable under item number 8414.30.40 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one producer and one exporter of the subject merchandise. These two companies, along with the Government of Singapore, are the signatories to the suspension agreement. The review covers the period April 1, 1990 through March 31, 1991 and three programs.

Final Results of Review

In our preliminary results of review, we preliminarily determined that the signatories to the suspension agreement complied with the terms of the suspension agreement during the period of review. We gave interested parties an opportunity to comment on the preliminary results of review. We received no comments, and have made no changes to the findings of our preliminary results of review. Therefore, for these final results of review, we determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement, including the payment of the provision export charges, for the April 1, 1990 through March 31, 1991 review period. A provisional export charge rate of 4.95 percent was in effect from April 1, 1990 through December 25, 1990, and a provisional export charge rate of 2.23 percent was in effect from December 26, 1990 through March 31, 1991.

We determine the total bounty or grant to be 5.52 percent of the f.o.b. value of the merchandise for the April 1, 1990 through March 31, 1991 review period. The suspension agreement states that the Government of Singapore will offset completely the net bounty or grant determined by the Department to exist with respect to the subject merchandise by the collection of an export charge applicable to exports of the subject product.

Following the methodology outlined in section B.4 of the agreement, the Department determines that, for the April 1, 1990 through December 25, 1990 portion of the review period, a positive adjustment of 0.57 percent must be made to the provisional export charge rate in effect, and for the December 26, 1990 through March 31, 1991 portion of the review period, a positive adjustment of 3.29 percent must be made to the provisional export charge rate in effect. These rates, established in the notices of the final results of the third and fifth administrative reviews of the suspension agreement (53 FR 25647, July 8, 1988; 55 FR 53028, December 26, 1990) are 4.95 percent and 2.23 percent, respectively. The Government of Singapore shall collect, in accordance with section B.4.c of the agreement, the difference, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department.

The Department intends to notify the Government of Singapore that the provisional export charge rate on all exports of the subject merchandise to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 5.52 percent of the f.o.b. value of the merchandise.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Department's regulations (19 CFR 355.22 (1992)).

Dated: October 2, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-24678 Filed 10-8-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out 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 1800H, 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 Review, application number 92-00012." A summary of the application follows.

Summary of the Application

Applicant: Balmac International, Inc., suite 2700, 61 Broadway, New York, NY 10006-2802.

Application No: 92-00012.

Date Deemed Submitted: October 2, 1992.

Members (in addition to applicant): None.

Export trade:

Products

Cold storage warehouses, ice flakers, ice machines, block ice machines, commercial and industrial mechanical refrigeration equipment and accessories.

Services

Design and modification of the above listed Products pursuant to foreign buyers' specification.

Export markets:

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export trade activities and methods of operation:

Balmac International, Inc. intends:

(a) To enter into and terminate exclusive independent agreements with Bally Engineered Structures, Inc. and any other Supplier separately wherein:

(1) Balmac International, Inc. agrees not to represent any competitors of such

Supplier as an Export Intermediary unless authorized by the Supplier;

(2) The Supplier agrees not to sell, directly or indirectly, through any other intermediary, into the Export Markets in which Balmac International, Inc. represents the Supplier as an Export Intermediary and, if such sales do occur to pay a commission to Balmac International, Inc.; or

(3) Both (1) and (2) above.

(b) To enter into and terminate exclusive agreements with Export Intermediaries wherein:

(1) Balmac International, Inc. agrees to deal in Products in the Export Markets only through that Export Intermediary;

(2) That Export Intermediary agrees not to represent Balmac International, Inc.'s competitors in the Export Markets or not to buy from Balmac International Inc.'s competitors for resale in the Export Markets; or

(3) Both (1) and (2) above.

(c) To enter into exclusive or nonexclusive agreements with an individual buyer in the Export Markets to act as a Purchasing Agent with respect to a particular transaction.

(d) For Balmac International, Inc. itself, or while acting as an Export Intermediary for separate Suppliers, to:

(1) Establish prices and quantities at which Products will be acquired, sold or resold for, or in the Export Markets;

(2) Establish the price and other terms of sale at which Services will be acquired, sold or resold for, or in the Export Markets;

(3) Allocate foreign territories or customers among Balmac International Inc.'s Export Intermediaries or to a Supplier and that Supplier's Export Intermediaries, or

(4) Any combination of (1), and (2), and (3) above. Balmac International, Inc. may engage in the activities in (d) above by agreement with Balmac International, Inc.'s Export Intermediaries, by independent agreement with separate Suppliers, by agreement with that Supplier's Export Intermediaries, or on the basis of its own determination.

(e) To disclose to an individual buyer in the Export Market prices and other terms of export marketing or sale.

Definitions

For purpose of this certificate application,the following terms are defined:

(a) "Export Intermediary" means:

(1) "Broker"—a person that locates buyers in the Export Markets for the Supplier or that locates Suppliers for buyers in the Export Markets on a straight commission or cost-plus commission basis and that, in so acting, offers, provides or engages in some or all Services.

(2) "Distributor"—a person that purchases Products for its own account from a Supplier, that may establish the resale price or maintain an inventory of Products for prospective, unidentified sale and that, in so acting, offers, provides or engages in some or all Services; or

(3) "Sales Representative or Agent"—a person that identifies and locates Products for sale; gives advice on, or chooses among prospective buyers in the Export Markets, advises on or negotiates prices, quantities, and other sale terms and conditions, sells Products for its own account or for the account of others; and that, in so acting, offers,provides or engages in some or all Services.

(b) "Purchasing Agent"—an intermediary who identifies and locates Products for purchase; gives advice on, or chooses among prospective Suppliers; advises on or negotiates prices, quantities, and other purchase terms and conditions; and purchases Products for its own account or for the account of others; and who, in so acting, offers, provides or engages in some or all Services.

(c) "Supplier"—a person that produces or sells Products to be exported from the United States or Services.

Dated: October 5, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-24677 Filed 10-8-92; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Myanmar

October 2, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of section 204 of the Agricultural Act of 1956, as amended, the Government of the United States has decided to establish a restraint limit for men's and boys' cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Myanmar and exported during the twelve-month period which began on October 1, 1992 and extends through September 30, 1993 at a level of 93,975 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640 or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Information regarding the 1993

CORRELATION will be published in the Federal Register at a later date.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Myanmar

Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts

September 1992

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, from Myanmar reached 110,571 dozen during the year ending July 1992, 52 percent above the 72,512 dozen imported during the year ending in July 1991. During the first seven months of 1992, imports of Category 340/640 from Myanmar reached 74,271 dozen, more than double the 32,603 dozen imported during the same period a year earlier and 8 percent above Myanmar's total calendar year 1991 Category 340/640 imports.

The sharp and substantial increase in Category 340/640 imports from Myanmar is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent falling from 16,401,000 dozen in 1988 to 11,729,000 dozen in 1991. U.S. production during the year ending March 1992 remained relatively even with the year ending March 1991 level. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, increasing 30 percent in the first seven months over the January-July 1991 level and reaching 28,035,769 dozen in the year ending in July 1992, 21 percent above the 23,136,806 dozen imported during the year ending July 1991 and the highest 12 month level on record.

The ratio of imports to domestic production increased from 157 percent in 1988 to 205 percent in 1991. This trend continued in 1992, with the ratio of imports to production reaching 208 percent during the year ending March 1992. The domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. This decline continued in 1992, with the domestic manufacturer's share of the market falling to 32 percent during the year ending March 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 79 percent of Category 340/640 imports from Myanmar during the year ending July 1992 entered the U.S. under HTSUSA numbers 6205.20.2046—men's and boys' cotton napped yarn dyed shirts, 6205.20.2050—men's cotton yarn dyed shirts, other than napped, 6205.20.2065—men's cotton shirts, other than yarn dyed, 6205.30.2050—men's man-made fiber yarn dyed shirts and 6205.30.2070—men's man-made fiber shirts, other than yarn dyed. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

Committee for the Implementation of Textile Agreements

October 2, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 13, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Myanmar and exported during the period beginning on October 1, 1992 and extending through September 30, 1993, in excess of 93,975 dozen. [1]

Textile products in Categories 340/640 which have been exported to the United States prior to October 1, 1992 shall not be subject to the limit established in this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-24622 Filed 10-8-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after September 30, 1992.

Request for Public Comments on Bilateral Textile Consultations with the Government of Oman on Certain Cotton and Man-Made Fiber Textile Products

October 5, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On September 21, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Oman with respect to men's and boys' cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Oman.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Oman, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Oman and exported during the twelve-month period which began on September 21, 1992 and extends through September 20, 1993, at a level of not less than 104,553 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Oman.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of Oman, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Oman

Category 340/640—Men's and Boys' Woven Shirts

September 1992

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made woven shirts, Category 340/640, from Oman reached 104,553 dozen during the year ending June 1992, 39 percent above the 75,462 dozen imported during the year ending in June 1991. During the first six months of 1992, imports of Category 340/640 from Oman reached 63,124 dozen, 65 percent above the 38,287 dozen imported during the same period a year earlier and 79 percent of Oman's total calendar year 1991 Category 340/640 imports.

The sharp and substantial increase in Category 340/640 imports from Oman is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent falling from 16,401,000 dozen in 1988 to 11,729,000 dozen in 1991. U.S. production during the year ending March 1992 remained relatively even with the year ending March 1991 level. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, increasing 30 percent in the first half over the January-June 1991 level and reaching 27,298,374 dozen in the year ending in June 1992, 18 percent above the 23,196,118 dozen imported during the year ending June 1991 and the highest 12 month level since the year ending in July 1987.

The ratio of imports to domestic production increased from 157 percent in 1988 to 205 percent in 1991. This trend continued in 1992, with the ratio of imports to production reaching 208 percent during the year ending March 1992. The domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. This decline continued in 1992, with the domestic manfacturers' share of the market falling to 32 percent during the year ending March 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 84 percent of Category 340/640 imports from Oman during the year ending June 1992 entered the U.S. under HTSUSA numbers 6205.20.2065—men's cotton shirts, other than yarn dyed, 6205.20.2075—boys' cotton shirts, other than yarn dyed, and other than those imported as parts of playsuits, and 6205.30.2070—men's man-made fiber shirts, other than yarn dyed. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 92-24621 Filed 10-8-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 9, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Handle, Step
5340-01-114-7387

Nonprofit Agency: NOC Industries, Inc., Cadillac, Michigan

Trousers, Men's, Medical Assistant
8405–00–110–8290
8405–00–110–8291
8405–00–110–8292
8405–00–110–8293
8405–00–110–8294
8405–00–110–8295
8405–00–110–8296
8405–00–110–8297
8405–00–110–8298
8405–00–110–8299
8405–00–110–8301
8405–00–110–8302
8405–00–110–9468
8405–00–110–9469
8405–00–110–9470
8405–00–110–9471
8405–00–110–9472
8405–00–110–9473
8405–00–110–9474
8405–00–110–9475
8405–00–110–9476
8405–00–110–9477
8405–00–110–9478
8405–00–110–9479
8405–00–110–9480
8405–00–110–9481
8405–00–110–9482
8405–00–110–9483
8405–00–110–9484
8405–00–110–9485
8405–00–110–9486
8405–00–110–9487
8405–00–110–9488
8405–00–110–9489
8405–00–110–9490
8405–00–110–9697
8405–00–113–5418
8405–01–008–8848

Nonprofit Agency: Goodwill Industries of Central Indiana, Inc., Indianapolis, Indiana

Services

Food Service Attendant, Air National Guard Base, Otis, Massachusetts
Nonprofit Agency: Community Connections, Inc., Yarmouth Port, Massachusetts

Grounds Maintenance, USARC #4, 1920 Harry Wurzbach Highway, San Antonio, Texas
Nonprofit Agency: Goodwill Industries of San Antonio, Inc., San Antonio, Texas

Janitorial/Custodial, Social Security Administration, Albuquerque Data Operations Center and Annex, 933 Bradbury SE, Albuquerque, New Mexico
Nonprofit Agency: Adelante Development Center, Inc., Adelante, New Mexico

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–24680 Filed 10–8–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 9, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodity to the Government.

2. The action will result in authorizing a small entity to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List:

Paper, Toilet Tissue
8540–00–530–3770
(Requirements for Zone 6 only)
Nonprofit agency: Duluth Lighthouse for the Blind, Duluth, Minnesota

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–24681 Filed 10–8–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions; Corrections

In notice document 92–23360, appearing on page 44367 in the issue of Friday, September 25, 1992 under the Clamp, Loop heading the following NSN's are incorrect: 5340–01–276–9179 should read 5340–01–276–9169 and 5340–01–998–3164 should read 5340–00–998–3164.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–24682 Filed 10–8–92; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Board of Trade Clearing Corporation and Chicago Mercantile Exchange Proposed Common Banking and Settlement Rule Amendments

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rules and rule amendments of the Board of Trade Clearing Corporation and the Chicago Mercantile Exchange to establish a common banking and settlement system.

SUMMARY: The Board of Trade Clearing Corporation ("BOTCC") and the Chicago Mercantile Exchange ("CME") have submitted proposed new rules, rule amendments, and other materials which would establish a common banking and settlement system at the BOTCC and CME.[1] Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets has determined to publish the BOTCC and CME proposals for public comment. The Division believes that publication of the BOTCC and CME proposals is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. References should be made to the proposed amendments to establish common banking and settlement system

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, or

[1] The BOTCC proposal includes proposed new Bylaws 118, 119, and 517, and proposed amendments to existing Bylaws 503, 508, 604, and 804. The CME proposal includes proposed new Rule 832 and proposed amendments to existing Rule 802.

Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rules and Rule Amendments

By letters dated August 27, 1992, and September 1, 1992, the CME and the BOTCC respectively submitted proposed new rules and rule amendments pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(b) which would establish a common banking and settlement system at the BOTCC and CME.[2] In connection with these rule changes, the BOTCC and CME also submitted the BOTCC–CME common banking and settlement procedures agreement.

Under the proposals, a firm that is member of both the BOTCC and the CME clearing organization—a joint clearing member—would be required to elect either the BOTCC or the CME clearing organization as its designated clearing organization ("DCO"). The DCO then would carry out both custodial and payment functions with respect to the joint clearing member's proprietary and customer accounts on behalf of both clearing organizations. Although a joint clearing member would deposit all performance bond at its DCO, the joint clearing member also would be required to make an accounting allocation of performance bond between the two clearing organizations, subject to any requirements on form or valuation of collateral imposed by either clearing organization.

Each joint clearing member would be required to execute a common banking and settlement agreement giving to both clearing organizations jointly a first lien and security interest in property, or proceeds thereof, deposited as performance bond. Each joint clearing member also would be required to establish at a settlement bank separate proprietary and customer accounts for purposes of daily settlement at both clearing organizations. All daily settlement instructions would have to be approved by both clearing organizations, except under specifically identified conditions when a clearing organization would be permitted to withhold its approval. Settlements would be made among the clearing organizations' joint bank account and the joint clearing members' bank accounts.

The proposal includes provisions that provide for the suspension or expulsion of a joint clearing member. Similarly, the proposal contains terms governing the liquidation of a suspended or expelled joint clearing member's positions.

The proposal also would require that the two clearing organizations share information with one another regarding the condition and activities of joint clearing members. Such sharing of information would be required in several different areas, including changes in financial information reporting, changes in capital and collateral requirements, the institution of disciplinary action, the occurrence of processing or operational errors, and failure to meet timely any settlement obligations. Information sharing would not only be required upon the occurrence of any adverse condition but also upon the termination of such adverse condition.

II. Request for Comments

The Commission requests comments on any aspect of the BOTCC's and CME's proposed new rules and rule amendments that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the proposed rules and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 5, 1992.

Alan L. Seifert,

Deputy Director.

[FR Doc. 92–24602 Filed 10–8–92; 8:45 am]

BILLING CODE 6351–01–M

[2] The BOTCC originally submitted its proposal pursuant to Commission Regulation 1.41(c) but subsequently requested that its proposal be treated as if it had been submitted pursuant to Commission Regulation 1.41(b).

DEPARTMENT OF DEFENSE

Office of the Secretary

Nuclear Failsafe and Risk Reduction Advisory Committee; Meeting

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Nuclear Failsafe and Risk Reduction Review Advisory Committee. The purpose of the meeting is to discuss and approve the Committee's Final Report to the Secretary of Defense on its comprehensive and independent review of U.S. positive measures for the prevention of unauthorized or inadvertent use of nuclear weapons with recommendations for enhancement of fail-safe policies, procedures and mechanisms and opportunities to reduce the risk of the outbreak of nuclear war. This meeting will be closed to the public.

DATES: October 30, 1992. 1000–1100.

ADDRESS: Pentagon, Crisis Coordination Center, room 3C912

FOR FURTHER INFORMATION CONTACT: Colonel Bill Jones, U.S. Army, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline #3, 5201 Leesburg Pike, suite 500, Falls Church, Virginia 22041, (703) 756–8680.

Dated: October 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24591 Filed 10–8–92; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 3, 1992; Tuesday, November 10, 1992; Tuesday, November 17, 1992 and Tuesday, November 24, 1992, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees

pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, the Pentagon, Washington, DC 20310.

Dated: October 5, 1992.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24592 Filed 10–8–92; 8:45 am]

BILLING CODE 3810–01–M

Office of The Secretary

DoD Government-Industry Technical Data Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The committee's November meetings are for November 17–18, 1992 from 9:30 a.m. to 4 p.m. at The Herman Lay Room, the U.S. Chamber of Commerce, 1615 "H" Street, NW., Washington, DC 20062–2000. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: October 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24591 Filed 10–8–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.197A–D, 84.036B, and 84.091A]

Office of Educational Research and Improvement; Higher Education Act Library Programs; Titles II–A, II–B, and II–C

AGENCY: Department of Education.

ACTION: Notice supplementing previous notice inviting applications for new awards for fiscal year 1993.

SUMMARY: On July 28, 1992, the Secretary published in the **Federal Register** a notice inviting applications for new awards for fiscal year 1993 under the Higher Education Act (HEA) title II library programs administered by the Office of Educational Research and Improvement. This supplemental notice advises potential applicants of the changes made to the title II library programs referenced in the July 28, 1992 notice by Public Law 102–325, "the Higher Education Amendments of 1992," which was enacted on July 23, 1992 and takes effect on October 1, 1992.

SUPPLEMENTARY INFORMATION: This supplemental notice summarizes the changes to HEA title II made by the Higher Education Amendments of 1992, which will govern the HEA title II library program applications for fiscal year 1993 and which applicants should consider in developing their applications. The July 28, 1992, **Federal Register** notice (57 FR 33411) remains in effect except as indicated in this supplemental notice. Copies of the HEA, as amended, are available from the program officers designated in the July 28 notice.

The title II library programs referenced in the July 28 notice have been redesignated or retitled under these new amendments as follows: (1) The College Library Technology and Cooperation Grants program (formerly designated as title II, part D) is now title II, part A; (2) HEA title II–B has been retitled "Library Education, Research, and Development;" and (3) HEA title II C has been retitled "Improving Access to Research Library Resources."

Application Notices Affected

CFDA No. 84.197A-D—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part A) Summary of Statutory Changes

(a) Networking Grants may now be awarded to institutions of higher education which demonstrate a need for special assistance for the planning, development, acquisition, maintenance, or upgrading of technological equipment necessary to organize, access, or utilize material in electronic formats and to participate in networks for the accessing and sharing of library and information resources.

(b) Combination Grants may now be awarded to combinations of institutions of higher education only for the purpose of accessing and sharing of library and information resources.

(c) The authority for Research and Demonstration Grants has been amended to provide participation in the National Research and Education Network as an example of an authorized activity.

(d) The minimum amount of a grant for the College Library Technology and Cooperation Grants program has been increased to $25,000.

(e) A Networking Grant may not exceed $50,000 for each institution of higher education

(f) For Networking Grants, the HEA directs the Secretary to give priority to certain applicants. That priority, and the manner in which it is implemented for fiscal year 1993, is listed under the heading "Implementation of New Priority."

Implementation of New Priority

The HEA directs the Secretary to give priority to institutions of higher education seeking assistance for projects that assist developing institutions of higher education in linking one or more institutions of higher education to resource sharing networks. In accordance with the HEA, and with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary reserves up to forty percent of all program funds solely for applications that meet this priority in a particularly effective way.

CFDA No. 84.036—Library Education and Human Resource Development Program Summary of Statutory Changes

(a) The Secretary is authorized to make awards "particularly in areas of critical needs, such as recruitment and retention of minorities." This provision will not affect the previously announced priorities governing fiscal year 1993 grants because those priorities are considered to address critical needs.

(b) Stipends are now available only to fellows who demonstrate need and are working toward a graduate degree. Stipends are not available to trainees or to undergraduate fellows.

FOR FURTHER INFORMATION CONTACT: Louise Sutherland, U.S. Department of Education, 555 New Jersey Avenue NW., room 404, Washington, DC 20208–5571. Telephone: (202) 219–1315. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: Public Law 102–325.

Dated: October 2, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–24594 Filed 10–8–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Involvement Notification for Proposed Interim Remedial Action at the Jefferson Tennis Court Site Oak Ridge, TN

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of floodplain involvement and opportunity to comment.

SUMMARY: DOE has assessed and proposes to remediate a 1.5-acre field near the Jefferson Tennis Court, owned by the City of Oak Ridge, Tennessee. The City of Oak Ridge intends to sell the property to Girls' Inc., who intends to use the acreage for a softball field. The proposed action to be taken by DOE involves covering the field with 0.5 to 1.0 feet of clean soil so that the field can be made available for unrestricted use. The acreage to be covered is within the 100-year floodplain of East Fork Poplar Creek (EFPC). A portion of the property that is within the floodplain would not be disturbed. DOE understands that Girls' Inc., will erect a fence to restrict human access to the undisturbed portion.

In accordance with the DOE regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022), DOE will prepare a floodplain assessment and issue a Statement of Findings before conducting environmental restoration activities. Maps and further information are available from the Information Resource Center, 105 Broadway Avenue, Oak Ridge, Tennessee 37830, (615) 481–0695.

DATES: Comments are due no later than October 26, 1992.

ADDRESSES: Send comments to Mr. Robert C. Sleeman, Director, Environmental Restoration Division (EW–91), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541, or fax comments to (615) 576–6074.

FOR FURTHER INFORMATION ON THE DOE FLOODPLAIN/WETLAND REVIEW PROCESS CONTACT: Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The proposed action, if implemented, would be conducted with the concurrence of the U.S. Environmental Protection Agency and the Tennessee Department of Conservation. The proposed action would be performed at the site in such a manner as to avoid or minimize impacts on the floodplain.

Paul D. Grim,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–24675 Filed 10–8–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–852–000, et al.]

Arizona Public Service Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 1, 1992.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Co.

[Docket No. ER92–852–000]

October 1, 1992.

Take notice that on September 24, 1992, Arizona Public Service Company (APS) tendered for filing revised Exhibit B (Exhibit) to the Wholesale Power Agreement (Agreement) between APS and Southern California Edison Company (SCE) (APS–FERC Rate Schedule No. 120). The Exhibit lists Maximum Demands applicable under the Agreement.

No change to the rate and revenue levels currently on file with the Commission for the 12 months immediately after the proposed effective as a result of this herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on SCE, the Arizona Corporation Commission and the California Public Utilities Commission.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Co.

[Docket No. ER92–772–000]

October 1, 1992.

Take notice that on September 23, 1992, West Texas Utilities Company (WTU) tendered for filing two letter agreements amending the agreements between WTU and the Cities of Brady and Coleman, Texas, filed in the above referenced proceeding on August 10, 1992. The letter agreements limit the amounts that WTU may collect for service under the agreements.

Copies of the filing have been served on the Cities and the Public Utility Commission of Texas.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Alabama Power Co.

[Docket No. ER92–832–000]

October 1, 1992.

Take notice that on September 9, 1992, Alabama Power Company (APCo) tendered for filing a Transmission Service Delivery Point Agreement dated as of September 18, 1992, which reflects an increase in the maximum capacity of certain existing delivery points of Central Alabama Electric Cooperative, Inc. All of these delivery points are served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designated FERC Rate Schedule No. 147). The parties request an effective date for this Transmission Service Delivery Point Agreement of September 18, 1992.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Co.

[Docket No. ER92-860-000]

October 1, 1992.

Take notice that Minnesota Power & Light Company (Minnesota Power) on September 25, 1992, tendered for filing an Electric Service Agreement between Minnesota Power and the City of Proctor, Minnesota, by and through the Proctor Public Utilities Commission (Proctor). The Agreement adds Proctor as a full requirements customer of Minnesota for a 20 year term beginning January 1, 1995.

Minnesota Power requests an effective date of January 1, 1995, and requests waiver of the notice requirements of Section 35.3 of the Commission's regulations.

Copies of the filing have been served on Proctor, the Minnesota Public Utilities Commission and the Minnesota Department of Public Service.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Co. of New York, Inc.

[Docket No. ER92-861-000]

October 1, 1992.

Take notice that on September 28, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing two Supplements to its Rate Schedule FERC No. 62, which provides for interruptible transmission service to Orange and Rockland Utilities, Inc. (O&R).

Supplement No. 10 provides for a decrease in rate from 2.6 mills to 215 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus decreasing annual revenues under the Rate Schedule by a total of $213.50. Supplement No. 11 provides for the addition of Philadelphia Electric as a source of energy to be transmitted under the Rate Schedule. Con Edison has requested waiver of notice requirements so that Supplement No. 10 can be made effective as of September 1, 1992 and Supplement No. 11 as of September 28, 1992.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER92-862-000]

October 1, 1992.

Take notice that PacifiCorp, on September 28, 1992, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Long-Term Power Sales Agreement (Agreement) between PacificCorp and Western Area Power Administration (Western) dated September 17, 1992.

Under terms of the Agreement, PacifiCorp will sell to Western firm capacity and energy for the period of December 1, 1993 through December 31, 2012.

PacifiCorp requests that the effective date of the Agreement be sixty (60) days after the Commission's receipt of this filing.

Copies of this filing were supplied to Western, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER92-859-000]

October 1, 1992.

Take notice that PacifiCorp on September 25, 1992, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Interconnection Agreement (Agreement) between PacifiCorp and Cowlitz County Public Utility District (Cowlitz) dated January 31, 1992.

The Agreement provides for the construction, ownership, operation and maintenance of the facilities required to connect Cowlitz's new Ariel Substation to PacifiCorp's existing 115 kV Kalama transmission line.

Copies of this filing were supplied to Cowlitz and Public Utility Commission of Oregon.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER92-343-003]

October 1, 1992.

Take notice that on September 23, 1992, Northern States Power Company (Minnesota) and Northern States Power (Wisconsin) jointly tendered for filing a Revised Transmission Loss Study dated September 1992.

The transmission system loss filing will reduce the NSP system average loss factors applicable to transmission service provided under various long term transmission service agreements and NSP's Transmission Service Tariff from 3.5% to 2.4%. The Revised Loss Study filing is being submitted in compliance with the Commission's initial Order dated April 29, 1992 and Order on Rehearing dated June 24, 1992, in this proceeding.

Copies of the filing have been served upon the wholesale and transmission wheeling customers of NSP-M and NSP-W, and upon the state commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: October 15, 1992, in accordance with Standard paragraph E at the end of this notice.

9. Century Power Corp.

[Docket No. ER92-851-000]

October 1, 1992.

Take notice that on September 23, 1992, Century Power Corporation (Century) tendered for filing a December 31, 1985 contract with the Western Area Power Administration (WAPA) and a Notice of Cancellation of the contract. Because the contract has never been used and is not expected to be needed, Century requests that the cancellation become effective on September 20, 1992, to coincide with the date on which the contract terminated pursuant to contractual notice given by Century to WAPA.

Century also tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 7 for the sale of surplus energy to WAPA. The agreement terminated by its terms on September 30, 1989. Century requests that the cancellation become effective on November 23, 1992.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Louis Dreyfus Electric Power, Inc.

[Docket No. ER92-850-000]

October 1, 1992.

Take notice that Louis Dreyfus Electric Power Inc. (LDEP) on September 22, 1992, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, a petition of waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective on December 1, 1992.

LDEP intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where LDEP purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, LDEP will be functioning as a marketer. In LDEP's marketing transactions, LDEP proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length, and no sales will

be made to affiliated entities. In transactions where LDEP does not take title to the electric power and/or energy, LDEP will be limited to the role of a broker and charge a fee for its services. LDEP is not in the business of transmitting electric power. LDEP does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales my be made to affiliates.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Co.

[Docket No. ER92-600-001]

October 1, 1992.

Take notice that on September 24, 1992, New England Power Company (NEP) tendered for filing its compliance refund report in the above referenced docket.

Comment date: October 15, 1992, in accordance with Standard paragraph E at the end of this notice.

12. New England Power Service

[Docket No. ER92-335-000]

October 1, 1992.

Take notice that on September 8, 1992, New England Power Service tendered for filing an amendment in the above referenced docket.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. EEA III, L.P.

[Docket No. QF91-24-001]

October 2, 1992.

On September 25, 1992, EEA III, L.P. (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: October 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Co.

[Docket No. ER92-812-000]

October 2, 1992.

Take notice that on October 2, 1992, Wisconsin Electric Power Company supplemented its earlier filing in this docket by providing corrected Original Sheet No. 10.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Scrubgrass Generating Co., L.P.

[Docket No. QF88-406-002]

October 2, 1992.

On September 24, 1992, Scrubgrass Generating Company, L.P., c/o U.S. Generating Company, 7475 Wisconsin Avenue, Bethesda, Maryland 20814, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kennerdall, Scrubgrass Township, Venango County, Pennsylvania. The Commission previously certified the facility as a qualifying small power production facility, Scrubgrass Power Corp., 45 FERC ¶ 62,075 (1988), and recertified the facility as a qualifying small power production facility by order dated July 26, 1991, Scrubgrass Generating Company, L.P., 56 FERC ¶ 62,062 (1991). The instant request for recertification is due to the increase in electric power production capacity and a change in the facility's ownership structure.

Comment date: November 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Wheelabrator Falls Inc.

[Docket No. QF86-135-002]

October 2, 1992.

On September 22, 1992, Wheelabrator Falls Inc. (Applicant), c/o Wheelabrator Environmental Systems Inc., Liberty Lane, Hampton, New Hampshire 03842, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Falls Township, Bucks County, Pennsylvania. The Commission previously certified the facility as a qualifying small power production facility, Waste Management, Inc., 34 FERC ¶ 62,236 (1986). On August 16, 1989, a notice of self recertification was filed to reflect a change in ownership from Waste Management, Inc. to applicant and a change in the electrical output of the facility. The instant request for recertification is due to the addition of an electric transmission line to the facility and a decrease in the maximum net power production capacity of the facility from 66 MW to 48.1 MW.

Comment date: November 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24641 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-736-000, et al.]

Texas Eastern Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corp.

[Docket No. CP92-736-000]

September 30, 1992.

Take notice that on September 28, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-736-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to an existing service agreement with EnMark Gas Corporation (EnMark) at the proposed interconnection facilities with La-Nevada Transit Company (La-Nevada) under Texas Eastern's blanket certificates issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern states that it proposes to install a delivery point to the service agreement covering service for EnMark under Rate Schedule IT-1. Texas

Eastern further states that the peak and average day deliveries at the point would be 5,000 DTH per day.

Texas Eastern says that the addition of the delivery point would have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that its proposal would be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Further, Texas Eastern states that the service it renders for EnMark would be performed pursuant to its Rate Schedule IT–1 and that Texas Eastern's existing tariff does not prohibit the additional volumes. It is indicated that the delivery point to be added would be located on Texas Eastern's 24-inch Line No. 1 at M.P.106.90 in Nevada County, Arkansas.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Co. of America

[Docket No. CP92–740–000]

September 30, 1992.

Take notice that on September 28, 1992, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP92–740–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add an existing delivery point to Midwest Gas, a division of Midwest Power Systems Inc. (Midwest), an existing customer, and to reassign volumes of gas sales to that point, under Natural's blanket certificate issued in Docket No. CP82–402–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Natural requests authorization to add a tap, presently used to deliver transportation natural gas to the City of Montezuma (Montezuma), Mahaska County, Iowa, as a sales tap to Midwest. Montezuma would receive the natural gas from Natural for Midwest's account and, pursuant to an agreement with Midwest, deliver the gas to Midwest through an existing interconnection of their facilities, it is stated. Natural states that it would deliver up to 100 Mcf of natural gas per day to Montezuma for Midwestern's account, which volume would be reassigned from Natural's certificated Oskaloosa delivery point to Midwest in Mahaska County, Iowa. Natural's delivery obligation to Montezuma would remain unchanged, it is stated. Natural asserts that no new facilities would be constructed by any party.

Natural further states that it has sufficient capacity to deliver the additional volumes of natural gas at the Montezuma delivery point.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP92–737–000]

September 30, 1992.

Take notice that on September 28, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP92–737–000, a request pursuant to § § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act to, under its blanket certificate issued in Docket No. CP82–535–000 and two new delivery points to an existing interconnection with Libra Marketing Company (Libra), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

As stated by Texas Eastern, the two delivery points will be added to Libra's service covered under Texas Eastern's Rate Schedule IT–1, and the peak and average day deliveries at the points will be 40,000 DTH/d at the Hidalgo County, Texas delivery point and 100,000 DTH/d at the Nueces County, Texas delivery point.

Specifically, the delivery points would be installed on Texas Eastern's 8-inch Line No. 16–A in Hidalgo County, Texas and on Texas Eastern's 12-inch Line No. 16–I in Nueces County, Texas at an estimated cost of $119,800.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Co.

[Docket No. CP92–722–000]

October 1, 1992

Take notice that on September 21, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–722–000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a new delivery point for Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples) to serve Eldon Grover, an end-user in Carlton County, Minnesota under Northern's blanket certificate issued in Do. CP82–401–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to construct and operate one small measuring station and appurtent facilities to provide natural gas deliveries to Peoples under Northern's CD–1 Rate Schedule to serve Eldon Grover a residential end-user located in Carlton County, Minnesota. Northern states that the estimated volumes to be delivered to Peoples is 1.5 Mcf of natural gas per day and 200 Mcf of natural gas per year. Northern states that the estimated cost to install these facilities is $1,340. The volumes to be delivered to Peoples at this delivery point would be within the currently effective entitlements for Peoples and the volumes for Eldon Gorver would be served from the total firm entitlement currently assigned to Minnesota small volume taps, it is indicated. Northern states that the establishment of this delivery point is not prohibited by Northern's existing tariff and Northern has sufficient capacity to accomplish deliveries at this new delivery point without detriment or disadvantage to Northern's other customers, it is stated.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP92–733–000]

Take notice that on September 25, 1992, Arkla Energy Resources (AER) a division of Arkla, Inc. P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP 92–733–000, a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities in Arkansas under the blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that it proposes to construct and operate a new sales and to operate one existing tap for delivery of gas for resale to consumer other than the right-of-way grantor for whom the tap was originally installed, all for the delivery of gas to Arkansas Louisiana Gas Company ("ALG") for resale to domestic & commercial consumers in Arkansas. AER further states that the gas will be delivered from its general system supply, which it states is adequate to provide the service.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Co.

[Docket No. CP92-738-000]

October 1, 1992.

Take notice that on September 25, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP92-738-000, a request pursuant to § 157.205 of the Commissions's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and install a hot tap assembly to effectuate the delivery of natural gas for Chevron USA, Inc. (Chevron), a producer, under the authorization issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it was authorized on July 17, 1989, in Docket No. CP89-1511-000, Tennessee was authorized to transport on an interruptible basis up to 2,000 Dt/d equivalent of natural gas for Chevron. It is stated that the gas is transported for Chevron for gas lift purposes from receipt points located Offshore Louisiana to a platform located at Eugene Island Block 215C.

On November 14, 1989, in Docket No. CP89-1511-001, Tennessee states that it was further authorized to construct six additional Offshore Louisiana delivery points for gas lift and emergency start-up purposes and to increase the transportation quantity to 21,500 Dt/d.

Tennessee states that it was further authorized on July 7, 1990, in Docket No. CP89-1511-002, to construct 10 additional Offshore Louisiana delivery points for gas lift and emergency start-up purposes and to increase the transportation quantity from 21,500 Dt/d for Chevron to 50,000 Dt/d.

It is stated that construction of one of the 10 authorized delivery points, Ship Shoal 168D, was delayed at Chevron's request and authorization to construct that point expired on July 7, 1991. By this filing, Tennessee states that it again seeks authorization to construct and install a 2-inch hot tap at Tennessee M.P. 523M-6501+0.86 on Chevron's Ship Shoal 168D Platform, Offshore Louisiana. Tennessee estimates that the cost of this facility is $10,000, which is 100 percent reimbursable to Tennessee.

Tennessee states that the addition of the requested delivery point will have no impact on its peak day and annual deliveries.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Eastern Transmission Corporation

[Docket No. CP92-745-000]

October 2, 1992.

Take notice that on September 30, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-745-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point under Texas Eastern's blanket certificate issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to install a new delivery point for delivery of natural gas to Libra Marketing Company (Libra) under an existing service agreement covering service under Texas Eastern's Rate Schedule IT-1. Texas Eastern states that it would install a 10-inch hot tap at M.P. 140.17 on its 30-inch Line No. 16 in San Patricio County, Texas. It is stated that a single 6-inch and a dual 8-inch meter station would also be installed. It is further stated that the peak and average day deliveries would be 100,000 dekatherms equivalent per day, corresponding to the Maximum Daily Delivery Obligation. Texas Eastern advises that Libra would resell the gas to Central Power & Light Company. Texas Eastern states that Libra would reimburse it for the cost of the facilities, estimated to be $49,500.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24642 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-63-000, TM93-1-63-000]

Carnegie Natural Gas Company; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that on September 30, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Thirty-Fifth Revised Sheet No. 8
Thirty-Fifth Revised Sheet No. 9
Fifth Revised Sheet No. 10
Third Revised Sheet No. 23

Carnegie states that pursuant to sections 23, 24 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA"), Annual Charge Adjustment ("ACA"), and Transportation Cost Adjustment ("TCA") to reflect updated projections affecting the average commodity cost of purchased gas to be incurred by Carnegie on and after October 1, 1992. Carnegie states that the primary purpose of its filing is to accurately state the average commodity cost of gas on Carnegie's tariff sheets so that the negotiated sales rates agreed upon between Carnegie and its customers for interruptible sales service on and after October 1, 1992, will be in compliance with the rate conditions imposed by the Commission in issuing the SEGSS certificate and footnote 2 of Revised Tariff Sheet No. 9.

The revised rates are proposed to become effective October 1, 1992, and reflect the following changes from Carnegie's last regular PGA filing in Docket No. TA92-1-63-000, *et al.*: a $0.9575 per dth decrease in the demand rate, a $0.9464 per dth increase in the commodity rate, and a 0.0315 per dth decrease in the DCA rate of its CDS and LVWS rate schedules; a $0.9150 per dth increase in the maximum commodity rate and a $0.9464 per dth in the minimum commodity rate under Rate Schedule SEGSS. The revised tariff sheets also reflect a decrease in the TCA charge of $0.0198 per dth, from $0.0929 per dth to $0.0731 per dth. The above tariff sheets also reflect a decrease in the ACA charge from $0.0023 per dth to $0.0022 per dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24656 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-5-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1992 tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

To Be Effective November 1, 1992

Ninth Revised Sheet Nos. 30A01-30A05
Fifth Revised Sheet Nos. 30A06
Fourth Revised Sheet No. 30A07
Third Revised Sheet No. 30A08
Third Revised Sheet No. 30A09

By this filing, Columbia proposes to revise the allocation to its customers of the fixed monthly demand surcharges applicable to Transcontinental Gas Pipe Line Corporation's Docket Nos. RP88-68 and RP91-147 to be flowed through from November 1, 1992 to November 1, 1993. The revised allocation is being filed pursuant to Section 25, of the General Terms and Conditions of Columbia's FERC Gas Tariff, First Revised Volume No. 1, which states, in part, that periodic adjustments will be made annually at November 1 of each year reflecting the then current daily Total Firm Entitlements. The allocation proposed herein reflects the Total Firm Entitlements under Rate Schedules CDS, SGS, WS, FSS, FTS and OPT in effect for each customer at November 1, 1992. No change in the total level of Transco costs to be flowed through is proposed.

On August 20, 1992, Columbia advised the Commission that in light of the July 6, 1992 decision of the United States District Court for the District of Delaware precluding Columbia from flowing through refunds relating to prepetition periods and making payments to pipeline suppliers for charges relating to prepetition periods, it was suspending all prepetition Order No. 528 payments and all Order No. 528 billing adjustments to its customers. Accordingly, while Columbia is making this filing in compliance with its tariff, it is not seeking to collect any amounts reflected in this filing, pending the outcome of the appeals of the July 6, 1992 Court order.

Columbia states that copies of the filing were mailed to jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, *et al.*, and RP91-41, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24643 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that on September 30, 1992, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1:

Seventeenth Revised Sheet No. 26.1
Seventeenth Revised Sheet No. 26A.1
Twenty-second Revised Sheet No. 26C
Fourteenth Revised Sheet No. 26D

The foregoing revised tariff sheets bear an issue date of September 30, 1992, and a proposed effective date of November 1, 1992.

Columbia states that § 26.3 of the General Terms and Conditions of Columbia's FERC Gas Tariff, First Revised Volume No. 1, requires Columbia at the end of each 12 month billing period commencing August 1, 1988, to recalculate the volumetric surcharge to reflect revisions for the actual FERC published interest rates during such 12 month period. This instant filing is said to be made to reconcile the period August 1, 1991 through July 31, 1992. The adjusted volumetric surcharge is 4.00¢ per Dth, which is a 0.14¢ reduction to the current surcharge.

Columbia states that copies of the filing were served on wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Transmission's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24646 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR92-8-000]

El Paso Refinery, L.P. v. SFPP, L.P.; Complaint

October 5, 1992.

Take notice that on September 4, 1992, pursuant to section 13(1) of the Interstate Commerce Act (ICA) (49 App. U.S.C. 13(1) (1988)), El Paso Refinery, L.P. (El Paso) filed a complaint alleging that SFPP, L.P. has engaged in unduly discriminatory and unreasonably preferential practices affecting the transportation service provided by SFPP, L.P. to El Paso. El Paso seeks relief from the Commission under section 15(1) of the ICA (49 App. U.S.C. 15(1) (1988)).

directing SFPP, L.P. to cease and desist the reversal of the direction of flow of all lines in SFPP, L.P.'s "East Line" system from Phoenix to Tucson.

Further, El Paso alleges that SFPP, L.P.'s rates do not reflect the increased throughput that will result from the East Line facility expansion. Accordingly, El Paso requests that the Commission exercise its authority under ICA section 15(l) to implement rates for product deliveries on the East Line that will accurately reflect the present realities of the system.

Any person desiring to be heard or to protest said complaint 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 (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before November 4, 1992. 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. Answers to this complaint shall be due on or before November 4, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24651 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA91-23-001]

Pipeline Rates: Hearing, Accounting and Florida Gas Transmission Co.; Order Establishing Hearing Procedures

Issued October 5, 1992.

On July 4, 1992, the Chief Accountant issued a contested audit report [1] under delegated authority noting Florida Gas Transmission Company's (Florida Gas) disagreement with the recommendation of the Division of Audits with respect to Exception No. 1, in Part I of the report. Florida Gas was requested to advise whether it would agree to the disposition of the contested matters under the shortened procedures provided for by Part 158 of the Commission's Regulations. 18 CFR 158.1, *et seq.*

On August 13, 1992, Florida Gas responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, Chapter I), a public hearing shall be held concerning the appropriateness of Florida Gas' accounting practices as discussed in the audit report.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 92-24617 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-46-000]

Kentucky West Virginia Gas Co., Proposed Change in FERC Gas Tariff

October 5, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on October 1, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Quarterly PGA filing, which includes Forty-First Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1992. The revised tariff sheet reflects a current increase of $0.0012 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.1601 per Dth.

Kentucky West states that effective November 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.1700 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state 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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24649 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-4-000]

Mississippi River Transmission Corporation; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that on October 1, 1992, Mississippi River Transmission Corporation (MRT) filed pursuant to section 4 of the Natural Gas Act (NGA) and the Regulations of the Federal Energy Regulatory Commission

[1] 60 FERC ¶ 62,013 (1992).

(Commission) thereunder changes in its FERC Gas Tariff which are proposed to become effective November 1, 1992, all as more fully described in its rate increase application which is on file and available for public inspection.

MRT states that the rates proposed by its filing reflect a relative modest increase in its jurisdictional sales and transportation revenues of approximately $6.9 million annually. MRT states that principal reasons for this increase include recent increases in the costs of transportation of gas by others, increased depreciation expense associated with additional capital expenditures, increased levels of various operating and maintenance and general and administrative costs, and an increased rate of return commensurate with the increased risk of operating in increasingly competitive and volatile natural gas markets. The filing further reflects updated system throughput and utilization of the straight fixed variable method of cost classification in allocating costs and designing the proposed rates.

MRT notes that the rates proposed in its filing may be in effect for only a short period before being superseded by rates filed in compliance with restructuring obligations under Commission Order Nos. 636 and 636-A (in this regard, MRT notes that it has proposed a May 1, 1993 effective date for its restructured rates and services in its restructuring proceeding at Docket No. RS92-43-000). Thus, MRT states that this filing should serve, in part, as a transitional vehicle in its movement toward implementation of the system restructuring required by Order No. 636.

MRT states that copies of the rate filing were served upon interested state agencies, MRT sales customers, firm shippers, and interruptible shippers intervening in either MRT's last general rate proceeding at Docket No. RP89-248-000 or in its current restructuring proceeding at Docket No. RS92-43-000. Copies of a summary form of the filing were served upon remaining interruptible shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 13, 1992. 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 MRT's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24652 Filed 10-8-92; 8:45]

BILLING CODE 6717-01-M

[Docket No. RP92-73-000]

National Fuel Gas Supply Corp.; Informal Settlement Conference

October 2, 1992.

Take notice that an informal settlement conference will be convened in this proceeding at 11 a.m. on Thursday, October 15, 1992. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-captioned proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joanne Leveque at (202) 208-5705 or Warren Wood at (202) 208-2091.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24616 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-286-001]

New England Power Co.; Order Granting Rehearing and Announcing Additional 30-Day Amnesty Period for the Filing of Service Agreements

Issued October 5, 1992.

On July 2, 1992, New England Power Company (New England Power) filed a request for rehearing of the Commission's order issued in this proceeding on June 2 1992. New England Power Company, 59 FERC ¶ 61,253 (1992) (June 2 Order). New England Power seeks rehearing of the Commisson's decision in the June 2 Order to accept four of six proposed service agreements filed by New England Power on the condition that the company revise the rates charged under the agreements and refund excess amounts to its customers.

As explaned below, we grant New England Power's request for rehearing and, accordingly, remove the refund obligation ordered in the June 2 Order. We take this opportunity to announce to the industry the adoption of an additional 30-day amnesty period in which to file service agreements governing jurisdictional service under tariffs of general applicability that have been approved or accepted under existing Commission regulations. We adopt this additional amnesty period in this limited context in an effort to clarify uncertainty created by the issuance and subsequent implementation of our policy concerning the timing of electric rate filings articulated in Central Maine Power Company [1] with respect to this limited category of rate filings.

Background

On January 27, 1992, as completed on April 3, 1992, New England Power filed with the Commission six service agreements under its short-term power sales tariff. That tariff, designated FERC Electric Tariff, Original Volume No. 5, was accepted for filing in 1988. By filing the service agreements, New England Power sought Commission authorization to serve new customers under the tariff.

New England Power requested waiver of the 60-day prior notice requirement, see 16 U.S.C. 824d(c) (1988); 18 CFR 35.3(a) (1992), for all six of the service agreements. The June 2 order noted that service under four of the filed agreements[2] was either on-going or had terminated at the time of New England Power's original filing. New England's request for rehearing concerns these four agreements.

In June 2 Order, the Commission accepted the rates in the four agreements for filing without suspension or hearing. However, the Commission found that with respect to the four agreements, New England Power had not demonstrated good cause for waiver of the prior notice requirement or for waiver of the Commission 's policy regarding late-filed agreements articulated in Central Maine.

In Central Maine, the Commission issued a policy statement governing its implementation of the 60-day prior notice requirement. The Commission stated that utilities providing jurisdictional service without agreements on file must submit rate for such pre-existing service within a certain period of time (amnesty window). The amnesty window ended

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[1] 56 FERC ¶ 61,200, *reh'g denied*, 57 FERC ¶ 61,083 (1991) (*Central Maine*).

[2] The agreements are with Niagara Mohawk Power Corporation, UNITIL Power Corporation, Hudson Light & Power Department (Hudson), and Long Island Lighting Company (LILCO).

on October 7, 1991, 60 days after publication of the Central Maine order in the **Federal Register**. The Commission stated that utilities filing rates outside of the amnesty window for pre-existing unauthorized service would be limited by the Commission to rates which would recover only contributions to such utilities' variable operation and maintenance (O&M) costs.[3]

Therefore, consistent with Central Maine, the Commission directed New England Power to revise its rates under the four late-filed service agreements for service provided prior to the date of issuance of the June 2 Order to a level reflecting New England Power's variable O&M costs. The Commission also directed New England Power to make refunds to reflect the revised rates.

On rehearing, New England Power argues that the Commission should open an additional amnesty window. New England Power argues that this additional amnesty window should be applciable to each of the four late-filed service agreements, *i.e.*, to filings of new service agreements under an existing tariff. In support, New England Power argues that, prior to clarification by the Commission, the Commission's policy was unclear as to whether the Central Maine policy applied to the filing of service agreements for new customers negotiated under the terms of an existing tariff. New England Power states that it reasonably interpreted the initial Central Maine order as not applying to service agreements for new customers negotiated pursuant to an existing tariff. New England Power argue (Request for Rehearing at 3) that the Commission's policy regarding the need to file such service agreements was not clarified until the Commission issued its decision in Mississippi Power Company, 58 FERC ¶ 61,286 (1992) (Mississippi Power). In this regard, New England Power argues that the Commission did not issue Mississippi Power until after service commenced under the four agreements, as well as after New England Power tendered its January 27, 1992 filing. Under these circumstances, New England Power argues that the Commission should create a brief amnesty period during which the Central Maine policy would not apply to utilities filing service agreements for new customers which are negotiated pursuant to an existing tariff.

In addition, New England Power argues that the Commission's actions in the June 2 Order were improper because the refunds ordered by the Commission constitute retroactive ratemaking and violate the file rate doctrine. New England Power also argues that the refunds ordered are unduly harsh and constitute an improper penalty outside the scope of the Commission's remedial authority under the Federal Power Act (FPA). Finally, New England Power argues that the Commission erred in calculating the length of the refund period and the amount of its refund obligation.

[3] See 56 FERC at 61,819.

Discussion

This is the fourth time since issuance of our Central Maine policy that we have addressed the filing of service agreements implementing jurisdictional service to particular customers under existing tariffs.[4] In our earlier rulings on this issue, we have explained that we consistently have required that utilities file service agreements for new customers which are negotiated pursuant to an existing tariff.[5] Our consistent policy for electric utilities has been that the filing of service agreements under previously-filed tariffs must be made in advance of the commencement of tariff service under the agreements.[6]

We further have explained in our earlier orders that the requirement of prior filing of service agreements is not a new requirement that originated at the time of issuance of our Central Maine policy. Nevertheless, we conclude from New England Power's filings and related filings that the Commission's initial order in Central Maine was not clear as to the applicability of the 60-day amnesty period announced in Central Maine (and which ended on October 7, 1991) to the filing of service agreements under general tariffs. According to New England Power, the Central Maine language that created the ambiguity is as follows:

> We are aware of the argument that, due to the need to respond quickly to market changes and opportunities for coordination, in some cases transactions must begin before the utility has a chance to file the rate reflecting the transaction with the Commission. While this argument has some merit, we note that many utilities have managed to avoid this problem by having tariffs on file that permit transactions to be negotiated subject to a cap of 100-percent contribution to fixed costs. * * * Such tariffs give the selling utility the flexibility to respond to market opportunities while satisfying its obligation to have its rates on file.[7]

Because the above language did not explicitly refer to service agreements and may have created uncertainty for the industry, we will accept New England Power's recommendation to offer public utilities one final chance in which to file for our consideration service agreements under general tariffs without risking Central Maine-type refunds for late filing.

Specifically, we will afford utilities 30 additional days, calculated from the date of publication of this order in the **Federal Register**, to file with the Commission any now-unfiled service agreements under which jurisdictional service already has commenced under generally-applicable tariffs. Utilities filing such service agreements after the close of this additional amnesty window will be limited by the Commission to rates which would recover (at most) only contributions to such utilities' variable operation and maintenance (O&M) costs.

Because New England Power already has filed service agreements governing service to Niagara Mohawk, UNITIL, Hudson, and LILCO under its short-term power sales tariff, and because the Commission has accepted those agreements for filing without suspension or hearing, there is no need to revise the rates for service provided under those four agreements. In other words, we no longer direct New England Power to revise its rates for service to the four wholesale customers prior to the date of issuance of the June 2 Order to a level reflecting its variable O&M costs. Accordingly, we no longer direct New England Power to refund (with interest) that portion of its rates that exceeds variable O&M costs incurred from the date of commencement of service under the four service agreements at issue until June 2, 1992.

In granting New England Power's request for rehearing, we wish to make clear that the 30-day extension of the Central Maine amnesty period announced herein applies only to the filing of service agreements pursuant to

[4] The first and second times we addressed this issue was in Mississippi Power and in the June 2 Order. The third time we addressed this issue was in our recent order in Central Power & Light Company, *et al.*, 60 FERC ¶_____ (Aug. 28, 1992). In a separate order issued today in Mississippi Power (Docket No. ER92-122-002), we grant rehearing for the same reasons we grant rehearing in the instant order. See 61 FERC ¶_____ (1992). We expect to issue a supplemental order in Central Power & Light in the near future that is consistent with this order.

[5] See Mississippi Power, 58 FERC at 61,897 (citing Boston Edison Company 25 FERC ¶ 61,157 (1983), *reh'g denied*, 26 FERC ¶ 61,124 (1984); Municipal Electric Utilities Association of Alabama v. FPC, 485 F.2d 987 (D.C. Cir. 1973)).

[6] See Central Hudson Gas & Electric Corp., *et al.*, 60 FERC ¶ 61,106 (1992) (articulating grounds for good cause waiver in the event of filing less than 60 days in advance of service), *reh'g pending*.

[7] 56 FERC at 61,818-19.

the tariffs of general applicability that have been approved or accepted under existing Commission regulations. As explained above, we base this decision on the ambiguous language in the initial Central Maine order concerning these types of tariffs.

Because we grant rehearing on the first of New England Power's arguments in favor of rehearing, we have no need to address any of its remaining arguments.

The Commission Orders:

(A) New England Power's request for rehearing is hereby granted.

(B) The Secretary shall promptly publish a copy of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24640 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. IN90-1-001, CP89-304-000, and CP89-305-000]

Northwest Pipeline Corp., et al.; Order Setting Matter for Expedited Hearing

Issued October 5, 1992.

I

On October 6, 1989, the Commission issued an "Order to Show Cause and Institution of Formal Investigation." [1] The order directed the Enforcement Section, Office of the General Counsel (Enforcement), to investigate certain activities of Northwest Pipeline Corporation (Northwest) in connection with its assignment of gas purchase contracts to its marketing affiliate, Williams Gas Supply Company (WGS). WGS subsequently sold gas produced under the assigned contracts to Williams Gas Marketing Company (WGM), another marketing affiliate of Northwest, for resale in the interstate market. The order also directed Northwest to show cause (1) why its activities had not violated the Natural Gas Act (NGA), 15 U.S.C. 717 et seq. (1988), the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 et seq. (1988), and the Commission's regulations thereunder, and (2) why the Commission should not impose appropriate remedies and assess a civil penalty. In addition, the order consolidated the investigative docket, IN90-1-000, with the proceedings in Docket Nos. CP89-304-000 and CP89-305-000. In these proceedings, Fina Oil and Chemical Company had protested Northwest's transportation under Northwest's open-access blanket certificate of some gas WGS purchased under the assigned contracts.[2]

Enforcement has completed its investigation under the Commission's Rules Relating to Investigations, 18 CFR part 1b (1992), and has reported to the Commission that Northwest, WGS and WGM may have engaged in and may be engaging in practices that violate the NGA, the NGPA, and the Commission's regulations thereunder. The facts alleged in Section II of this order describe the acts and practices that are the subject of this proceeding.

II

As a result of the investigation, the following information has been alleged to the Commission:

Corporate Affiliations

1. The Williams Companies, Inc. (Williams) is a parent company for corporations that engage in the marketing and transportation of natural gas.

2. Williams is the parent of and controls, among others, Williams Western Group (previously Northwest Energy Company, both hereinafter referred to as "WWG") and Williams Energy Company (previously Williams Gas Marketing Group, Inc. and Williams Gas Marketing Group, all of which are hereinafter referred to as "WGM Group").

3. WWG is the parent of and controls Northwest.

4. Since July 1, 1988, WGM Group has controlled several corporations engaging in the marketing (i.e., the purchase and sale) of natural gas, including WGM.

5. Prior to September 23, 1988, WWG was the parent of Northwest Marketing Company (Northwest Marketing), a marketing affiliate of Northwest.

6. On September 23, 1988, control of Northwest Marketing was transferred from WWG and WGM Group and Northwest Marketing was renamed Williams Gas Supply Company (WGS).

7. After that date, WGM Group controlled WGS and WGS engaged in the marketing (i.e., the purchase and sale) of gas.

Operations

8. Northwest operates a 7,000-mile gas gathering and interstate transmission facility that extends from the gas-producing areas of the San Juan Basin in northwestern New Mexico and southwestern Colorado through the states of Colorado, Utah, Wyoming, Idaho, Oregon and Washington, where Northwest interconnects with the facilities of Westcoast Energy, Inc., at the border of the United States and Canada. Effective July 1, 1991, Williams Field Services Company, an affiliate of Northwest, has operated Northwest's gathering and processing facilities for Northwest pursuant to an operating agreement.

9. Since September 30, 1987, WGS (or its predecessor-in-interest Northwest Marketing) and WGM have held blanket sales certificates issued by the Commission in Docket Nos. CI87-734 and CI87-738, respectively. These sales certificates allow WGS and WGM to sell gas (a) that is "committed or dedicated to interstate commerce," as defined in section 2(19) of the NGPA, 15 U.S.C. 3301(18) (1988), and therefore subject to the Commission's jurisdiction under the NGA, 15 U.S.C. 717f (1988) (such gas is referred to herein as "NGA gas"), and (b) that is not dedicated to any particular purchaser.

10. During May 1988, WGM and the WGM Group began marketing gas within the area served by Northwest's system.

11. Effective July 1, 1988, Northwest began providing "open-access" transportation under its blanket transportation certificate and part 284 of the Commission's regulations, 18 CFR part 284 (1992) (part 284 transportation).

12. As permitted by Northwest's blanket certificate, Northwest's sales customers converted approximately 62 percent and 78 percent of their firm sales entitlements to firm transportation entitlements as of July 1, 1988, and October 1, 1988, respectively.

Transfer of the Gas

13. As a result of the conversions described in ¶ 12 above, Northwest no longer needed all of its gas reserves for sale to its customers.

14. During a period including July 17, 1988, through September 30, 1988, representatives of Williams and Northwest discussed assigning Northwest's rights and obligations under some of Northwest's gas purchase contracts to a Northwest affiliate. Representatives of WGM Group and WGM participated in some of these discussions.

15. During a period including September 12, 1988 through November 8, 1988, representatives of Northwest, WGM Group and WGM discussed assigning many of Northwest's gas

[1] 49 FERC ¶ 61,023 (1989).

[2] On September 30, 1992, Fina filed a withdrawal of its protests in Docket Nos. CP89-304-000 and CP89-305-000. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure, 18 CFR 385.216(b) (1992), the Commission will allow the withdrawal of Fina's protests unless a motion in opposition to the withdrawal is filed by October 15, 1992.

purchase contracts to a company under the control of WGM Group and/or discussed administering those contracts.

16. During the discussions described in ¶¶ 14 and 15, Northwest provided Williams, WGM Group and/or WGM substantial information regarding the contracts being considered for assignment and the wells subject to those contracts.

17. During the discussions described in ¶¶ 14 and 15, Northwest's representatives discussed with representatives of WGM Group and/or WGM (a) the criteria for selecting the gas purchase contracts that would be assigned, (b) obligations under the contracts, and (c) the respective obligations, following the assignment, of WGM, Northwest, and the assignee.

18. During a period including July 17, 1988 through October 15, 1988, Northwest did not provide the information described in ¶¶ 14 and 17 to any other shipper or potential shipper on its system.

19. On September 30, 1988, Northwest and WGS executed an agreement purporting to assign from Northwest to WGS the gas purchase contracts to which ¶¶ 14–17 above refer.

20. On September 30, 1988, Northwest sent out two types of form letters to producers with which Northwest had gas purchase contracts. One form letter (Letter A) notified producers that Northwest had assigned its contracts with them to WGS. Letter A indicated that if the producer preferred to terminate the contract rather than to sell to WGS, the producer should notify Northwest by October 14, 1988. Northwest sent Letter A to approximately 200 producers that were parties to 564 gas purchase contracts (Letter A contracts).

21. Northwest sent another September 30, 1988 form letter (Letter B) to approximately 50 producers that were parties to 73 gas purchase contracts that Northwest had not assigned (Letter B contracts). Letter B stated that Northwest would terminate each such contract by November 1, 1988 unless the producer agreed to (a) modify the contract to provide that Northwest would be responsible for taking gas only on a "best efforts" basis, or (b) permit Northwest to assign the contract to WGS. Letter B stated that WGS would contact each producer within several days about Letter B contracts Northwest proposed to terminate.

22. On or about September 30, 1988, Northwest provided WGS copies of Letters A and B and a list of all Letter A and Letter B contracts. Northwest did not provide these documents to any other shipper or potential shipper on Northwest's system at the time it provided them to WGS.

23. In order to introduce the WGM Group, answer questions about how WGS would purchase the assigned gas, and persuade any undecided producers to agree to the assignment prior to the October 14, 1988 deadline described in ¶ 20, WGS and WGM corresponded and met during the first half of October 1988 with producers which had received Letter A. During this period, no other shipper or potential shipper on Northwest's system gained access to the list of assigned contracts or was present during meetings or communications among WGS, WGM and producers with respect to the assigned contracts.

24. During and after the communications described in ¶ 23, Northwest and certain producers agreed to terminate approximately 60 Letter A contracts.

25. Northwest did not enter into a termination agreement with respect to a Letter A contract unless the producer surrendered all contractual rights under the contract, including any claims under take-or-pay provisions of the contract.

26. Discussions between producer parties to Letter B contracts and Northwest led to the assignment, at the producers' request, of 13 Letter B contracts from Northwest to WGS.

Gathering and Transportation of the Assigned Gas

27. Until July 1, 1991, Northwest owned and operated a gathering system that connects the wells producing gas subject to the assigned contracts to Northwest's main transportation line or to the transportation lines of other interstate pipelines. Effective July 1, 1991, Williams Field Services Company has operated the gathering system as contract operator for Northwest.

28. Gas produced from the vast majority of wells subject to the assigned contracts cannot be transported to market on mainline facilities unless Northwest provides gathering from the wellhead to interconnections with main transportation pipelines.

29. On September 22, 1988, WGS sent Northwest a request for gathering service. Attached to the request was a computer printout that Northwest had provided WGM Group on or about September 15, 1988 and that listed proposed receipt points. This printout listed the wells subject to contracts that Northwest proposed to assign.

30. On or about October 27, 1988, Northwest and WGM executed four contracts, numbered J–35 through J–38, to provide gathering service on Northwest's gathering system from the wells subject to assigned contracts to interconnections on the mainlines of Northwest and other pipelines. Each contract had an effective date of September 26, 1988.

31. Northwest began gathering the assigned gas for WGM under the J–36, J–37 and J–38 contracts on the following dates, all in 1988:

J–36—October 1
J–37—October 1
J–38—October 14

32. Northwest began gathering the assigned gas for WGM under the J–35 contract on December 2, 1988.

33. On September 30, 1988, Northwest's agreements to provide gathering services to shippers other than WGM applied to only a few wells subject to the assigned contracts.

34. After September 30, 1988, it was Northwest's policy not to provide gathering service for gas produced by wells subject to an assigned contract for a shipper other than WGM unless: (a) The producer agreed to terminate the assigned contract by giving up all contractual rights, including rights under take-or-pay provisions; or (b) WGS unilaterally released gas produced under the assigned contract.

35. As a result of Northwest's implementation of its gathering service after September 30, 1988, prospective shippers of assigned gas could not obtain access to the mainline systems of Northwest or any other interstate pipeline unless: (a) WGM was the shipper of the gas under the J–35 through J–38 gathering contracts; (b) the producer agreed to terminate the assigned contract by giving up all contractual rights, including rights under take-or-pay provisions; or (c) WGS in its unilateral discretion released gas produced under the assigned contract.

Marketing the Assigned Gas

36. Effective October 1, 1988, WGS and WGM executed a contract under which WGM agreed to purchase from WGS gas subject to the assigned contracts.

37. On or about November 1, 1988, WGS and WGM executed a contract under which WGM became the exclusive agent for marketing the assigned gas.

38. Since October 1, 1988:

(a) WGS has purchased assigned gas, at prices determined by WGS, and resold the gas to WGM; and

(b) WGM has primarily sold the gas to marketers or to customers located on gas transmission systems of Northwest and of El Paso Natural Gas Company (El Paso), an interstate pipeline transporting and selling gas in the State of California.

39. During the period between October 1 and December 28, 1988, WGM and WGM Group contacted potential customers on Northwest's and El Paso's transmission systems to advise them of the advantages of purchasing the augmented gas supply made available to WGM as a result of the assignments.

Administration of the Assigned Contracts

40. From or before November 1, 1988, through or on about March 26, 1990, Northwest detailed up to 31 employees to WGS for the purpose of assisting WGS in administration of the assigned contracts.

III

The Commission neither makes findings of fact nor reaches conclusions of law with regard to Northwest's alleged acts and practices. However, the allegations set forth in Section II of this order, if true, indicate that Northwest, WGS, and WGM may have committed the following violations:

A. By taking actions that served to transfer the assigned gas from Northwest to WGS and WGM, as described in ¶¶ 14–23, 25–26, 29–31, 34–35 and 40, Northwest may have violated and/or may be violating:

1. Section 4(b) of the NGA, 15 U.S.C. 717c(b) (1988), in that Northwest may have provided and may be providing WGS and WGM undue preferences with respect to jurisdictional sales by WGS and WGM and jurisdictional transportation;

2. Section 5(b) of the NGA in that Northwest may have subjected and may be subjecting its jurisdictional sales customers to an undue prejudice or disadvantage by assigning the gas at issue to WGS rather than selling such gas to them;

3. Standard C of the Commission's Standards of Conduct, 18 CFR 161.3(c), in that Northwest may have provided and may be providing WGS and WGM undue preferences in and relating to transportation;

4. Standard F of the Standards of Conduct, 18 CFR 161.3(f), in that Northwest may have provided to its marketing affiliates information related to transportation of natural gas without contemporaneously providing that information to other potential shippers on Northwest's pipeline;[3]

5. Sections 284.8 and 284.9 of the Commission's regulations, 18 CFR 284.8 and 284.9 (1992), in that (a) Northwest's unduly discriminatory gathering of assigned gas for transportation on its mainline may have been and may be equivalent to failing to offer and provide part 284 transportation on that mainline without undue discrimination and (b) that Northwest's unduly discriminatory transfer of the assigned gas may have otherwise rendered Northwest's mainline transportation of that gas unduly discriminatory;

6. Section 7(c) of the NGA, 15 U.S.C. 717f(c) (1988), in that Northwest's violations of §§ 284.8 and 284.9 of the Commission's regulations may have violated and may be violating Northwest's blanket certificate;

7. Section 311(a)(1) and 504(a)(2) of the NGPA, 15 U.S.C. 3371(a)(1), 3414(a)(2) (1988), to the extent that Northwest violated §§ 284.8 or 284.9 as described in ¶ A.5 above with respect to transportation Northwest provided under purported authority of section 311(a)(1); and

8. Standard G of the Commission's Standards, 18 CFR 161.3(g), in that Northwest may have failed to separate its operating employees from those of its marketing affiliate, WGS, to the maximum extent practicable.

B. Northwest, WGS and WGM may be properly treated as a single entity with respect to WGS's and WGM's sales of the assigned gas. If they are so treated, the sales of the assigned gas by WGS and WGM may be properly imputed to Northwest and, therefore, may have violated and may be violating:

1. Section 4(d) of the NGA, 15 U.S.C. 717c(d) (1988), in that Northwest has sold and is selling the gas at rates below its filed rates; and

2. Section 7(c) of the NGA in that Northwest has sold and is selling the gas to customers other than those on the Northwest system without certificate authority.

The issues to be addressed in the hearing and briefs in this proceeding are whether Northwest, WGS and WGM violated and are violating the foregoing provisions, or any other laws and regulations under the Commission's jurisdiction, as a result of the acts and practices described in Section II of this order and if so, what remedies should be imposed.

The Commission Finds

Good cause exists for the Commission to determine whether Northwest, WGS, and WGM violated and are violating the foregoing provisions or any other laws or regulations that the Commission administers, as a result of the acts and practices which are described in this order. Good cause also exists for the Commission to determine whether appropriate remedies should be imposed for any violations that the Commission determines have occurred or are occurring.

The Commission Orders

(A) Pursuant to Rule 501 of the Commission's Rules of Practice and Procedure (Commission's Rules), 18 CFR 385.501 (1992), this matter is hereby set for hearing.

(B) Northwest, WGS, and WGM shall file answers to this order pursuant to Rule 213 of the Commission's Rules, 18 CFR 385.213 (1992), within 30 days from the date of this order. In their answers, the respondents shall admit or deny, specifically and in detail, each allegation set forth in Section II of this order, and shall set forth every defense relied on. If an allegation is only partially accurate, each respondent shall specify that part of the allegation it admits and that part of the allegation it denies.

(C) Pursuant to sections 14, 15 and 16 of the NGA, 15 U.S.C. 717m, 717n, 717o (1988), sections 501 and 502 of the NGPA, 15 U.S.C. 3411, 3412 (1988), and Rule 601 of the Commission's Rules, 18 CFR 385.601 (1992), a prehearing conference shall be convened in this proceeding in a hearing room of the Federal Energy Regulatory Commission, 810 First Street NW., Washington, DC 20426, within 15 days after the filing of the answers pursuant to paragraph (B) of this order. Participants shall be fully prepared, as set forth in Rule 601(b), to discuss any and all matters to be considered at the conference.

(D) A Presiding Administrative Law Judge (Presiding Judge), to be designated by the Chief Administrative Law Judge, shall preside at the prehearing conference in this proceeding, with authority to establish and change procedural dates and to rule on motions, all as provided for in the Commission's Rules, 18 CFR part 385 (1992).

(E) The Presiding Judge shall conduct all hearings, pursuant to subpart E of the Commission's Rules, 18 CFR 385.501–385.510 (1992), and shall have all authority delegated by Rule 504 of the

[3] In *Tenneco Gas* v. *FERC*, No. 89–1768 (July 21, 1992), the U.S. Court of Appeals for the District of Columbia Circuit upheld Standard F insofar as it requires contemporaneous disclosure of transportation information, but set aside the portion of the standard that requires contemporaneous disclosure of gas marketing and gas sales information. The court remanded this portion of the standard for further explanation on how the requirement for contemporaneous disclosure of marketing and gas sales and supplies information relates to the pipelines' market power over transportation. In Order No. 636–A, the Commission stated that it will consider the remand of the Tenneco Gas decision in the near future. We expect that to occur soon enough to allow the parties to consider the remand order at an early stage of this hearing.

Commission's Rules, 18 CFR 385.504 (1992).

(F) This proceeding shall be phased. In the first phase, the Presiding Judge shall determine, based on the evidence introduced into the record, whether respondents have violated the provisions cited in Section III, or any other laws or regulations that the Commission administers, as a result of the acts and practices alleged in Section II of this order or as a result of any other related acts or practices. The Presiding Judge shall issue an initial decision in the first phase, which shall be subject to review by the Commision pursuant to Rule 711. The Presiding Judge shall issue the initial decision within 180 days from the date of this order.

(G) If the Commission finds violations in the first phase, the Presiding Judge will conduct a second phase. In the second phase, the Presiding Judge shall determine whether the Commission should order any or all appropriate remedies, including, but not limited to: (1) An order that Northwest, WGS, and WGM cease and desist from all future violations; (2) disgorgement by Northwest of all revenues (minus appropriate costs) obtained from transporting the assigned gas; (3) disgorgement by WGS and WGM of all sales revenues (minus appropriate costs) that they obtained by selling the assigned gas; (4) a refund by Northwest of the difference between what it actually collected through its PGA rates and what it would have collected through those rates had it retained the gas that it assigned to WGS; (5) rescission by Northwest of the assignment of Letter A and Letter B contracts and/or WGS's reassigment of the contracts back to Northwest; and (6) any other retrospective or prospective remedies that the Presiding Judge deems appropriate.

(H) Petitions for intervention shall be filed no later than 7 days after the date of this order.

By the Commission. Commissioner Moler dissented in part with a separate statement attached. Commissioner Terzic dissented.

Lois D. Cahsell,

Secretary.

Moler, Commissioner, *dissenting in part:*

I support the Commission's order setting for hearing the issue of whether Northwest violated Standard G of the Commission's marketing affiliate rule § 161.3(g) of our regulations). I also support setting for hearing the issue of whether Northwest denied access to the interstate market in an unduly discriminatory manner. The factual issue to be addressed is whether Northwest denied access to those who refused to use the services of Williams Gas Supply or Williams Gas Marketing.

However, based on the present record, I do not believe there is a sufficient basis for taking further action against Northwest by setting the remaining issues for hearing. It is clear to me as a matter of law that the assignment of a gas sales contract is not a jurisdictional activity. The order does not allege that Northwest violated the abandonment provisions of section 7(b) of the NGA by the assignment of contracts to its affiliates. Thus, because our authority to deal with discriminatory practices is limited to jurisdictional acts,[1] I do not believe that assignment of those contracts is a violation under section 4 of the NGA, and therefore subject to the Commission's enforcement action. The hearing order fails to clearly specify what type of section 4 violations may have occurred. It combines the denial of access issue with the assignment of contract issue. I support pursuing the denial of access issue, but do not believe we should pursue the assignment of contract issue.

And, I am troubled by how the Commission may handle the question of lack of access to nonjurisdictional facilities. While the Commission may, arguably, have rate jurisdiction over gathering facilities,[2] I am uncertain as to whether we have the authority to order access to nonjurisdictional facilities, or what remedies could be imposed if we find that access has been stymied in the past. I do believe that access to interstate markets is a critical element of the Commission's commitment to a competitive natural gas market, which is one reason why I have dissented from recent decisions finding pipeline facilities to be nonjurisdictional.

For these reasons, I must dissent in part from the Commission's hearing order in this proceeding.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 92-24654 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-5-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

October 5, 1992.

Take notice that on October 1, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing changes to its FERC Gas Tariff to be effective November 1, 1992, consisting of the following tariff sheets:

Primary Tariff Sheets

Second Revised Volume No. 1:
- Twenty-First Revised Sheet No. 10
- Twentieth Revised Sheet No. 11
- Third Revised Sheet No. 12
- Fifteenth Revised Sheet No. 13
- Original Sheet No. 16
- Sheet Nos. 17 through 18
- First Revised Sheet No. 20
- First Revised Sheet No. 21
- First Revised Sheet No. 22
- Second Revised Sheet No. 25
- Third Revised Sheet No. 26
- First Revised Sheet No. 27
- Second Revised Sheet No. 31
- Second Revised Sheet No. 32
- Second Revised Sheet No. 34
- Second Revised Sheet No. 36
- Second Revised Sheet No. 37
- First Revised Sheet No. 38
- First Revised Sheet No. 45
- First Revised Sheet No. 62
- First Revised Sheet No. 63
- First Revised Sheet No. 64
- First Revised Sheet No. 65
- First Revised Sheet No. 66
- First Revised Sheet Nos. 67–72
- First Revised Sheet No. 81
- First Revised Sheet No. 85
- First Revised Sheet No. 92
- First Revised Sheet No. 95
- Second Revised Sheet No. 100
- First Revised Sheet No. 120
- First Revised Sheet No. 121
- First Revised Sheet No. 122
- First Revised Sheet No. 123
- First Revised Sheet No. 138
- Third Revised Sheet No. 146
- Original Sheet No. 153–A
- Original Sheet No. 153–B
- Fifth Revised Sheet No. 300
- Fourth Revised Sheet No. 301
- Fourth Revised Sheet No. 302
- Second Revised Sheet No. 303
- First Revised Sheet No. 304

First Revised Volume No. 1–A:
- First Revised Sheet No. 2
- Sixteenth Revised Sheet No. 201
- Fourth Revised Sheet No. 202
- First Revised Sheet No. 313
- Second Revised Sheet No. 314
- First Revised Sheet No. 318
- Second Revised Sheet No. 319
- Third Revised Sheet No. 320
- First Revised Sheet No. 400
- First Revised Sheet No. 406
- Second Revised Sheet No. 422
- First Revised Sheet No. 424
- Second Revised Sheet No. 437
- Original Sheet No. 439–A
- Original Sheet No. 439–B
- Original Sheet No. 439–C
- Fifth Revised Sheet No. 601
- Fifth Revised Sheet No. 602

Original Volume No. 2:
- Sixteenth Revised Sheet No. 2
- Eighth Revised Sheet No. 2.1
- Fourteenth Revised Sheet No. 2.2
- Thirtieth Revised Sheet No. 2.3
- Fourteenth Revised Sheet No. 2–A
- Eighth Revised Sheet No. 2–A.1
- Twenty-Sixth Revised Sheet No. 2–B
- Second Revised Sheet No. 2–C
- Second Revised Sheet No. 1557
- Second Revised Sheet No. 1558

[1] *APCA* v. *FERC*, 587 F.2d 1089, 1095–96 (D.C. Cir. 1978).

[2] See Northwest Pipeline Corp. 59 FERC ¶ 61,115 (1992). I dissented to this order.

First Revised Sheet No. 1559
First Revised Sheet No. 1560
First Revised Sheet No. 1561

Alternate Tariff Sheet

First Revised Volume No. 1–A:
Alternate Sixteenth Revised Sheet No. 201

Northwest states that the changes reflect an overall change in its jurisdictional rates for the twelve months ended June 30, 1992, adjusted for known and measurable changes through March 30, 1993, to provide additional revenues of $74,421,850. Northwest further states that the increase in jurisdictional rates reflected in its filing is necessary to permit Northwest the opportunity to recover its revenue requirements due to (1) construction of significant mainline expansion facilities, and (2) changes in cost allocation and rate design from its prior rate proceeding.

Northwest's filing includes various other changes to its rates, tariffs, and terms and conditions to (1) respond to rate design initiatives set forth by the Commission in Order Nos. 636 and 636–A, (2) remove gathering and processing costs and services from its FERC Tariff, (3) include its mainline expansion facilities authorized in Docket No. CP91–780, (4) provide for use of rolled-in rate treatment to recover the cost of the mainline expansion facilities, and (5) provide for the aggregation of costs associated with Rate Schedules T–1 and X–87.

Northwest states that this filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commissions Regulations.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1992.

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 Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24657 Filed 10–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–1–86–000]

Change in Sales Rates Pursuant to Purchased Gas Adjustment

October 5, 1992.

Take notice that on September 30, 1992, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) regulations a proposed change in rates applicable to service rendered under Rate Schedule PL–1, affected by and subject to Paragraph 21, "Purchased Gas Cost Adjustment" (PGA) of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such rates are proposed to become effective November 1, 1992.

PGT states that copies of the filing have been served upon all affected jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24658 Filed 10–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–6–000]

Paiute Pipeline Co.; Change in Rates

October 5, 1992.

Take notice that on October 1, 1992, Paiute Pipeline Company (Paiute), pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's regulations thereunder, submitted for filing a notice of change in rates for natural gas service rendered to jurisdictional customers served under all rate schedules contained in First Revised Volume No. 1–A of Paiute's FERC Gas Tariff. In order to implement the notice of change in rates, as well as certain other tariff changes, Paiute tendered for filing and acceptance the following tariff sheets to be a part of First Revised Volume No. 1–A:

Title Page
First Revised Sheet No. 2
Third Revised Sheet No. 10
First Revised Sheet Nos. 20–24
First Revised Sheet Nos. 27–28
First Revised Sheet No. 59
First Revised Sheet No. 65
First Revised Sheet Nos. 68–77
First Revised Sheet No. 110
Second Revised Sheet No. 130
Original Sheet No. 131

Paiute proposes to make the tendered tariff sheets and the change in rates effective on November 1, 1992.

Paiute states that based upon the test period cost of service and the projected throughput quantities employed in its filing, Paiute projects a deficiency of approximately $6,842,736 in annual revenues from jurisdictional transportation and storage services at current rates. Paiute is therefore proposing to increase rates for its jurisdictional transportation and storage services in an amount that is sufficient to eliminate the revenue deficiency and recover the full cost of service reflected in its filing.

Pauite states that its proposed tariff sheets are submitted to revise its Statement of Rates and other tariff sheets as necessary to reflect the proposed changes to rates, and to revise certain other tariff sheets to reflect new monthly billing determinants used for rate design and billing purposes, the elimination of annual entitlements and associated overrun penalty payments, and certain minor housekeeping changes.

Paiute indicates that its proposed rates reflect costs and anticipated revenues applicable to a system-wide capacity expansion construction project for which a certificate of public convenience and necessity was issued in Docket No. CP91–2322–000. Paiute also states that in designing its proposed transportation rates, it has utilized a straight fixed variable rate design methodology, using a one-part, seasonally adjusted demand charge, which Paiute states is consistent with the discussion in Order No. 636–A, issued on August 3, 1992.

Paiute states that it has served copies of its filing on all affected customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24653 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-1-000]

Southern Natural Gas Co.; Limited Section 4 Filing

October 5, 1992.

Take Notice that on October 1, 1992, Southern Natural Gas Company (Southern), filed in accordance with Commission's Order Nos. 636 and 636-A its limited filing under section 4 of the Natural Gas Act to recover $92.6 million annually in Gas Supply Realignment (GSR) costs in accordance with the mechanism set forth in Southern's compliance filing in docket No. RS92-10-000. Southern proposes to commence recovery of the GSR costs on April 1, 1993 contemporaneously with the proposed effective date of its compliance filing Docket Nos. RS92-10-000.

Southern states it is filing to recover GSR costs which will immediately result from Southern's implementation of Order Nos. 636 and 636-A commencing on April 1, 1993. Specifically, Southern is filing to recover those costs which directly result from the restructuring required by the Commission and which are known and measurable as a result of the restructuring. Southern also requests authority to direct bill, in accordance with Order Nos. 636 and 636-A, any unrecovered balances that may exist in PGA Account No. 191 as of the effective date of service restructuring under Southern's compliance filing in Docket No. RS92-10-000.

Southern states that copies of the filing were served upon Southern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24647 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-2-000]

Tennessee Gas Pipeline Co.; Filing

October 5, 1992.

Take notice on October 1, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Fourth Revised Volume No. 1 of its FERC Gas Tariff to be effective on November 1, 1992:

First Revised Sheet No. 179
First Revised Sheet No. 268
First Revised Sheet No. 269

Tennessee states that this filing is being made to provide Rate Schedule FT-B shippers additional flexibility in sourcing gas in the supply area in accordance with the terms of its Cosmic Settlement, Docket Nos. RP86-119 *et al.* Tennessee states that the filing will permit FT-B shippers to nominate gas from primary and secondary receipt points on any of Tennessee's supply legs in excess of the shippers' firm entitlements on those supply legs. In addition, Tennessee has requested continued authorization from the Commission to waive the minimum rate requirements of § 284.7(d)(5) of the Commission's regulations for any Rate Schedule IT arrangements that "feed" a Rate Schedule FT-B contract at the pooling points under Tennessee's tariff, to the extent the parties mutually agree to discount such rate below the minimum rate.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

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 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24650 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-17-000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 1, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on appendix A and appendix B to the filing.

The proposed effective date of these revised tariff sheets is November 1, 1992.

Texas Eastern states that these tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. Texas Eastern states that in compliance with §154.308 (b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542-PGA (Revised) and FERC's Notice of Criteria for Accepting Electronic PGA Filings dated April 12, 1991.

Texas Eastern states that the changes proposed in this PGA filing consist of Demand current adjustment of $0.024/dth and a Commodity current adjustment of $0.0515/dth based upon the change in Texas Eastern's projected cost of purchased gas from Texas Eastern's October 1, 1992 Out-of-cycle PGA in Docket No. TQ92-8-17 filed on September 30, 1992.

Texas Eastern states that on September 15, 1992 Texas Eastern filed substitute tariff sheets to be effective for the period beginning December 1, 1990 to-date reflecting the rates provided for in the Stipulation and Agreement in Docket No. RP88-67, *et al.* (Phase II/

PCBs) filed by Texas Eastern on December 17, 1991 (PCB Settlement). The substitute tariff sheets filed herewith listed on appendix B reflect Texas Eastern's PCB settlement rates adjusted for the PGA change proposed herein.

Texas Eastern respectfully requests the Commission to accept the tariff sheets on appendix A hereto to be effective for purposes of rendering billings beginning November 1, 1992 and accept the substitute tariff sheets on appendix B as a supplement to Texas Eastern's September 15, 1992 filing in Docket No. RP88-67 *et al.* (Phase II/PCBs) for the period beginning November 1, 1992.

Texas Eastern states that copies of its filing have been served on all authorized Purchasers of Natural Gas from Texas Eastern, applicable state regulatory agencies and all parties on the service list in Docket Nos. RP88-67, *et al.* (Phase II/PCBs).

Any person desiring to be heard or to protest said filing should filed a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. 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 the filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24644 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-284-000, ER92-284-001 and EL92-40-000]

Vermont Electric Power Co., Inc.; Initiation of Proceeding and Refund Effective Date

October 5, 1992.

Take notice that on September 25, 1992, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL92-40-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL92-40-000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 92-24615 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-52-000,001 TM93-1-52-000]

Western Gas Interstate Company; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that on October 1, 1992, Western Gas Interstate Company ("Western"), pursuant to section 4 of the Natural Gas Act, the Commission's regulations thereunder and Western's FERC Gas Tariff, tendered for filing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date for the tariff sheets are October 1, 1992 and November 1, 1992.

Western states that, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff.

Western states that the Tariff sheet proposed to become effective October 1, 1992 is to account for the decrease in Western's Annual Charge Adjustment (ACA). The adjustment of the ACA surcharge is determined each fiscal year, and reflects a decrease of $0.0001/Mcf from the currently effective ACA Surcharge.

Western further states that the Tariff sheet proposed to become effective November 1, 1992 is to provide for: (1) A increase in purchased gas cost under Western's Rate Schedule CD-N of $0.7572 per MMBTU; and (2) a increase in purchased gas cost under Western's Rate Schedule CD-S of $0.6735 per MMBTU.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24648 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that Williams Natural Gas Company (WNG) on September 30, 1992, tendered the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 1, 1992:

Thirteenth Revised Sheet No. 6,
Fourteenth Revised Sheet No. 6A,
Thirteenth Revised Sheet No. 9

WNG states that the tariff sheets are being filed in accordance with Article 18, Purchased Gas Adjustment of the General Terms and Conditions WNG's FERC Gas Tariff, First Revised Volume No. 1.

(1) A $0.1920 per Dth increase in Cumulative Adjustment due to an increase in WNG's projected gas purchase costs.

(2) A special Surcharge Adjustment of $0.0911 per Dth to amortize over the six-month period November 1992 through April 1993 $6.4 million which was the unrecovered Deferred Purchased Gas Cost Amortized Subaccount balance on April 30, 1992.

WNG states that copies of its filing were served on all jurisdictional 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24645 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4520-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Availability of Environmental Impact Statements Filed September 28, 1992 through October 2, 1992 pursuant to 40 CFR 1506.9.

EIS No. 920385, Draft EIS, FHW, ND, North Dakota 1806 Transportation Improvements, from the Heart River Bridge in Mandan to Fort Lincoln State Park, Funding and COE 404 Permit, Morton County, ND, Due: November 25, 1992, Contact: George A Jensen (701) 250-4204.

EIS No. 920386, Draft EIS, FHW, AK, Kenai River Bridge Crossing Project, Construction from Sterling Highway to Funny River Road, Funding, COE Section 10 and 404 Permits, US CGD Permit and EPA NPDES Permit, Kenai Peninsula, AK, Due: November 27, 1992, Contact: Steve Moreno (907) 586-7428.

EIS No. 920387, Draft EIS, FHW, MA, MA-146/Massachusetts Turnpike Interchange Project, Improvements from MA-146 between I-290 at Brosnihan Square in Worcester and MA-122A in Millbury, Funding, COE Section 404 Permit and EPA NPDES Permit, Cities of Worcester and Millbury, Worcester County, MA, Due: November 24, 1992, Contact: Arthur O'Connor (617) 494-2528.

EIS No. 920388, Draft EIS, AFS, MT, Beartooth Mountains Oil and Gas Leasing and Development, Approval Implementation, Custer National Forest, Land Management Plan, Beartooth Ranger District, Carbon, Park, Sweetgrass and Stillwater Counties, MT, Due: November 23, 1992, Contact: Carl Fager (406) 657-6361.

EIS No. 920389, Final EIS, SFW, IA, Brushy Creek State Recreation Area (BCSRA) Dam and Lake Project, Implementation, Funding, NPDES Permit and Section 404 Permit, Des Moines River, Webster County, IA, Due: November 9, 1992, Contact: David Pederson (612) 725-3596.

EIS No. 920390, Draft EIS, FHW, MO, Ozark Mountain Highroad Corridor Construction from existing US 65/MO-F north of Branson, then south across Lake Taneycomo to another intersection with US 65 south of Branson, Funding, COE Section 10 and 404 Permits and Coast Guard Bridge Permit, Taney and Stone Counties, MO, Due: November 23, 1992, Contact: Jim Mullen (314) 636-7104.

EIS No. 920391, Final EIS, UAF, MO, B-2 Advanced Technology Bomer, A/OA-10 Thunderbolt and T-38 Talon Jet Trainer Aircrafts Basing at Whiteman Airforce Base, Implementation, Johnson County, MO, Due: November 09, 1992, Contact: Capt. Douglas Hulings (804) 764-3056.

EIS No. 920392, Final EIS, FAA, MI, Detroit Metropolitan Wayne Airport, Air Traffic Control Noise Abatement Procedures, Implementation and Completion of the Master Plan Development, Wayne County, MI, Due: November 09, 1992, Contact: Douglas Powers (312) 694-7899.

EIS No. 920393, Draft EIS, AFS, OR, East End Salvage Timber Sales and Restoration Projects, Implementation, Umatilla National Forest, Heppner Ranger District, Grant and Morrow Counties, OR, Due: November 23, 1992, Contact: David Kendrick (503) 676-9187.

EIS No. 920394, Draft EIS, NPS, HI, Kaloko-Honokohau National Historical Park, Management and Development, General Management Plan, Implementation, Hawaii County, HI, Due: December 08, 1992, Contact: Gary Barbano (808) 541-2693.

EIS No. 920395, Final EIS, FHW, TX, TX-35/Alvin Freeway Construction, I-45/Gulf Freeway to Belfort, Houston, Harris County, TX, Due: November 09, 1992, Contact: John E. Inabinet (512) 482-5516.

Amended Notices

EIS No. 920251, Draft Supplement, BLM, MT, Flathead National Forest Land and Resource Management Plan Amendment 16, Old-Growth Management Indicator Species Continued Populations Plan, Implementation, Flathead, Lake, Lincoln, Missoula, Powell and Lewis and Clark Counties, MT, Due: October 15, 1992, Contact: Nancy Warren (406) 758-5325.

Published FR 07-02-92—Review period extended.

EIS No. 920344, Draft EIS, FAA, CA, Lindbergh Field Facilities Improvements, San Diego International Airport, Plan Approval, San Diego County, CA, Due: October 27, 1992, Contact: Bill Johnstone (310) 297-1621.

Published FR 08-28-92—Review period extended.

EIS No. 920379, Legislative Draft E, AFS, OR, Steamboat Creek Wild and Scenic Suitability Study, Designation, North Umpqua River, Umpqua National Forest, Douglas and Lane Counties, OR, Due: January 15, 1993, Contract: Nancy L. Peckman (503) 496-3532.

Published FR 10-02-92—Due date correction.

Dated: October 5, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-24673 Filed 10-8-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4520-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 21, 1992 through September 25, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

DRAFT EISs

ERP No. D-FHW-E40744-NC Rating EC2, US 421 Highway Improvements, East of Secondary Road 2433 to West of I-77, Funding and Possible COE 404 Permit, Wilkes and Yadkin Counties, NC.

Summary: EPA had concerns over wetland losses and habitat fragmentation and therefore recommends using an alternative that uses the existing highway corridor.

ERP No. D-FHW-E40746-NC Rating EC2, US 421 Transportation Improvement just west of the South Fork New River to NC-1361 east of the Town of Deep Gap, Funding, Land Transfer and COE Section 404 Permit(s), Watauga County, NC.

Summary: EPA expressed concern for the potential for adverse water quality impacts related to construction activities in the mountainous region. Non-point source contributions and loss of upland habitat was also a concern.

ERP No. D-FHW-G40133-OK Rating LO, OK-99/OK-3E/US 377 North of Ada Transportation Corridor Reconstruction, Funding, Section 404 and NPDES Permits, Pontotoc and Seminole Counties, OK.

Summary: EPA had no objections to selection of the New Alignment

Alternative with New Alignment in the Byng Area as the proposed alternative.

ERP No. D–FHW–G40134–OK Rating LO, OK–82 Highway Construction, Red Oka to Lequire, Funding and Possible National Pollutant Discharge Elimination System Permit, Latimore and Haskell Counties, OK.

Summary: EPA had no objections to the selection of the West Alignment as the preferred alternative. The EIS was closely coordinated with other agencies to lessen the adverse impacts, for a project that will have a positive effect on the area.

ERP No. D–FHW–J40126–MT Rating E02, US 2 Reconstruction, Columbia Heights to Hungry Horse, Funding, Land Transfer and COE Section 404 Permit, Flathead County, MT.

Summary: EPA expressed objections to the placement of large amounts of fill material in the South Fork of the Flathead River ad the destruction of valuable wetlands and riparian areas. Water quality data and analysis were completely lacking

ERP No. D–ICC–J53004–MT Rating LO, Tongue River Railroad Additional Rail Line Construction and Operation, Ashland to Decker, Approval, Rosebud and Big Horn Counties, MT.

Summary: EPA had no objections to the ICC's Four Mile Creek Alternative. EPA did provide comments on cultural statements concerning Native American issues.

FINAL EISs

ERP No. F–AFS–J65184–UT, Uinta National Forest Plan Amendment, Rangeland Ecosystem Management Plan, Implementation, Sanpete, Wasatch, Utah, Toole and Juab Counties, UT.

Summary: EPA continued to find no significant concerns with the proposed action. EPA can support the Agency preferred alternative, Alternative B, with caveats raised in preceding paragraphs.

ERP No. F–AFS–K65134–CA, South Fork of the Trinity Wild and Scenic River Management Plan, National Wild and Scenic Rivers, Implementation, Trinity River, Six Rivers and Shasta-Trinity National Forests, Trinity and Humboldt Counties, CA.

Summary: EPA continued to express concerns with the extent of the Forest Service's proposed corridor of protection. EPA requested that the Record of Decision contain additional clarifying language.

ERP No. F–AFS–L65161–WA, Withrow Timber Sale, Implementation, Wenatchee National Forest, Naches Ranger District, Yakima County, WA.

Summary: EPA expressed environmental objections with the preferred alternative. EPA environmental objections are based on: potential violations of State water quality standards and exceeding the Forest Plan standard for stream temperature, decreased visibility and degradation of air quality in the Class I airsheds adjacent to the planning area, potential impacts to threatened species, the need for complete monitoring and mitigation discussions and the need for a broader cumulative effects analysis.

ERP No. FA–NOA–K90007–00, Pacific Coast Groundfish Fishery Management Plan (FMP), Updated Information to the License Limitation Program, Approval and Implementation of Amendment No. 6., OR, WA and CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Regulations

ERP No. R–NSF–A22124–00, 45 CFR parts 670, 671, & 672; Conservation of Antarctic Animals and Plants; Waste Regulation; Enforcement & Hearing Procedures; (57 FR 33918).

Summary: EPA expressed concerns regarding the vagueness of the proposed permit issuance criteria, and the permit application and review process. EPA also, recommended that NSF revise the proposed definitions to reflect consistency with Annex III to the Protocol, and that the regulations accurately reflect the provisions of Annex III regarding disposal of sewage and domestic liquid wastes.

Dated: October 5, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–24674 Filed 10–8–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Crowley American Transport, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011063–012.

Title: United States/Jamaica Discussion Agreement.

Parties:

Crowley American Transport, Inc.
Kirk Lines Ltd.
Sea-Land Service, Inc.
Blue Caribe Line

Synopsis: The proposed amendment modifies the Agreement Authority to provide for space chartering and rationalization of service. The parties have requested a shortened review period.

Dated: October 5, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–24607 Filed 10–8–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Holland America Line—Westours Inc., (d/b/a Holland America Line), Wind Surf Limited and HAL Antillen N.V., 300 Elliott Ave. West, Seattle, Washington 98119.

Vessels: MAASDAM and RYNDAM

Dated: October 5, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–24608 Filed 10–8–92; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 92-49]

Blue Star Line, Ltd., and Hamburg-Seudamerikansche Dampfschiffahrts-Gesellschaft Eggert & Amsinck DBA Columbus Line v. Lauritzen Reefers, A/S and J. Lauritzen (U.S.A.), Inc. Filing of Complaint and Assignment

October 5, 1992.

Notice is given that a complaint filed by Blue Star Lines, Ltd. and Hamburg-Seudamerikansche Dampfschiffahrts-Gesellschaft Eggert & Amsinck dba Columbus Line ("Complainant") against Lauritzen Reefers, A/S and J. Lauritzen (U.S.A.), Inc. ("Respondent") was served October 5, 1992. Complainants allege that Respondents engaged in violations of sections 10(a)(1) and (b)(1)–(4), (6), and (9)–(12) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1) and (b)(1)–(4), (6), and (9)–(12), by operating an ocean common carrier service in the California/New Zealand trade without filing a tariff while offering secret rates and commercial terms which vary at will.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 5, 1993, and the final decision of the Commission shall be issued by February 2, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24609 Filed 10-8-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-48]

Imperial Chemical Industries, PLC v. Empresa Naviera Santa S.A. Filing of Complaint and Assignment

Served October 5, 1992.

Notice is given that a complaint filed by Imperial Chemical Industries, PLC ("Complainant") against Empresa Naviera Santa S.A. ("Respondent") was served October 5, 1992. Complainant alleges that Respondent engaged in violations of section 10(b)(10) of the Shipping Act of 1984, 46 U.S.C. 1709(b)(10), by misrating two shipments from New York to Chile and declining to honor Complainant's overcharge claim.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 5, 1993, and the final decision of the Commission shall be issued by February 2, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24610 Filed 10-8-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. State Medicaid Fraud Control Units–42 CFR part 1002, subpart C 0990–0162—Extension—The regulation establishes application and annual reporting requirements to enable State governments to receive Federal funding for the operation of certified Medicaid Fraud Control Units. The information collected is necessary to monitor and ensure that costs are allowable and pertain to fraud against the Medicaid program. *Respondents:* State governments; Burden Information for Application—*Annual Number of Respondents:* 2; *Frequency of Response:* Once; *Average Burden per Response:* 112 hours; *Estimated Annual Burden:* 224 hours—Burden Information for Annual Recertification Report—*Annual Number of Respondents:* 41; *Frequency of Response:* Once; *Average Burden per Response:* 56 hours; *Estimated Annual Burden:* 2296 hours—*Total Burden:* 2520 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 25, 1992.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 92-24115 Filed 10-8-92; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 92D-0296]

Draft Guidance Manual for Submitting Computer-Assisted New Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance manual for submitting computer-assisted new drug applications (CANDA's). The draft guidance manual, entitled "CANDA Guidance Manual," is intended to facilitate the use of computers in the drug approval process by giving applicants and other interested parties guidance on the factors FDA considers in accepting CANDA's. Computerized submissions will enable FDA to expedite its new drug approval process.

DATES: Written comments by January 7, 1993.

ADDRESSES: Submit written requests for single copies of the draft guidance manual to the CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that

office in processing your requests. Submit written comments on the draft guidance manual to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance manual and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The draft guidance manual is available via Internet and Bitnet by sending an electronic mail message to DOC00003@FDACD.BITNET. The sole purpose of this address is to automatically distribute the notice and report by return electronic mail. Therefore, no other correspondence should be sent to this address, and there is no need to include text in the body or subject of the request message.

FOR FURTHER INFORMATION CONTACT: Robert A. Bell, Center for Drug Evaluation and Research (HFD–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0845.

SUPPLEMENTARY INFORMATION: One of FDA's continuing objectives is to improve the speed and quality of its drug review and approval program. The Federal Food, Drug, and Cosmetic Act requires persons who wish to market new drug products to demonstrate that those drug products are both safe and effective before introducing them into interstate commerce. This is achieved through the submission of a new drug application to FDA. These applications ordinarily contain thousands of pages of reports, analyses, tabulations, and case reports, which must be reviewed by agency officials. FDA believes the increased use of CANDA's and computers will enhance the timeliness, effectiveness, and efficiency of the drug review process and reduce burdensome, nonessential, hard-copy handling and storage. For example, data from case report forms and tabular listings can be more effectively retrieved and reviewed using computer technology, and several reviewers can simultaneously review an application and search or analyze selected sections.

FDA has been accepting CANDA's for the past 6 years. During that time, the agency has issued computer-related guidances and information that have addressed the needs of several FDA review disciplines. The most comprehensive guidance was a notice published in the **Federal Register** of September 15, 1988 (53 FR 35912).

In an attempt to consolidate these guidances, FDA, the Pharmaceutical Manufacturers Association, and the Health Protection Branch of the Canadian Department of National Health and Welfare have worked over the past few years to develop the draft guidance manual.

The draft guidance manual includes the following information.

1. Policies and procedures for CANDA submissions to indicate:

(a) How, where, and when to submit a CANDA;

(b) Applicant and FDA interaction, agency contacts and appropriate offices, agency and division hardware and software; and

(c) Potential problem areas and their resolution.

2. CANDA definitions and terminology.

3. Guidelines for CANDA system security and integrity.

4. CANDA guidelines specific to the following FDA reviewing divisions and application sections: Biopharmaceutics; pharmacology and toxicology; chemistry, manufacturing, and controls; and statistics.

5. Survey results on CANDA's submitted from 1985 through 1988.

6. Administrative and technical requirements of the Canadian Drugs Directorate's Computer-Assisted New Drug Submissions.

CANDA's may be transmitted in several ways: (1) Direct access by agency reviewers to the applicant's mainframe; (2) direct access to a third party mainframe; (3) review of the application on a microcomputer in the reviewer's office; (4) review of the application on an agency mainframe; or (5) review of the application from an optical disk. CANDA's may also include the use of an electronic mail component to speed the transmission.

FDA is making this draft guidance manual available for public comment before issuing a final guidance. If, following the receipt of comments, the agency concludes that the draft guidance manual reflects acceptable criteria for use in submitting CANDA's, FDA will prepare a final guidance manual and announce its availability in the **Federal Register**.

This guidance may be useful to applicants in submitting CANDA's. Applicants may follow the guidance or may choose to use alternate procedures even though they are not provided for in the guidance. If an applicant chooses to use alternate procedures, the applicant may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This guidance does not bind the agency and does not create or confer any rights, privileges, or benefits for or on any person.

Interested persons may, on or before January 7, 1993, submit written comments on the draft guidance manual to the Dockets Management Branch (address above). FDA is requesting comments pertaining to the development of an overall CANDA policy, rather than comments that propose adoption of specific equipment, systems, computer programs, and services. FDA will consider these comments in determining whether further amendments to, or revisions of, the draft guidance manual are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy.

Dated: September 17, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–24628 Filed 10–8–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92M–0241]

Les Laboratories Blanchard; Premarket Approval of Blanchard™ Soft (Polymacon) Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Les Laboratories Blanchard, Sherbrooke, Quebec Canada, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the BLANCHARD™ Soft (polymacon) Contact Lens. The device is to be manufactured under an agreement with Allergan Optical, Irvine, CA, which has authorized Les Laboratories Blanchard to incorporate information contained it its approved premarket approval application (PMA) and related supplements for the Hydron® (polymacon) Hydrophilic Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 22, 1992, of the approval of the application.

DATES: Petitions for administrative review by November 9, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23,

12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On June 4, 1991, Les Laboratories Blanchard, Sherbrooke, Quebec Canada, submitted to CDRH an application for premarket approval of the BLANCHARD™ Soft (polymacon) Contact Lens. The BLANCHARD™ Soft (polymacon) Contact Lens is indicated for daily wear for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. In addition, the lens is to be disinfected using either a heat or chemical lens care system. The application includes authorization from Allergan Optical, Irvine, CA 92713-9534, to incorporate information contained in its approved PMA and related supplements for Hydron® (polymacon) Hydrophilic Contact Lens.

In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On May 22, 1992, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 9, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 25, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92-24568 Filed 10-8-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of November 1992.

Name: Predoctoral Training Review Committee.

Date and Time: November 12-13, 1992, 8:30 a.m.

Place: Ramada Inn Rockville, Georgetown & Montrose Rooms, 1775 Rockville Pike, Rockville, Maryland 20852.

Open on November 12, 8:30 a.m.-9:30 a.m.—Closed for Remainder of Meeting.

Purpose: The Predoctoral Training Review Committee shall review applications that either assist in meeting the cost of planning, developing, and operating; or participating in approved predoctoral training programs in the field of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on November 12, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Predoctoral Training Review Committee, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Name: Faculty Development Review Committee.

Date and Time: November 17-20, 1992, 8:30 a.m.

Place: Conference Rooms I and J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on November 17, 8:30 a.m.-10:30 a.m.—Closed for Remainder of Meeting.

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and (2) plan, develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on November 17, at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Faculty Development Review Committee, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Agenda Items are subject to change as priorities dictate.

Dated: October 5, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92-24587 Filed 10-8-92; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-92-1007; FR-3272-D-01]

Delegation of Authority or the HOPE for Homeownership of Single Family Homes Program (HOPE 3)

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Grant Programs the Secretary's power and authority with respect to the HOPE for Homeownership of Single Family Homes Program (HOPE 3), subject to certain specified exceptions.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0324, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice delegates all power and authority of the Secretary of Housing and Urban Development concurrently to the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Grant Programs for the HOPE for Homeownership of Single Family Homes Programs (HOPE 3), except for the power to sue and be sued. The Secretary also does not delegate to the Deputy Assistant Secretary for Grant Programs the authority to issue or waive rules and regulations. The authority delegated to the Assistant Secretary only may be redelegated to employees of the Department, except for the authority to issue or waive rules and regulations.

The HOPE 3 Program is a new program authorized by title IV, subtitle C, of the National Affordable Housing Act ("NAHA") (Pub. L. 101–625, 104 Stat. 4079, 4172–4180 (November 28, 1990), codified at 42 U.S.C. 12891–12898). HOPE is an acronym which stands for Homeownership and Opportunity for People Everywhere. Among the HOPE grant programs, HOPE 3 provides homeownership opportunities for eligible, low-income families and individuals to purchase certain Federal, State and local government-owned single family properties, and units in scattered site, single family public and Indian housing developments. In general, under the HOPE 3 Program HUD awards grants on a competitive basis to eligible applicants (public bodies, Indian tribes, private nonprofit organizations, and cooperative associations) for the planning or implementation of eligible HOPE 3 homeownership programs.

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development and to the Assistant Secretary for Grant Programs all power and authority of the Secretary with respect to the HOPE for Homeownership of Single Family Homes Program (HOPE 3) authorized by title IV, subtitle C of the National Affordable Housing Act ("NAHA") (42 U.S.C. 21891–12898).

Section B. Authority Excepted

The authority delegated to the Assistant Secretary for Community Planning and Development does not include the power and authority to sue and be sued. The authority delegated to the Deputy Assistant Secretary for Grant Programs does not include the power to sue and be sued or the power to issue or waive rules and regulations.

Section C. Authority to Redelegate

The Assistant Secretary for Community Planning and Development may redelegate to employees of the Department any of the power and authority delegated under this delegation, except the authority to issue or waive rules and regulations. The Deputy Assistant Secretary for Grant Programs is not authorized to redelegate the power and authority delegated under this delegation.

Authority: Title IV, subtitle C, of the National Affordable Housing Act (42 U.S.C. 12891–12898); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 1992.

Jack Kemp,

Secretary of Housing and Urban Development.

[FR Doc. 92-24637 Filed 10-8-92; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-92-3038; FR-2736-N-08]

Regulatory Waiver Requests Granted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waiver requests: June 1, 1992 through August 31, 1992.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This Notice is the sixth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Grady J. Norris, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. (Telephone 202–708–3055. TDD: (202) 708–3259. These are not toll-free numbers.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the Federal Register. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional informations about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the sixth Notice of its kind to be published under section 106. The first Notice, published on August 26, 1991, updated waiver-grant activity by the Department from the period immediately following passage of the Reform Act through the end of May 1991. Thereafter, notices updating waiver-grant activity for the ensuring three-month periods were published on October 28, 1991, January 13, 1992, April 8, 1992, and July 20, 1992.

Today's document updates HUD's waiver-grant activity through the end of August, 1992. In approximately three months, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from September 1, 1992 through November, 1992.

Today's document also includes a large number of waiver-grant summaries representing activity associated with bond financing transactions under 24 CFR part 811 between July 1991 and the end of June 1992. Through error, these waiver-grant actions were not reported in earlier quarterly summaries.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in part 24) would come early in the sequence, while waivers in the section 8 and section 202 programs (24 CFR chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between September and November 1992.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the appendix that follows this Notice.

Dated: September 30, 1992.

Jack Kemp,

Secretary.

Appendix— Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development June 1, 1991 through August 31, 1992 [and Listing of Pre-June 1, 1991 Regulatory Waivers Not Previously Reported]

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 1 through 4 in this listing is:

Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 Seventh Street, SW., room 7270, Washington, DC 20410–7000. Phone: (202) 708–2565. TDD: (202) 708–2565.

1. *Regulation:* 24 CFR 91.40(b).

Project/Activity: Norwalk, CA; Middletown, CT; Port St. Lucie, FL; Muskegon, MI; Roseville, MI; Newburgh, NY; and Parma, OH. Waiver of the 60-day comment period for the Comprehensive Housing Affordability Strategy (CHAS).

Nature of Requirement: 24 CFR 91.40(b) requires that a jurisdiction make its proposed comprehensive housing affordability strategy (CHAS) available to the public for a reasonable length of time (at least sixty days) for an examination and comment period.

Granted By: Jack Kemp, Secretary.

Date Granted: June 17, 1992 (Norwalk CA); June 30, 1992 (Middletown CT); August 4, 1992 (Port St. Lucie FL); August 6, 1992 (Muskegon, MI, Roseville MI, Newburgh NY, Parma OH).

Reasons Waived: 24 CFR 570.302(b), in implementing statute, requires that a grantee in the Community Development Block Grant (CDBG) program submit a final statement of community development objectives and projected use of funds to HUD no later than the first working day in September. Section 104(c) of the Housing and Community Development Act of 1974, as amended, (24 U.S.C. 5304(c)) requires that before HUD makes a grant under the CDBG program to a metropolitan city or an urban county, the unit of general local government must certify that it is following a current CHAS approved by HUD. Because the above jurisdictions could not meet these requirements, they requested that the requirement at 24 CFR 91.40(b) be waived and the required length of time for comments be shortened to thirty days, thus allowing time for a CHAS to be submitted to HUD and approved and a final statement to be submitted before the deadline. Because of the potential detrimental impact to each of the jurisdiction's low-income population, the Secretary determine that good cause existed for which to waive 24 CFR 91.40(b).

2. *Regulation:* 24 CFR 92.101(a).

Project/Activity: City of Tucson/Pima County, AZ. Waiver of the March 31, 1992 submission deadline regarding HOME consortia to August 14, 1992.

Nature of Requirement: 24 CFR 92.101(a), in part, requires a consortium of geographically contiguous units of general local government, for purposes of carrying out the HOME Investment program, to notify HUD, submit written certifications, and have executed a legally binding cooperation agreement by March 31 prior to the beginning of the fiscal year the consortium will be effective.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: August 11, 1992.

Reasons Waived: The consortium agreement document was delayed in receiving approval from both the Mayor and Council of the City of Tucson and the Board of Supervisors of Pima County. Failure to grant this waiver in the first year of the HOME program would prevent the City of Tucson/Pima County from receiving its FY 1993 HOME allocation which would be detrimental to the consortium's low-income population.

3. *Regulation:* 24 CFR 92.150(a).

Project/Activity: Stamford, CT and Lynwood, CA. Waiver of HOME Investment Partnerships program description submission requirements.

Nature of Requirement: 24 CFR 92.150(a) requires that a jurisdiction that has not yet been designated a participating jurisdiction for the HOME program must submit a program description within 45 days of designation as a participating jurisdiction under 24 CFR 92.105.

Granted By: Randall H. Erben Acting Assistant Secretary for Community Planning and Development.

Date Granted: July 27, 1992 and August 18, 1992.

Reasons Waived: Waivers of 24 CFR 92.150(a) were granted to the above

participating jurisdictions for good cause. In going through the HOME application process for the first time, in this new program, Stamford encountered difficulties in synchronizing local legislative hearing and meeting requirements with the 45-day deadline. Lynwood experienced delays due to the death of its CD Director/HOME Coordinator and the resignation of its City Manager.

4. *Regulation:* 24 CFR 92.250.

Project/Activity: Los Angeles, CA. Waiver of the HOME Investment Program maximum per-unit subsidy amount to 100 percent of the section 221(d)(3) limits.

Nature of Requirement: 24 CFR 92.250 limits the amount of HOME funds that may be invested on a per-unit basis in affordable housing to 67 percent of the per-unit dollar limits established by HUD for elevator-type projects, involving nonprofit mortgagors, insured under section 221(d)(3) of the National Housing Act, as amended.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 19, 1992.

Reasons Waived: To permit the City of Los Angeles to more quickly rebuild in areas affected by the recent civil unrest, the waiver was granted, raising the subsidy limits from 67 percent to 100 percent for a period of twelve months ending July 1, 1993.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 5 through 16 in this listing is:

Morris E. Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708-2700. TDD: (202) 708-4594.

5. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Independence One Mortgage Corporation and Adjustable Rate Mortgages.

Nature Of Requirement: The regulations, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 27, 1992.

Reasons Waived: Independence One Mortgage Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

6. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Statewide Funding Corporation and Adjustable Rate Mortgages.

Nature Of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 4, 1992.

Reasons Waived: Statewide Funding Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

7. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Independence One Mortgage Corporation and Adjustable Rate Mortgages.

Nature Of Requirement: The regulations, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 5, 1992.

Reasons Waived: Independence One Mortgage Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

8. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Source One Mortgage Service Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 5, 1992.

Reason Waived: Source One Mortgage Service Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

9. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Liberty Mortgage Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 20, 1992.

Reason Waived: Liberty Mortgage Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee

obtaining written consent from the mortgagors to the modification of the initial adjustment date.

10. *Regulation:* 24 CFR 203.50(g).

Project/Activity: Hilltop area, Tacoma, WA, 203(k) Rehabilitation Loans.

Nature of Requirement: The regulation allows for the utilization of higher market values for properties where the unit of local government demonstrates that the properties are located in an area of concentrated redevelopment or revitalization and the prescribed loan limitation prevents utilization of the program to accomplish rehabilitation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 1992.

Reason Waived: If the appraised value of the existing properties in this area were based on the value of other properties in the same area, rehabilitation under the 203(k) program could not take place because the maximum loan to value ratios would be exceeded. Since the city of Tacoma is involved in redeveloping and revitalizing this area of their city and they will help low and moderate income families by offering affordable housing opportunities, a waiver of the market values in equivalent neighborhoods in other parts of the community that had already been rehabilitated. This waiver will help the city of Tacoma expand affordable housing opportunities in the Hilltop area.

11. *Regulation:* 24 CFR 280.305.

Project/Activity: Dudley Street Neighborhood Initiative, Roxbury, MA, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 25, 1992.

Reason Waived: The grantee requested approval to establish phases for the project. The waiver was granted in order to permit the grantee to pre-sell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to pre-sell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

12. *Regulation:* 24 CFR 280.305.

Project/Activity: Horace-Mann—Ambridge Neighborhood Improvement Organization, Inc., Gary, IN, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 25, 1992.

Reason Waived: The grantee requested approval to establish phases for the project. The waiver was granted in order to permit the grantee to pre-sell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to pre-sell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities of low- and moderate income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

13. *Regulation:* 24 CFR 280.305.

Project/Activity: Woonsocket Housing Development Corporation, Woonsocket, RI, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 17, 1992.

Reason Waived: The grantee requested approval to establish three phases for the project. The waiver was granted in order to permit the grantee to presell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to presell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

14. *Regulation:* 24 CFR 280.305.

Project/Activity: Wilson Community Improvement Association, Inc., Wilson, NC, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 27, 1992.

Reason Waived: The grantee requested approval to establish phases for the project. The waiver was granted in order to permit the grantee to presell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to presell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

15. *Regulation:* 24 CFR 234.1(k).

Project/Activity: Tony Cruz Condominium, Colorado Springs, CO.

Nature of Requirement: The regulation requires that a condominium project must consist of four or more units to be eligible for FHA-insured financing.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 27, 1992.

Reason Waived: This duplex was originally built to be sold conventionally as a duplex. When the market did not respond, the builder, based upon advice from his counsel, decided to form a condominium project. Recognizing that this is an unusual situation that has occurred due to lack of familiarity with HUD's program requirements and that all HUD requirements, except the four-unit requirement, have been met; HUD determined that the units should not present a marketing problem should we acquire them in a claim. Without the waiver, the condominium would not be able to offer expanded affordable

housing opportunities for moderate income, first-time homebuyers.

16. *Regulation:* 24 CFR 234.26(e)(3).

Project/Activity: Colchester Town Condominium, Fairfax County, VA.

Nature of Requirement: The regulation requires that in order for a condominium project to be eligible for FHA-insured financing, at least 51 percent of the units must be occupied by owners of the units.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 28, 1992.

Reason Waived: Colchester Town Condominium is somewhat unique in that a governmental entity, the Fairfax County Redevelopment and Housing Authority (FCRHA) owns 32 of the 200 units in this project as part of the county's affordable rental program. Combined with a number of other investor-owned units, the ratio is currently 47 percent owner-occupied. Without the waiver, the condominium would not be able to offer expanded affordable housing opportunities for moderate income, first-time homebuyers as well as encouraging Fairfax County's initiative in providing affordable rental units.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 17 through 19 in this listing is:

Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Washington, DC 20410–7000. Phone: (202) 708–2565. TDD: (202) 708–2565.

17. *Regulation:* 24 CFR 570.200(a)(5) and 24 CFR 570.200(h).

Project/Activity: Petersburg, VA—rehabilitation program operations; Macomb County, MI—construction of a senior center; Jacksonville, NC—construction of sewer collector lines; Arlington, TX—Phase III-Arlington Human Services Center, a new gymnasium and renovation of a smaller existing gymnasium, and a senior recreation/nutrition center. Waiver of reimbursement of pre-agreement costs under the community Development Block Grant program.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreements. 24 CFR 570.200(a)(5) limits pre-agreement costs to those described in subparagraph 570.200(h).

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 16, 1992 (Petersburg, VA); June 26, 1992 (Macomb, MI); July 9, 1992 (Jacksonville, MI); July 14, 1992 (Arlington, TX).

Reasons Waived: In each of the jurisdictions above, the Acting Assistant Secretary determined that not granting a wavier would cause undue hardship on low and moderate income persons that would otherwise benefit from the facility or operations and adversely affect the purposes of the Housing and Community Development Act of 1974, as amended.

18. *Regulation:* 24 CFR 576.51(a).

Project/Activity: Yonkers, NY. Under the Emergency Shelter Grants program, waiver of the application submission deadline requirements to permit submission at a later date.

Nature of Requirement: 24 CFR 576.51(a) requires that any State, or formula city or county, or Territory, that elects to receive an Emergency Shelter Grant, submit an application no later than 45 days after the date of notification of the grant allocation amount.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: July 9, 1992.

Reasons Waived: A waiver was granted for the above applicant because issues that arose in HUD review of the City of Yonker's Comprehensive Housing Affordability Strategy (CHAS) could have delayed approval of the CHAS beyond the date of the deadline for submission of the FY 1992 Emergency Shelter Grant (ESG) application. The CHAS must be approved before the ESG application. The CHAS was being submitted by applicant for the first time, as required by the National Affordable Housing Act. Not to grant a waiver of the application deadline and to extend the deadline would have caused undo hardship and would adversely affect the purposes of title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.

19. *Regulation:* 24 CFR 577.400(b).

Project/Activity: Women's Housing Connection of Silicon Valley. Correction in a grant amount in the Transitional Housing for the Homeless program.

Nature of Requirement: 24 CFR 577.400(b) states that "After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for any approved assistance."

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 9, 1992.

Reasons Waived: Because of HUD's miscalculation of a disallowed expense, the initial grant award was less than it should have been. To avoid adversely affecting the purposes of the program, the waiver was granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 20 through 82 in this listing is:

James B. Mitchell, Financial Policy Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–4325, TDD: (202) 708–4594.

20. *Regulation:* 24 CFR 811.104(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(2)(i), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Housing Authority of St. Marys current refunding of bonds which financed two Section 8 assisted projects in St. Marys Georgia: Cumberland Oaks (FHA No. 061–35340–PM–L8–M1) and Pines Apartments (FHA No. 061–35316–PM–L8–M1).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: August 14, 1991.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA mortgage amounts, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. These refunding proposals were approved by HUD on July 9, and July 2, 1991, respectively. Refunding bonds have been priced to average yields of 7.71% and 7.76%. The tax-exempt refunding bond issues of $4,245,000 and $1,790,000 at current low-interest rates will save Section 8 subsidy and in the case of Cumberland Oaks, forced the cure of deficiencies cited by HUD's Atlanta Office. The Treasury also gains long-term tax revenue benefits through immediate replacement of outstanding tax-exempt coupons of 10.04% and 10.43% with tax-exempt bonds yielding 7.71% and 7.76%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit),

curing project deficiencies, and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

21. *Regulation:* 24 CFR 811.104, 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Douglas Housing Finance Corporation refunding of bonds which financed two Section 8 assisted projects: Casas de Esperanza and Pioneer Village (FHA Project Numbers 123–35132 and 123–35129).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 19, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 27, 1991. Refunding bonds have been priced to an average yield of 7.00%. The tax-exempt refunding bond issue of $2,975,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 10.125 and 11.75% at the call date in 1992 with tax-exempt bonds yielding 7.00%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage risk plus the 221(g)(4) put feature. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues (helping to reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

22. *Regulation:* 24 CFR 811.104, 811.105, 811.105(b)(1), 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.108(a)(4), 811.108(b)(1), 811.109(a)(2), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Maumelle Housing Development Corporation refunding of bonds which financed a Section 8 assisted project: Maumelle (Project No. AR–37–8023–014).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 24, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 24, 1991. Convertible refunding bonds have been priced to an average yield of 7.875 percent. The 1992A tax-exempt refunding bond issue of $9,390,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 12.90 and 13.00 percent at the call date in 1992 with tax-exempt bonds yielding 7.875 percent. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

23. *Regulation:* 24 CFR 811.104, 811.105, 811.105(b)(1), 811.106, 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.1108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Brockton Housing Development Corporation refunding of bonds which financed a Section 8 assisted project: Douglas House (FHA No. 023–35266).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 26, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 18, 1991. Refunding bonds have been priced to an average yield of 7.375 percent. The tax-exempt refunding bond issue of $8,390,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12 percent at the call date in 1992 with tax-exempt bonds yielding 7.375 percent. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

24. *Regulation:* 24 CFR 811.104, 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Charter Mound Bayou Housing Corporation refunding of bonds which financed a Section 8 assisted project: Herdy Micou Homes Project (FHA Project Number 065–35315).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on November 27, 1991. Refunding bonds have been priced to an average yield of 7.50%. The tax-exempt refunding bond issue of $940,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of high coupon outstanding tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.50%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of

the HAP contract, thus reducing FHA mortgage risk plus the 221(g)(4) put feature. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues (helping to reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

25. *Regulation:* 24 CFR 811.104, 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Rehab Housing Development Corporation of Natchez refunding of bonds which financed a Section 8 assisted project: Natchez Rehabilitation Apartments Project (FHA Project Number 065–35309).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 18, 1991. Refunding bonds have been priced to an average yield of 7.50%. The tax-exempt refunding bond issue of $1,420,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 10.50 and 12.50% at the call date in 1992 with tax-exempt bonds yielding 7.50%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage risk plus the 221(g)(4) put feature. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues (helping to reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

26. *Regulation:* 24 CFR 811.104. 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Yazoo City Housing Development Corporation refunding of bonds which financed a Section 8 assisted project: Willow Wood Apartment Project (FHA Project Number 065–35267).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 9, 1991. Refunding bonds have been priced to an average yield of 7.50%. The tax-exempt refunding bond issue of $1,420,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of high coupon outstanding tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.50%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage risk plus the 221(g)(4) put feature. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues (helping to reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

27. *Regulation:* 24 CFR 811.104(d), 811.105(b)(1), and 811.117.

Project Activity: Jefferson County (Alabama) current refunding of bonds which financed a Section 8 assisted project in Alabama: Spring Gardens Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant Section 11(b) exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Dated Granted: January 15, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of this refunding transaction in which the project is owned by the Housing Authority, which will issue bonds as a non-profit entity under section 501(c)(3) of the Tax Code. This refunding proposal was approved by HUD on January 2, 1992. If permitted by future amendment of Section 8 appropriations statutes, the Authority has HUD approval to use the savings to provide housing for very low-income persons and families, a priority HUD objective established by Secretary Kemp.

28. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Beacon Heights HDC current refunding of bonds which financed a Section 8 assisted project in South Bend, Indiana: Beacon Heights Apartments (FHA No. 073–35371).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on May 8, 1991. Refunding bonds have been priced to an average yield of 7.625%. The tax-exempt refunding bond issue of $5,635,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.25% at the call date in 1991 with tax-exempt bonds yielding 7.625%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues,

(helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

29. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Michigan City HDC current refunding of bonds which financed a Section 8 assisted project in Elkhart, Indiana: Woodlands East Phase II Apartments (FHA No. 073–35337).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 20, 1991. Refunding bonds have been priced to an average yield of 7.625%. The tax-exempt refunding bond issue of $1,200,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.0% at the call date in 1991 with tax-exempt bonds yielding 7.625%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

30. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Beckley HDC advance refunding of bonds which financed a Section 8 assisted project in Beckley, West Virginia: Manor House Apartments (FHA No. 045–35154).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 23, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions, to credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on May 9, 1991. Refunding bonds have been priced to an average yield of 8.0%. The tax-exempt refunding bond issue of $4,145,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 8.0%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

31. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Bay Shore HDC refunding of bonds which financed a Section 8 assisted project in Islip, New York: Bay Towne Village Apartments (FHA No. 012–35538).

Nature of requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing/FHA Commissioner.

Date Granted: July 25, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 20, 1991. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of $7,175,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-germ tax revenue benefits through replacement of outstanding tax-exempt coupons of 13% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

32. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: The Lillian Cooper HDC current refunding of bonds which financed a Section 8 assisted project in Utica, NY: Faxton-Scott Apartments (FHA No. 013–35095).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: August 15, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 8, 1991. Refunding bonds have been priced to an average yield of 7.236%. The tax-exempt refunding bond issue of $3,090,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12.0% at the call date in 1991 with tax-exempt bonds yielding 7.236%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of

reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

33. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: The Lillian Cooper HDC current refunding of bonds which financed a Section 8 assisted project in Utica, NY: Margaret Apartments (FHA No. 013–35105).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: August 15, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 8, 1991. Refunding bonds have been priced to an average yield of 7.27%. The tax-exempt refunding bond issue of $2,065,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.6% at the call date in 1991 with tax-exempt bonds yielding 7.27%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

34. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Biltmore HDC current refunding of bonds which financed a Section 8 assisted project in Ohio: Biltmore Apartments (FHA No. 046–35532).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: September 12, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 10, 1991. Refunding bonds have been priced to an average yield of 7.5%. The tax-exempt refunding bond issue of $10,555,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9⅝%–12¼% at the call date in 1992 with tax-exempt bonds yielding 7.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit, and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

35. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: The Lillian Cooper HDC current refunding of bonds which financed a Section 8 assisted project in Utica, New York: Genesee Towers Apartments (FHA No. 013–35108).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: September 12, 1991.

Reasons waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 4, 1991. Refunding bonds have been priced to an average yield of 7.5%. The tax-exempt refunding bond issue of $2,000,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt bonds of 10.3% at the call date in 1991 with tax-exempt bonds yielding 7.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

36. Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(3), 811.114(d), and 811.115(b).

Project/Activity: The Penfield-Crown Oak HDC refunding of bonds which financed a Section 8 assisted project in Rochester, NY: Crown Oak Estates (FHA No. 014–35048–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(B) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: September 23, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 9, 1991. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of $3,895,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11–7/8% at the call date in 1991 with tax-exempt bonds yielding 7.35%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and

increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

37. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Lillian Cooper HDC refunding of bonds which financed a Section 8 assisted project in Utica, New York: Lillian Cooper Memorial Apartments (FHA No. 031–35117–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 9, 1991. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of $1,720,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax-exempt bonds yielding 7.35%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

38. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Lillian Cooper HDC refunding of bonds which financed a Section 8 assisted project in Utica, New York: Macartovin Apartments (FHA No. 031–35119–PM–L8).

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhanced refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 9, 1991. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of $2,760,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax exempt bonds yielding 7.35% The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

39. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: New Hartford HDC refunding of bonds which financed a section 8 assisted project in Utica, New York: Village Point Apartments (FHA No. 031–35118–PM–L8)

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhanced refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 9, 1991. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of $1,585,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax exempt bonds yielding 7.35%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

40. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Greater Tennessee HAC refunding of bonds which financed Section 8 assisted projects in Tennessee: Forest Creek, Dunlap Gardens, Sneedville, and Savannah Apartments.

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 31, 1991. Refunding bonds have been priced to an average yield of 7.5%. The tax-exempt refunding bond issue of $6,520,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12%

at the call date in 1991 with tax-exempt bonds yielding 7.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purpose of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

41. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Russel Erskine HDC refunding of bonds which financed a Section 8 assisted project in Montgomery, Alabama: Russel Erskine Memorial Apartments (FHA No. 062–35318–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 13, 1991. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of $2,480,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5–11.75% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire a priority HUD objective established by Secretary Kemp.

42. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: City of Little Rock refunding of bonds which financed a Section 8 assisted project in Arkansas: Kanis Place Apartments (FHA No. 082–35222–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 19, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 11, 1991. Refunding bonds have been priced to an average yield of 7.15%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The tax-exempt refunding bond issue of $3,000,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax-exempt bonds yielding 7.15%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

43. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Montgomery HDC refunding of bonds which financed a Section 8 assisted project in Montgomery, Alabama: Jefferson Davis Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 19, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 18, 1991. Refunding bonds have been priced to an average yield of 7.40%. The tax-exempt refunding bond issue of $3,710,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.40%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

44. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Greater Ohio HAC refunding of bonds which financed four Section 8 assisted projects in Ohio: Laurel Estates, Beasley Mills, Douglas Square, and Smiley Gardens.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 19, 1991.

Reason Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance

refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 18, 1991. Refunding bonds have been priced to an average yield of 7.45%. The tax-exempt refunding bond issue of $5,700,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1991 with tax-exempt bonds yielding 7.45%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit, and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire a priority HUD objective established by Secretary Kemp.

45. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 81.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Tri-City village HDC refunding of bonds which financed a Section 8 assisted projects in Dowagie, Michigan: Tri-City Village Apartments (FHA No. 047–35163–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 19, 1991.

Reason Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 30, 1991. Refunding bonds have been priced to an average yield of 8.15%. The tax-exempt refunding bond issue of $1,755,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax-exempt bonds yielding 8.15%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

46. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Gadsden HDC refunding of bonds which financed a Section 8 assisted project in Gadsden, Alabama: College Manor Apartments (FHA No. 062–35334–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 23, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on October 30, 1991. Refunding bonds have priced to an average yield of 7.0%. The tax-exempt refunding bond issue of $1,565,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date in 1991 with tax-exempt bonds yielding 7.0%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

47. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Port Chester CDC refunding of bonds which financed a Section 8 assisted project in Port Chester, NY: Southport Mews, FHA No. 36–0017–014.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 23, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 25, 1991. Refunding bonds have been priced to an average yield of 7.5%. The tax-exempt refunding bond issue of $3,900,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax-exempt bonds yielding 7.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

48. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Macon (Georgia) HDC refunding of bonds which financed a Section 8 assisted project in Macon, Georgia: Riverside Gardens Apartments (FHA No. 061–35332–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: January 15, 1992.

Reasons waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 11, 1991. Refunding bonds have been priced to an average yield of 7.30%. The tax-exempt refunding bond issue of $2,410,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 7.30%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract when the mortgage interest rate drops from 12% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

49. *Regulation:* 24 CFR 811.105(b), 811.105(b)(c)(3), 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: City of Fort Worth HC refunding of bonds which financed a Section 8 assisted project in Fort Worth, Texas: Peppertree Acres Apartments (FHA No. 113–35075–PM–L8), FAF & Ethics No. 213.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: February 4, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 6, 1992. Refunding bonds have been priced to an average yield of 7.36%. The tax-exempt refunding bond issue of $4,935,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of out-standing tax-exempt coupons of 11.95% at the call date in 1992 with tax-exempt bonds yielding 7.36%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

50. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Pinellas County HA refunding of bonds which financed to Section 8 assisted projects in Florida: Cypress Courts (FHA No. 066–35173–TN–L8) and Oceanside Estates Apartments (FHA No. 067–35235–TN–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Houseing—FHA Commissioner.

Date Granted: February 5, 1992.

Reasons Waived: The part 811 regulations cited above were intend for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 30, 1992. Refunding bonds have been priced to an average yield of 6.85%. The tax-exempt refunding bond issues of $2,035,000 and $3,295,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1991 with tax-exempt bonds yielding 6.85%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

51. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Lucas County HA refunding of bonds which financed a Section 8 assisted project in Toledo, Ohio: Lucas-Plaza Apartments (FHA No. 042–35384).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: February 1, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding does not use a HUD debenture lock or provide credit enhancement and, as an experiment, the bonds will be sold unrated. This refunding proposal was approved by HUD on February 1, 1991. Refunding bonds have been priced to an average yield of 8.5%. The tax-exempt refunding bond issue of $7,054,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exemt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 8.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to prove housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

52. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Chester Redevelopment Authority refunding of bonds which financed a Section 8 assisted projects in Pennsylvania:

Chester Apartments (FHA No. 034–35214–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: February 19, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 25, 1991. Refunding bonds have been priced to an average yield of 6.88%. The tax-exempt refunding bond issue of $5,165,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75% at the call date in 1991 with tax-exempt bonds yielding 6.88%. The refunding will also substantially reduce FHA project exempt mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

53. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Devon Trace HDC refunding of bonds which financed a Section 8 assisted project in Ferndale, Michigan: Devon Trace Apartments (FHA No. 044–35527–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: February 24, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 30, 1992. Refunding bonds have been priced to an average yield of 7.55%. The tax-exempt refunding bond issue of $2,340,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.25% at the call date in 1992 with tax-exempt bonds yielding 7.55%. The refunding will also substantially reduce the FHA mortgage interest rate from 11.5% to 8.25% at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

54. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.106(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Jackson HA refunding of bonds which financed a Section 8 assisted project in Mississippi: Delhaven Manor Apartments (FHA No. 065–35350–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: March 3, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 27, 1992. Refunding bonds have been priced to an average yield of 7⅜%. The tax-exempt refunding bond issue of $3,050,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¾% at the call date in 1992 with tax-exempt bonds yielding 7⅜%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

55. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: El Paso HC refunding of bonds which financed three Section 8 assisted projects in Texas: Sierra Vista, Cove Village, and River Park East Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: March 30, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 19, 1992. Refunding bonds have been priced to an average yield of 7⅜%. The tax-exempt refunding bond issue of $6,895,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¾% at the call date in 1992 with tax-exempt bonds yielding 7⅜%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.5%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues,

(helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

56. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Niagara Falls Housing Agency refunding of bonds which financed a Section 8 assisted project in New York: Colt Block Apartments (FHA No. 014–35051–PM–SR–L8).

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: March 31, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 24, 1992. Refunding bonds have been priced to an average yield of 7⅜%. The tax-exempt refunding bond issue of $2,270,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11% at the call date in 1992 with tax-exempt bonds yielding 7⅜%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.5% to 8.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

57. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.198(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Cleveland (Texas) HC refunding of bonds which financed four Section 8 assisted projects in Texas: Park Place, Heritage Square, Fox Run, and Colonial Park Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: April 23, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on Janaury 30, 1992. Refunding bonds have been priced to an average yield of 7.45%. The tax-exempt refunding bond issue of $7,190,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¾% at the call date in 1992 with tax-exempt bonds yielding 7.48%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

58. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Ohio HFA refunding of bonds which financed seven Section 8 assisted projects in Ohio: Loveland Pines, West Park Senior, Brookside Village, Park Place, Rosaline, Orchard Terrace, and Crossgate Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: April 27, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on March 30, 1992. Refunding bonds have been priced to an average yield of 7.54%. The tax-exempt refunding bond issue of $11,325,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10–12.25% at the call date in 1992 with tax-exempt bonds yielding 7.54%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.16% to 12.0% down to 7.625%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

59. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Hinesville Housing Authority refunding of bonds which financed a Section 8 assisted project in Georgia: Baytree Apartments (FHA No. GA06–0012–012).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Authur J. Hill, Assistant Secretary for Housing-HFA Commissioner.

Date Granted: April 29, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on April 7, 1992. Refunding bonds have been priced to an average yield of 6.99%. The tax-exempt refunding bond issue of $1,700,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-

exempt coupons of 10.5% at the call date in 1992 with tax-exempt bonds yielding 6.99%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

60. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Bristol Housing Authority refunding of bonds which financed a Section 8 assisted project in Virginia: Springdale Village Apartments (FHA No. 051–35322–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: May 14, 1992.

Reasons Waived: The part 811 regulations cited bove were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 21, 1992. Refunding bonds have been priced to an average yield of 7¼%. The tax-exempt refunding bond issue of $3,785,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1992 with tax-exempt bonds yielding 7¼%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.55% to 7.8%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

61. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a) (1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Philadelphia Redevelopment Authority refunding of bonds which financed a Section 8 assisted project: West Philadelphia Townhouses (FHA No. 034–35206–LM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill Assistant Secretary for Housing-FHA Commissioner.

Date Granted: May 14, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 20, 1992. Refunding bonds have been priced to an average yield of 7⅜%. The tax-exempt refunding bond issue of $6,880,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 7⅜%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 11.78% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

62. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Lehigh HA refunding of bonds which financed three Section 8 assisted projects in Pennsylvania: Coplay, Hokendauqua, and Whitehall Township Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: May 28, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 19, 1992. Refunding bonds have been priced to an average yield of 7⅛%. The tax-exempt refunding bond issue of $3,795,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11½% at the call date in 1992 with tax-exempt bonds yielding 7⅛%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11¾% down to 7½%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

63. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: North Tampa HDC refunding of bonds which financed a Section 8 assisted project in Florida: Country Oaks Apartments (FHA No. 063–35263–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: June 3, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding

transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 15, 1992. Refunding bonds have been priced to an average yield of 7.085%. The tax-exempt refunding bond issue of $4,280,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 7.085%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12% to 7.15%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

64. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Fifth Avenue HDC refunding of bonds which financed two Section 8 assisted projects in Gary, Indiana: NSA III and NSA V Apartments (FHA No. 073–33416–LM–L8 and 073–35459–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: June 23, 1992.

Reasons Waived: The part 811 regulation cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. Project refunding proposals were approved by HUD on October 25, 1991, and May 21, 1992. Refunding bonds have been priced to an average yield of 7.31%. The tax-exempt refunding bond issues of $5,635,000 and $9,780,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¼% at the call date in 1993 with tax-exempt bonds yielding 7.31%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 11.57% to 7¼%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

65. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Chicago HA refunding of bonds which financed 16 Section 8 assisted projects in Chicago (list attached to Notification of Tax Exemption).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: June 30, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 29, 1992. Refunding bonds have been priced to an average yield of 6.82%. The tax-exempt refunding bond issues of $59,240,000 and $23,030,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11½% at the call dates in 1992 with tax-exempt bonds yielding 6.82%. The refunding will also substantially reduce the FHA mortgage interest rates of expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

66. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Mount Pleasant HDC refunding of bonds which financed a Section 8 assisted project in Boston: Mount Pleasant Apartments (FHA No. 023–35221–LDP–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: June 30, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 29, 1992. Refunding bonds have been priced to an average yield of 6.85%. The tax-exempt refunding bond issue of $4,400,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9–12% at the call date in 1992 with tax-exempt bonds yielding 6.85%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

67. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Rome HDC refunding of bonds which financed a Section 8 assisted project in Rome, New York: Park Drive Apartments (FHA No. 013–35127–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income

taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 1, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity: This refunding proposal was approved by HUD on January 15, 1992. Refunding bonds have been priced to an average yield of 7.23%. The tax-exempt refunding bond issue of %6,725,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10⅜% at the call date in 1993 with tax-exempt bonds yielding 7.35%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10¼% to 7.35%, thus reducing FHA mortgage insurance risk. The refunding serves the important pubic purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

68. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Bucks County RA refunding of bonds which financed a Section 8 assisted project in Pennsylvania: Warminster Apartments, FHA No. 034–34184–PM–L8.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 10, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 11, 1991. Refunding bonds have been priced to an average yield of 6.81%. The tax-exempt refunding bond issue of $3,800,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.5–11.5% at the call date in 1992 with tax-exempt bonds yielding 6.81%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.64% down to 7.125%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

69. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Ohio HFA refunding of bonds which financed three Section 8 assisted projects in Ohio: Plaza, Chadwick Place, and Western Glen Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 14, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 9, 1992. Refunding bonds have been priced to an average yield of 6.86%. The tax-exempt refunding bond issue of $5,090,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11–12.25% at the call date in 1992 with tax-exempt bonds yielding 7.25%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% down to 7.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Winter Haven HA refunding of bonds which financed a Section 8 assisted project in Winter Haven, Florida: Abbey Lane Apartments (FHA No. 067–35251—HUD Ethics No. 235).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: July 15, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 27, 1992. Refunding bonds have been priced to an average yield of 7.17%. The tax-exempt refunding bond issue of $4,075,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 10.25% and 20.00% at the call date in 1992 with tax-exempt bonds yielding 7.17%. The refunding will also substantially reduce the FHA mortgage interest rate from 11.23% to 7.37% at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(b)(1), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Augusta Housing Agency Inc., an instrumentality of the Augusta (Georgia) Housing Authority refunding of bonds which financed a non-FHA Insured, 30-year Section 8 assisted project in Augusta, Georgia: Bon Air Apartments (GA–0013–002/GA–0015–003), FAF & Ethics No. 192.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner,

Date Granted: July 21, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on March 20, 1992. Refunding bonds have been priced at 7.36%. The 1992 Series C tax-exempt refunding bond issue of $8,025,000 at current low-interest rates will yield 7.36%. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12.00% at the call date in 1992 with tax-exempt bonds yielding 7.36%. While the refunding will not reduce the non-FHA project mortgage debt service, savings from the refunding (upon request of HUD's Atlanta Office) will by March 1995 contribute $702,700, to correct all deficiencies cited by said HUD Office and bring the project back into compliance. The refunding serves the important public purposes of also reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

72. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.0108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Clearwater (Florida) HDC refunding of bonds which financed a Section 8 assisted project in Clearwater, Florida: Clearwater Apartments, FAF and Ethics No. 1.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 29, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 29, 1992. Refunding bonds have been priced to an average yield of 7.09%. The tax-exempt refunding bond issue of $3,360,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 13.15% and 19.15% at the call date in 1992 with tax-exempt bonds yielding 7.09%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract from 12.0% down to 6.10%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of also reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

73. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b, 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Lewiston HA refunding of bonds which financed three Section 8 assisted projects in Lewiston, Maine: Bartlett Court, Bates Street, and Pierce Place Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 29, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 16, 1992. Refunding bonds have been priced to an average yield of 6.61%. The tax-exempt refunding bond issue of $5,005,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10–11.5% at the call date in 1992 with tax-exempt bonds yielding 6.61%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.77% to 7.0% down to 7.625%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of also reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

74. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Third Columbus (Georgia) HDC refunding of bonds which financed a Section 8 assisted project in Georgia: Renaissance Villa Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 29, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 16, 1992. Refunding bonds have been priced to an average yield of 7.08%. The tax-exempt refunding bond issue of $1,790,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¼–12⅛% at the call date in 1992 with tax-exempt bonds yielding 7.08%. The refunding will also substantially reduce the FHA mortgage interest rates at

expiration of the HAP contract, from 12.0% down to 6.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

75. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Dayton (Kentucky) HA refunding of bonds which financed a Section 8 assisted project in Ohio: Cambridge Arms I Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 31, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 14, 1992. Refunding bonds have been priced to an average yield of 7.47%. The tax-exempt refunding bond issue of $4,345,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1992 with tax-exempt bonds yielding 7.47%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10¼% to 7.75%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

76. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Hinesville (Georgia) HA refunding of bonds which financed a Section 8 assisted project in Georgia: Northgate Apartments.

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 31, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise this option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 17, 1992. Refunding bonds have been priced to an average yield of 6.72%. The tax-exempt refunding bond issue of $2,655,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5 to 11% at the call date in 1992 with tax-exempt bonds yielding 6.72%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% to a rate close to the bond rate, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

77. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Spring Creek HDC refunding of bonds which financed a Section 8 assisted project in Illinois: Spring Creek Towers Apartments (FHA No. 072–35079–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: August 27, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal as approved by HUD on August 4, 1992. Refunding bonds have been priced to an average yield of 6.6%. The tax-exempt refunding bond issue of $5,145,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.2–12.3% at the call date in 1992 with tax-exempt bonds yielding 6.6%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10.23% to 6.87%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

78. *Regulations:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The City and County of Honolulu advance refunding of bonds which financed a Section 8 assisted project in the State of Hawaii, Smith-Beretania Apartments, FHA No. 140–35092.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 15, 1991.

Reasons Waived: The part 811 relations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was

approved by HUD on July 9, 1991. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of $10,680,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk, The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood the projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

79. *Regulation:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The Pryor Creek (Oklahoma) Development Authority funding of bonds which financed a Section 8 assisted project in the State of Oklahoma: Twin Villa Apartments, FHA No. OK56–0013–003.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 29, 1991.

Reasons Waived: The part 811 relations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 18, 1991. Refunding bonds have been priced to an average yield of 7.25%. The tax-exempt refunding bond issue of $2,385,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.3% at the call date with tax-exempt bonds yielding 7.25%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk, The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood the projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

80. *Regulation:* 24 CFR 811.114(d), 811.115(b), and 811.117.

Project/Activity: McKinney Act State Agency Refunding of bonds which financed four Section 8 assisted projects in the Sate of Delaware: (1) Woodlea Apartments, (2) Silver Lake Estates, (3) Little Creek Apartments, and (4) Spencer Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity. The refunding is accomplished via section 103 of the Internal Revenue Code of 1986, and FAF Agreements are in place.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 10, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on October 25, 1991, and is refunded under FAF/McKinney; it will not only reduce FHA project mortgage debt service but due to the 50–50 percent savings split derived from the refunding, Delaware is able to provide housing for very low-income persons and families (Homeless) as required by the McKinney Act and is a priority HUD objective established by Secretary Kemp.

81. *Regulation:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The Craig County refunding of bonds which financed a Section 8 assisted project in Craig County, Oklahoma: "Hornet Apartments," FHA No. 118–35106–PM–L8.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing-FHA Commissioner.

Date Granted: February 20, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 30, 1992. Refunding bonds have been priced to an average yield of 6.9%. The tax-exempt refunding bond issue of $1,770,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date in 1992 with tax-exempt bonds yielding 6.9%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

82. *Regulation:* 24 CFR 811.114(d), 811.115(b), and 811.117, and 207.259(e).

Project/Activity: McKinney Act State Agency Refunding of bonds which financed a Section 8 assisted project in the District of Columbia: Cavalier Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity. The refunding is accomplished via section 103 of the Internal Revenue Code of 1986, and no HUD Notification of 11(b) Tax Exemption is needed.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: May 28, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage, HUD agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 2, 1992. It will not only reduce FHA project mortgage debt service but due to the 50–50 percent savings split derived from the refunding, the D.C. HFA will gain $1.1

million to provide housing for very low-income households, as required by the McKinney Act, a priority HUD objective established by Secretary Kemp.

Note to Reader: The person to be contacted for additional information about waiver-grant item number 83 in this listing is: Michael Levine, Acting Director, Development Grant Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–0558. TDD: (202) 708–4594.

83. *Regulation:* 24 CFR 850.31(f).
Project/Activity:

Project name	Project No.	Field office
Washington Square Phase II.	PA009HG701	Philadelphia.

Nature of Requirement: The regulatory provision cited above prohibits certain modifications of Housing Development Grant (HDG) Projects after an application is funded. "Changes of site, total number of units, unit size (number of bedrooms), building type, or number of lower income units are not permitted."

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 17, 1992.

Reason Granted: The waiver permitted an increase in the number of low income units from 20 to 48, increase in number of units from 100 to 101, and reconfiguration of project buildings.

Since the waiver request was related to the introduction of Lower Income Housing Tax Credits to the project, the waiver was conditioned on a possible HDG reduction as determined appropriate by HUD subsidy layering analysis. Analysis is now in process.

Standard criteria for waiving § 850.31(f) and how the project met each criterion are as follows:

1. The revised project should be as competitive as the approved application.

Response: The revised project is more competitive than the original because of the increase in lower income units and the decrease in HDG funds per unit.

2. Unforeseeablity of change at time of project application.

Response: Since project approval, the housing market softened while the need for lower income housing units increased. Difficulties in leasing Phase I, provided evidence that the market had changed.

3. "Good cause" for revising the approved HDG application.

Response: The revision provides more lower income units while maintaining project feasibility.

4. The change is in the public interest.

Response: The increase in the number of lower income units is in the public interest.

5. Change meets at least one of the Secretary's goals for HUD.

Response: The goal of expanding housing opportunities is met by more low income units at no extra cost to HUD.

6. Change does not alter the basic character of the project.

Response: Project site, number of income-generating units, and bedroom distributions have not changed. The new design maintains open space, the change from stacked townhouses over garages to three-story garden apartments would have been required under new Handicapped Accessibility Standards.

Note to Reader: The person to be contacted for additional information about the waiver-grant item numbered 84 in this listing is: Kathryn Greenspan, Housing Program Specialist, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410. Phone: (202) 708–3887. TDD: (202) 708–4594.

84. *Regulation:* 24 CFR 882.712(c)(1)(iii).

Project/Activity: Project-Based Certificate Program.

Nature of Requirement: (1) Temporary relocation policies apply only to lawful residential tenants who are temporarily relocated from a property (building or complex) following submission of the Owner's application to the PHA for project-based certificate (PBC) assistance. (2) The temporary location period for such tenants will not exceed 12 months.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: July 21, 1992.

Reason Waived: Families were temporarily relocated prior to submission of the PBC application to the PHA because of extensive code violations which made continued occupancy hazardous. The waiver will make it possible for the former tenants to return to the rehabilitated units.

Note to Reader. The person to be contacted for additional information about waiver-grant item number 85 in this listing is: Linda Cheatham, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–3000. TDD: (202) 708–4594.

85. *Regulation:* 24 CFR 888.103a.
Project/Activity:

Project name	Project No.	Field office
Elmwood Park Senior Complex.	071–EH451	Chicago.

Nature of Requirement: On April 24, 1991, HUD published "Final Fair Market Rents" pursuant to its duties to establish FMRs under the above cited regulation. In the preamble to the actual schedule of applicable FMRs, it is stated that for certain projects, subject to FY 1987 FMRs and earlier, the 1988 FMRs are the highest and most recent which they may use, and "* * * shall be applicable to all subsequent processing in reviewing contract rents and utilities." Therefore, if HUD wishes not to impose a restriction that appears in the published preamble, it must waive the regulation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Housing Commissioner.

Date Granted: August 26, 1992.

Reason Waived: The subject was selected for funding in 1986, and initially closed on May 22, 1989. Excavation of the site began in June 1989, and unforeseen soil contamination was discovered. The Illinois Environmental Protection Agency halted construction. A mortgage increase request to fund the estimated $483,472 cost of clean-up was submitted to Headquarters. If HUD strictly imposed the above referenced preamble requirement, which appears in the section on "applicability" to the FY 1989 schedule of new construction FMRs, and processed the subject FMRs applying the 1.20 prerogative of 1988 FMRs, an additional cash requirement of $78,663 was necessary. The subject's non-profit sponsor could not meet this necessary cash requirement, so it was likely that HUD would ultimately end up owning a contaminated site which it must then clean up anyway pursuant to its CERCLA liability. But if HUD waived the regulation, in recognition of the fact that the preamble requirement was not published until April 24, 1991, and previous established procedure would have permitted the use of 1989 FMRs, with a lesser prerogative of only 1.12 of 1989 FMRs, an additional cash requirement of only $63 would be necessary, since the sponsor's minimum capital investment of $10,000 has already been met. HUD and the sponsor share a common goal to provide this much needed housing and not waste the time, effort, and money already expended on this project.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 86 through 88 in this listing is: Roger Braner, Acting Director,

Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410. Phone: (202) 708–1380. TDD: (202) 708–4594.

86. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: Cleveland and Chicago Field Offices, Chicago Regional Office.
Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: April 21, 1992.
Reason Waived: The Cleveland Field Office was granted a waiver for the completion of the PHMAP assessment for the Cuyahoga Metropolitan Housing Authority (CMHA) due to the necessity to merge performance data from the Lakeview Terrace Resident Management Firm with that of CMHA; and the completion by the Field Office of a confirmatory review after the merge has been completed. The Chicago Field Office was granted a waiver for the completion of the PHMAP assessment for all of the public housing agencies in its jurisdiction due to the flooding by the Chicago River and various computer problems.

87. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: The Denver Regional Office.
Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: April 22, 1992.
Reason Waived: The Denver Regional Office was granted a waiver for the completion of the PHMAP assessment for the Salt Lake Housing Authority (SLHA) due to the fact that the SLHA used incorrect date for its PHMAP Certification and it required additional time to resubmit its first phase PHMAP certification, thereby necessitating additional time for the Denver Regional Office to complete the PHMAP assessment.

88. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: The Little Rock Field Office, Ft. Worth Regional Office.
Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: July 13, 1992.
Reason Waived: The Little Rock Field Office was granted a waiver for the completion of the PHMAP assessment for the Marianna Housing Authority (MHA) due to the fact that the MHA used incorrect data for its PHMAP Certification and it required additional time to resubmit its first phase PHMAP certification, thereby necessitating additional time for the Little Rock Field Office to complete the PHMAP assessment.

Note to Reader: The person to be contacted for additional information about waiver-grant items numbered 89 through 93 in this listing is: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–1015. TDD: (202) 708–0850.

89. *Regulation:* 24 CFR 905.325.
Project/Activity: Establishment of ceiling rents for Lac Courte Oreilles Housing Authority Rental Program.
Nature of the Requirement: Waiver of the Regulation cited above is required to allow establishment of ceiling rents for their Rental Program.
Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.
Date Granted: May 20, 1992.
Reason Waived: This waiver was requested and granted to allow the Lac Courte Orielles Housing Authority to establish ceiling rents for their rental program in accordance with PIH Notice 89–21, which provides for the establishment of ceiling rents in a rental Indian housing program.

90. *Regulation:* 24 CFR 905.325.
Project/Activity: Establishment of ceiling rents for Ute Mountain Ute Housing Authority.
Nature of the Requirement: Waiver of the Regulation cited above is required to allow establishment of ceiling rents for their Rental Program.
Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.
Date Granted: May 20, 1992.
Reason Waived: This waiver was requested and granted to allow the Ute Mountain Ute Housing Authority to establish ceiling rents for their rental program in accordance with PIH Notice 89–21, which provides for the establishment of ceiling rents in a rental Indian housing program.

91. *Regulation:* 24 CFR 905.404 (a); 24 CFR 905.407 (b) (1) (3); 24 CFR 905.407 (c); 24 CFR 905.410; 24 CFR 905.413 (a), (b) and (d); 24 CFR 905.416 (c) and (d); 24 CFR 905.419 (b) and (c); 24 CFR 905.422; 24 CFR 905.440 (b) (1) and (2).
Project/Activity : Conversion of 355 Turnkey III (TKY III) units to the Mutual Help (MH) Homeownership Opportunity Program by the Tlingit-Haida Regional Housing Authority in Juneau, Alaska.
Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert an existing unit funded and built under one program to operation under a different program.
Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.
Date Granted: May 22, 1992.
Reason Waived: This action was requested, and granted, in order to fulfill the Department's obligation in the case entitled *Samato* v. *Wilson, et al,* in which, based on meeting their obligations under the Settlement Agreement, eligible members of the class were to be transferred from the TKY III Program to the MH Program.
Also, many of these homebuyers have been in their TKY III units since they were built and transferring to the MH Program will enable participants to realize homeownership in a shorter period of time.

92. *Regulation:* 24 CFR 905.440(c).
Project Activity: Establishment of Purchase Price for a Subsequent Homebuyer in the Mutual Help Homeownership Opportunity (MH) Program at the Northern Circle Indian Housing Authority in Ukiah, California.
Nature of Requirement: The Regulation cited above applies to how to establish a purchase price for a subsequent homebuyer. Therefore, a waiver is required to use only the current replacement cost, instead of the lower of the current replacement cost or the appraised value of the home.
Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.
Date Granted: May 21, 1992.
Reason Waived: This action was requested, and granted, because Northern Circle Indian Housing Authority has been unable to obtain a current appraisal due to a lack of cooperation by the Bureau of Indian Affairs to complete timely appraisals, a lack of understanding of trust land by private firms, and the unavailability of comparable properties.

93. *Regulation:* 24 CFR 905.705.
Project Activity: Providing Performance Funding System subsidy for one unit unit from the Modoc-Lassen Indian Housing Authority's inventory which is used as a space for community members to make Native American crafts, which will be sold locally and in surrounding communities.
Nature of Requirement: The regulation cited above discusses how to determine the amount of operating subsidy for which an IHA is eligible under the Performance Funding System.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: March 25, 1992.

Reason Waived: This waiver was requested, and granted, to provide Performance Funding System operating subsidy for one unit removed from the Modoc-Lassen Indian Housing Authority's rental inventory. The rental units is being used as a crafts center which promotes economic self sufficient services to the community.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 94 through 100 in this listing is: Edward C. Whipple, Occupancy Division, Office of Management Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–0744, TDD: (202) 708–0850.

94. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Edgar Housing Authority of Edgar, Nebraska.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Edgar Housing Authority to establish ceiling rents for all one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

95. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Housing Authority of Excelsior Springs, Missouri.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Housing Authority of Excelsior Springs to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

96. *Regulation:* 24 CFR 913.107

Project/Activity: Public housing projects owned and operated by the Ely Housing Authority of LaSalle County, in LaSalle County, Illinois.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Ely Housing and Redevelopment Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

97. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Lucas Metropolitan Housing Authority of Lucas, Ohio.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Lucas Metropolitan Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

98. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Lynch Housing Authority

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Lynch Housing Authority to establish ceiling rents for one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

99. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Housing Authority of the City of Marion, Indiana.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Housing Authority of the City of Marion to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

100. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Stromsburg Housing Authority of Stromsburg, Nebraska.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Stromsburg Housing Authority to establish ceiling rents for one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 101 through 105 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–1872. TDD: (202) 708–0850.

101. *Regualtion:* 24 CFR 990.109(b)(3)(iv).

Project/Activity: Detroit Housing Department, Detroit, MI.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted by: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 10, 1992.

Reason Waived: The initial request for a waiver came shortly after HUD had published a proposed rule in the **Federal Register** that would have established new conditions under which a PHA could include vacant units in the determination of operating subsidy eligibility. Congressional action on the Department's 1992 Appropriations Bill, however, included language in the Conference report that barred appropriated funds from being used to implement the proposed rule.

The proposed rule would have corrected inefficiencies and removed inequities contained in the current Vacancy Rule. The Congressional abrogation of the rule-making process meant a continuation of these problems. It was thus felt necessary to develop general policy describing the circumstances under which Vacancy Rule waivers would be considered and approved so that these problems could be minimized without being in conflict with the Congressional action. Waiver requests received during and after this period were reviewed but not generally not acted upon.

In response to this situation, HUD approved an obligation of $28.9 million of operating subsidy funds by issuing a letter-of-intent (LOI) in September 1991. In determining this amount, 62% was used as the assumed occupancy percentage. It was hoped, however, that a policy on Vacancy Rule waiver requests would be in place before payments of the LOI began so that appropriate conditions could be placed on the released funds, if warranted.

In November 1991, the Detroit Field Office was authorized to pay $14.4 million to the DHD and payment of an additional $4 million was authorized in March 1992. No conditions were placed on these payments. HUD is now asking Congress to reverse its earlier action on the proposed vacancy rule and allow HUD to proceed with publication of a final rule. Since only three months remained in the DHD's fiscal year and because there was an approvable budget in the Field Office, Good cause was found to exist to permit the DHD to use 62% as its projected Occupancy percentage.

102. *Regulation:* 24 CFR 990.109(e)(2).

Project/Activity: Denver Housing Authority, Denver, CO.

Nature of Requirement: The regulation requires a PHA to include locally-generated income in its calculation of operating subsidy eligibility.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 24, 1992.

Reason Waived: The waiver allows the exclusion from the subsidy calculation of surcharge income from a cable TV service being offered to residents at the Denver Housing Authority. The provision of this cable service is seen as a desirable resident initiative project. The Central Resident Council (CRC) is expected to become responsible for the cable service contract within a year. Residents choosing cable service will pay a mandatory $2 surcharge as part of their monthly bill and this income, less reasonable administrative expenses, would be used by the CRC for resident initiatives such as the scholarship fund. This project will be operated with the full consultation and involvement of the CRC. This waiver is for a period not to exceed 12 months from the time the cable service is implemented. During this period the housing authority shall train and prepare CRC to assume complete responsibility for the cable service contract.

103. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: Bromley-Heath Resident Management Corporation, Boston Housing Authority, Boston, MA.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 89% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability.

104. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: Carr Square RMC, St. Louis Housing Authority, St. Louis, MO.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 72% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability. The RMC was encouraged to use the relief provided to develop a homeownership occupancy plan, marketing program and waiting list.

105. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: Cochran Gardens—Cochran Plaza RMC, St. Louis Housing Authority, St. Louis, MO.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 88% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability.

[FR Doc. 92–24519 Filed 10–8–92; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-99]

Federal Property Suitable as Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 9, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 2, 1992.

Denise R. Alexander,

Deputy Assistant Secretary for Operations.

[FR Doc. 92–24393 Filed 10–8–92; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. D–92–1008; FR–3273–D–01]

Redelegation of Authority for the HOPE for Homeownership of Single Family Homes Program (HOPE 3)

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

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development is redelegating all power and authority with respect to the HOPE for Homeownership of Single Family Homes Program (HOPE 3) to Regional Administrators, Field Office Managers, and Field Directors of Offices or Divisions of Community Planning and Development, and their Deputies, subject to certain specified exceptions.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0324, TDD (202) 708–2565. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION: The Secretary has delegated all power and authority with respect to the HOPE 3 Program to the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Grant Programs, subject to certain exceptions, published elsewhere in today's issue. In this redelegation, the Assistant Secretary for Community Planning and Development is redelegating to specified officials of HUD Regional and Field Offices power and authority with respect to the HOPE 3 Program, subject to additional exceptions. In particular, the authority to approve and to terminate or to deobligate grants is limited to Regional Administrators, Field Office Managers, and their Deputies.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. Authority Redelegated

Each Regional Administrator, Field Office Manager, and Director of an Office or Division of Community Planning and Development, and the Deputy of each such official, is authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of the Assistant Secretary with respect to the HOPE for Homeownership of Single Family Homes Program (HOPE 3) authorized by title IV, subtitle C, of the National Affordable Housing Act (42 U.S.C. 12891–17898).

Section B. Authority Excepted

The authority redelegated above does not include: (1) The authority to issue or waive rules and regulations, or (2) the authority to redelegate further the power and authority delegated herein. In addition, there is excepted from the authority delegated to Directors of Offices or Divisions of Community Planning and Development, and their Deputies, the power and authority to approve grants and to terminate or deobligate grants.

Authority: Title IV, subtitle C, of the National Affordable Housing Act (42 U.S.C. 12891–12898); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

Dated: September 30, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–24638 Filed 10–8–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–03–4320–2]

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Grazing Advisory Board.

SUMMARY: The Carson City District Grazing Advisory Board will meet at 10 a.m., on Thursday, November 19, 1992, at the Carson City District Office Conference Room, 1535 Hot Springs Road, suite 300, Carson City, Nevada. The primary topics will be the FY 1993 Rangeland Improvement Projects, Allotment Management Plans, and the status of the Land Use Plans. The meeting is open to the public. Interested persons may make oral statements at 1 p.m. or file written statements for the Board's consideration.

FOR FURTHER INFORMATION CONTACT: Jim Gianola, Carson City District Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada, 89706, phone: (702) 885–6140.

Dated: September 29, 1992.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 92–24598 Filed 10–8–92; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–050–03–4740–01; 1784]

Arizona: Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Jeanette Davis, Public Affairs Officer, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300.

SUPPLEMENTARY INFORMATION: A meeting of the Yuma District Advisory

Council will be held Tuesday, November 17, 1992, 10:30 a.m. to 3:30 p.m., at the Chamber of Commerce Office, Highway 95, Bullhead City, Arizona. Agenda topics will include: (1) Imperial Oasis, (2) Long-Term Visitor Areas, (3) Quartzsite Federal Prison, (4) Fish and Wildlife 2000, (5) Parker Strip Recreation Area Management Plan, (6) Lake Havasu Fisheries Improvement Program, and (7) Fiscal Year 1993 Direction.

Following the meeting, council members will participate in a field tour of sections of Bullhead City. Members of the public are invited to attend the meeting and the field tour, but must provide their own transportation.

Summary minutes of the meeting will be maintained in the Yuma District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

This notice is published under the authority of title 5, United States Code, section 552b(e)(3).

Dated: October 2, 1992.

Herman L. Kast,

District Manager.

[FR Doc. 92-24599 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-02-4212]

Montana; Realty Action

ACTION: Designation of public lands in Missoula, Granite and Powell counties, Montana, for possible transfer out of federal ownership via exchange.

SUMMARY: BLM proposes to exchange isolated public land tracts with Champion International Corporation to acquire lands with high recreation and natural resource values.

The following public land is being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Federal Land Exchange Facilitation Act of January 25, 1988, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 10 N., R. 10 W.,
Sec. 4, Lots 1, 2, SE¼NE¼;
Sec. 10, SE¼NE¼, SW¼NW¼, E½SE¼.
T. 11 N., R. 10 W.,
Sec. 18, N½NE¼, SE¼NE¼.
T. 14 N., R. 10 W.,
Sec. 8, W½W½;
Sec. 14, E½NE¼, NE¼SE¼.
T. 15 N., R. 10 W.,
Sec. 29, Lot 4.
T. 14 N., R. 11 W.,
Sec. 1, Lot 3, SE¼NW¼, E½SW¼.
T. 11 N., R. 12 W.,
Sec. 5, SW¼NW¼, SW¼;
Sec. 6, Lots 1,2,6,7, E1/SW¼;
Sec. 7, Lot 4, NE¼NE¼, S½NE¼, E½W½, W½SE¼, NE¼SE¼.
T. 11 N., R. 13 W.,
Sec. 2, Lots 1–4, S½NW¼, NW¼SW¼;
Sec. 12, SW¼SW¼, S½SE¼.
T. 14 N., R. 13 W.,
Sec. 6, NE¼SE¼.
T. 12 N., R. 14 W.,
Sec. 20, W½NE¼, N½NW¼, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 29, E½SE¼;
Sec. 30, Lots 1–4, NE¼, E½NW¼, E½SW¼,SE¼.
T. 11 N., R. 15 W.,
Sec. 6, Lots 1–7, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 10, All;
Sec. 12, NE¼NW¼, W½SW¼, SE¼SW¼;
Sec. 13, N½NW¼;
Sec. 14, N½N½.
T. 12 N., R. 15 W.,
Sec. 17, Lots 1 & 2;
Sec. 20, Lots 1–7, NW¼NW¼, NW¼SW¼, NW¼SE¼;
Sec. 30, Lots 1–4, E½W½, SE¼;
Sec. 32, N½NE¼, SW¼SW¼, E½SW¼, SE¼SE¼;
Sec. 34, W½W½.
T. 11 N., R. 16 W.,
Sec. 6, Lots 1–3, 6, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼.
T. 12 N., R. 16 W.,
Sec. 8, Lots 13–24, NW¼NW¼, SE¼SW¼;
Sec. 9, Lots 1–3, S½NW¼, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 10, Lots 1–5, SW¼NE¼, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 11, W½SW¼;
Sec. 20, Lots 1–3, NE¼, E½NW¼, S½;
Sec. 24, W½;
Sec. 32, NW¼, N½S½, SE¼SE¼.
T. 13 N., R. 17 W.,
Sec. 10, S½N½.
T. 13 N., R. 18 W.,
Sec. 14, E½SW¼, SE¼;
Sec. 22, Lots 3–8;
Sec. 23, N½NE¼, NE¼NW¼;
Sec. 24, NE¼, E½NW¼, NW¼NW¼.

These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register.** The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or five years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATES: On or before November 23, 1992, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, MT 59702.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana 59801.

Dated: September 30, 1992.

Michele D. Good,

Acting District Manager.

[FR Doc. 92-24600 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-DN-M

[NM-018-03-4333-10]

Intent To Prepare a Resource Management Plan Amendment/ Environmental Assessment (RMPA/ EA); New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Taos Resource Management Plan (RMP) incorporating Orilla Verde Recreation Area (the former Rio Grande State Park) into the RMP and directing future management of the area.

SUMMARY: The Taos Resource Area (TRA), Bureau of Land Management (BLM), proposes an amendment to the Taos RMP which was completed in 1988. The amendment would incorporate a 1349 acre reconveyance of the former Rio Grande State Park to BLM which took place in 1990. The Park was constructed with Land and Water Conservation Fund (LWCF) monies. LWCF requires perpetual dedication of the lands for park purposes. The amendment would also provide the framework for management of the recreation area within this criteria.

DATES: Interested parties may submit comments regarding concerns, issues, and criteria to be addressed in the plan amendment by October 30, 1992. This will constitute public scoping for the plan amendment.

ADDRESSES: Comments should be sent to Area Manager, Bureau of Land Management, Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Terry Humphrey, BLM, Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571, 505–758–8851.

SUPPLEMENTARY INFORMATION: Several meetings concerning management of the area were held in Taos, Embudo, Santa Fe, and Questa, New Mexico during January and February, 1992. Several informal meetings were held with community leaders and interested citizens from March through August, 1992.

Following the public scoping comment period, the BLM will prepare a draft

RMPA/EA. A team of interdisciplinary specialists with backgrounds in outdoor recreation planning, wildlife biology, range management, hydrology, cultural resources, and geology will be involved in the preparation of the Plan Amendment/EA. Upon completion of the draft Plan Amendment/EA, a 30 day public review will follow. The Proposed Plan Amendment/EA and Decision Record will then be completed and a 30 day protest period will follow. A notice of availability will announce the Proposed Plan Amendment/EA and Decision Record in a subsequent **Federal Register.**

Dated: October 1, 1992.

Larry L. Woodard,

State Director.

[FR Doc. 92-24601 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-FB-M

[WY-930-03-4214-11; WYW 75480, WYW 75481, WYW 75482, WYW 75483,WYW 75484, WYW 75485]

Proposed Modification, Continuation, and Termination of Bureau of Reclamation Withdrawals, Riverton Reclamation Project; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Approximately 261,269.43 acres of lands withdrawn for the Riverton Reclamation Project, including the Muddy Ridge Area, were reviewed under Section 204(l) of the Federal Land Policy and Management Act of 1976. Included in this total were 3,126.29 acres of lands in overlapping withdrawals within the Riverton Reclamation Project. The review resulted in the following Bureau of Reclamation recommendations:

1. Continue withdrawals on 45,059.53 acres which includes 390 acres of lands in overlapping withdrawals.

2. Terminate withdrawals on 59,472.39 acres which includes 476.33 acres of lands in overlapping withdrawals. Lands proposed for termination will return to the Bureau of Land Management. Future use and disposition of these lands will be based on land use planning, environmental analysis, and public participation.

3. Terminate withdrawals on approximately 66,332.30 acres which includes 1,120.34 acres of lands in overlapping withdrawals. The lands are privately owned surface having only ditches and canal reservations to the United States.

4. Terminate withdrawals on 90,405.21 acres, which includes 1,139.62 acres of lands in overlapping withdrawals. The lands are privately owned, having a reserved mineral or other interest to the United States.

The actions for termination in paragraphs 3 and 4 are record clearing actions. The termination would not open any lands to mineral location or leasing since all of the Federal mineral estate is currently available for development.

DATES: Comments need to be received by January 7, 1992 and should be limited to whether or not the lands proposed for continuation are being used for the purpose for which they were withdrawn. A map showing the lands proposed for retention and termination is available for viewing at the Lander Resource Area Office, Rawlins District Office, or the Wyoming State Office.

Public comment concerning future land uses, management, etc., for those lands proposed for termination (paragraph 2) and possible return to multiple use management by BLM, will be taken later when land use planning occurs.

ADDRESSES: Comments should be sent to the Ray Brubaker, State Director, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6001.

FOR FURTHER INFORMATION CONTACT: Duane Feick, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6127.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that 45,059.53 acres of lands withdrawn by Secretarial Orders of September 27, 1918, and January 3, 1920, the Act of Congress of August 15, 1953, and the Bureau of Land Management Order of April 5, 1956, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714 (1988). The lands are described as follows:

Wind River Meridian, Wyoming

T. 3 N., R. 1 E.,
- Sec. 1, lots 1–2, NE¼SE¼, W½SE¼SE¼;
- Sec. 12, NW¼NE¼NE¼, N½SW¼NE¼NE¼, SW¼SW¼NE¼NE¼, NW¼NE¼, NE¼NW¼;
- Sec. 16, S½N½SE¼NW¼, SW¼SW¼NW¼, W½W½NW¼SW¼;
- Sec. 17, N½SE¼NW¼NE¼, NW¼SW¼NE¼, SW¼SW¼NE¼, E½NW¼SE¼NE¼, SE¼SE¼NE¼, E½W½NW¼SE¼;
- Sec. 20, E½NE¼NW¼, N½S½NW¼, NE¼SE¼NW¼, N½SW¼SE¼NW¼, SE¼SW¼SE¼NW¼, SE¼SE¼NW¼;
- Sec. 21, SW¼SW¼;
- Sec. 28, SW¼NE¼, W½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
- Sec. 29, NE¼, NE¼SE¼;
- Sec. 33, NE¼;
- Sec. 34, E½SE¼NE¼, E½W½SE¼NE¼, W½NW¼, S½S½SE¼NW¼.

T. 4 N., R. 1 E.,
- Sec. 22, SE¼SE;
- Sec. 23, S½S½;
- Sec. 24, S½S½;
- Sec. 25, N½NE¼, SW¼NE¼, W½SE¼NE¼, NW¼NE¼SE¼NE¼, N½NE¼NE¼SE¼NE¼, W½, NW¼SE¼, W½SW¼SE¼, W½E½SW¼SE¼;
- Sec. 26, all;
- Sec. 27, E½E½;
- Sec. 34, NE¼NE¼;
- Sec. 35, NE¼, N½NW¼, SE¼NW¼;
- Sec. 36, W½NE¼, W½SE¼NE¼, NW¼, N½SW¼, NW¼NE¼SE¼, N½SW¼NE¼SE¼, W½SE¼, S½SE¼SE¼.

T. 2 N., R. 2 E.,
- Sec. 1, lots 1–4, S½N½, S½;
- Sec. 2, lots 1–4, S½N½, S½;
- Sec. 3, S½;
- Sec. 10, N½;
- Sec. 11, N½, SE¼;
- Sec. 12, N½;
- Sec. 19, lots 3–4, SE¼SW¼, SW¼SE¼, W½SE¼SE¼;
- Sec. 25, NW¼NE¼NW¼, S½NE¼NW¼.

T. 3 N., R. 2 E.,
- Sec. 1, lots 2–4, N½SW¼NW¼, Trs. 1–2;
- Sec. 2, Trs. 1 and 11;
- Sec. 3, Trs. 6, 11, 12, 16, 17, 19, and 21;
- Sec. 4, Trs. 4–5;
- Sec. 6, lots 4–5, Trs. 7–8;
- Sec. 7, NE¼ of lot 4, N½SE¼ of lot 4;
- Sec. 8, S½SE¼;
- Sec. 12, N½S½NE¼, SE¼SE¼NE¼;
- Sec. 15, W½E½NW¼;
- Sec. 23, NW¼SE¼NE¼;
- Sec. 25, W½NE¼SW¼, SE¼NE¼SW¼, W½SW¼, SE¼SW¼, S½S½N W¼SE¼, SW¼SE¼, E½SE¼;
- Sec. 26, SE¼NW¼, E½SW¼, SW¼SW¼ SE¼;
- Sec. 27, S½SE¼;
- Sec. 34, E½, NE¼NW¼, E½E½N W¼NW¼, NE¼SE¼NW¼, S½SE¼N W¼, N½NE¼SW¼;
- Sec. 35, all;
- Sec. 36, all.

T.4 N., R. 2 E.,
- Sec. 1, lots 1–3, S½NE¼, NE¼SE¼NW¼, S½NE¼SW¼, W½SW¼, N½SE¼S W¼, N½SW¼SE¼SW¼, SE¼SE¼S W¼;
- Sec. 2, NE¼SE¼, Tr. 10;
- Sec. 3, Trs. 1, 2, 5, and 6;
- Sec. 10, E½NE¼;
- Sec. 11, SW¼NW¼, SE¼SW¼, Trs. 3, 4, 9, and 10;
- Sec. 12, NE¼NE¼, NE¼NE¼NE¼NW¼;
- Sec. 13, Trs. 6–9;
- Sec. 14, NW¼SE¼, SE¼SE¼, Trs. 4–6;
- Sec. 19, lots 3–4, NE¼SW¼, N½SE¼S W¼, N½SE¼, N½SW¼SE¼, SE¼SE¼;
- Sec. 20, S½;
- Sec. 21, SW¼, S½SE¼;
- Sec. 22, S½S½;
- Sec. 23, S½S½;
- Sec. 25, S½S½;
- Sec. 26, N½, NE¼SW¼, N½NW¼SW¼, N½SE¼, NE¼SW¼SE¼, E½SE¼S W¼SE¼, SE¼SE¼;
- Sec. 27, Trs. 1, 3, 4, and 6;
- Sec. 28, Trs. 1–3;

Sec. 29, Trs. 1, 2, and 11–14;
Sec. 30, Trs. 1, 7, 9, 12–14, 16, 19, and 21;
Sec. 32, Trs. 2, 12, 14, 16, 18, 20, and 21;
Sec. 33, S½SW¼SE¼, Trs. 4, 6, 8, 11, 12, and 14;
Sec. 35, Tr. 9;
Sec. 36, NE¼NE¼, W½SW¼, Trs. 1, 2, and 7.

T. 5 N., R. 2 E.,
Sec. 34, SE¼SE¼;
Sec. 36, W½SW¼, SE¼SW¼, S½SE¼.

T. 1 N., R. 3 E.,
Sec. 11, SW¼SE¼;
Sec. 13, SW¼NW¼, W½W½W½SE¼NW¼;
Sec. 14, S½NE¼NE¼, NW¼NE¼, N½N½SW¼NE¼, N½N½SE¼NE¼, S½NE¼SE¼NE¼, SE¼SE¼NE¼, N½NE¼NE¼SE¼.

T. 2 N., R. 3 E.,
Sec. 3, N½SW¼NE¼SW¼, S½N½SE¼NE¼SW¼, S½NE¼NW¼SW¼;
Sec. 4, lots 3–4, N½S½NW¼;
Sec. 5, lots 1–4, E½NE¼SW¼NE¼, N½SE¼NE¼, SW¼NW¼, W½NE¼SE¼NW¼, NW¼SE¼NW¼, NW¼SW¼;
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, N½S½SE¼SE¼;
Sec. 7, lots 1–2, W½NW¼NE¼, W½E½NW¼NE¼, NE¼NW¼, E½SE¼SE¼;
Sec. 16, W½SW¼;
Sec. 17, S½S½NW¼NE¼, SW¼NE¼, NW¼NW¼NW¼, S½N½NW¼, S½NW¼, SW¼, S½N½NE¼SE¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 18, lots 2–3, NE¼NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 19, N½NW¼NE¼, N½NE¼SE¼SW¼, E½SW¼SE¼SE¼;
Sec. 20, N½N½NE¼NE¼NE¼, W½NE¼NE¼, S½N½SE¼NE¼NE¼, S½SE¼NE¼NE¼;
Sec. 22, SW¼NE¼SE¼;
Sec. 26, SW¼SW¼NW¼, S½SW¼NE¼SW¼, SE¼NE¼SW¼, N½NW¼NW¼SW¼, S½SE¼NW¼SW¼, N½NE¼SW¼SW¼, N½NW¼SE¼SW¼, N½SW¼NW¼SE¼, S½SE¼SE¼SE¼;
Sec. 33, S½N½N½NE¼NE¼.

T. 3 N., R. 3 E.,
Sec. 1, lots 1–4, S½N½, S½;
Sec. 6, Trs. 3–5;
Sec. 7, Trs. 8, 11, 18, 22–25, 27, and 29;
Sec. 8, SE¼NE¼NE¼SW¼, S½N½NW¼SW¼, S½N½SW¼, SW¼NE¼SE¼, SW¼NE¼NW¼SE¼, S½NW¼SE¼, N½SE¼SE¼;
Sec. 9, NW¼SW¼SW¼, SE¼SW¼SW¼, SW¼SE¼SW¼, SW¼SE¼SE¼SW¼;
Sec. 13, N½NE¼;
Sec. 14, N¼SW¼SW¼, N½SW¼SW¼SW¼, N½S½SW¼SW¼SW¼, SE¼SW¼SW¼, S½SE¼SW¼;
Sec. 15, NE¼SW¼NW¼, S½SW¼NW¼, SW¼SE¼NW¼, SW¼SE¼NE¼SE¼, NW¼SE¼, N½SE¼SE¼;
Sec. 16, NW¼NE¼, NE¼SW¼NE¼, SE¼NE¼, N½NE¼NW¼, NE¼NW¼NW¼;
Sec. 23, N½SE¼NE¼, SE¼SE¼NE¼, NE¼NE¼SE¼;
Sec. 24, NW¼, N½SW¼, N½SE¼SW¼, W½SE¼, NW¼SE¼SE¼, S½SE¼SE¼;
Sec. 25, N½NE¼NE¼;
Sec. 27, SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, SW¼NE¼NW¼SE¼, N½SW¼NW¼SE¼;
Sec. 29, S½SW¼SW¼, SE¼SW¼, N½N½SW¼SE¼;
Sec. 30, lot 4, SE¼SE¼SE¼;
Sec. 31, Trs. 1–9;
Sec. 32, S½NE¼, NW¼, S½;
Sec. 33, SW¼NE¼, N½NE¼SE¼NE¼, W½SE¼NE¼, S½NW¼, SW¼.

T. 4 N., R. 3 E.,
Sec. 4, SE¼SW¼, Tr. 1;
Sec. 5, Trs. 2, 3, and 9;
Sec. 6, lots 3–5, SW¼NE¼, N½SE¼NW¼, N½SE¼SE¼NW¼, N½NE¼SE¼, N½SE¼NE¼SE¼, N½NE¼NW¼SE¼;
Sec. 7, lot 3, NE¼SW¼;
Sec. 8, SW¼, W½SE¼;
Sec. 9, S½NE¼, N½SE¼, Trs. 1 and 4;
Sec. 10, SW¼NE¼, S½NW¼, N½SW¼, SE¼SW¼, Tr. 2;
Sec. 15, W½SW¼, SE¼SW¼, Trs. 9–10;
Sec. 16, NW¼, NE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 17, NE¼NE¼;
Sec. 18, lot 4, SE¼SW¼, Tr. 10;
Sec. 19, lots 1–4, W½E½, E½W½;
Sec. 22, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 23, W½SW¼, SE¼SW¼, Trs. 9, 11, and 13;
Sec. 25, N½SW¼, S½SE¼, Trs. 1 and 3;
Sec. 26, N½NE¼, SE¼NE¼, Trs. 3–4;
Sec. 30, lots 1–4, E½, E½W½;
Sec. 31, Trs. 1–4;
Sec. 36, Trs. 10 and 15.

T. 1 N., R. 4 E.,
Sec. 7, N½SE¼;
Sec. 8, E½NW¼, N½SW¼.

T. 2 N., R. 4 E.,
Sec. 4, lots 3–4, SW¼NW¼, W½NW¼SW¼;
Sec. 6, lots 6–7, E½SW¼, SE¼;
Sec. 7, lots 1–2, NE¼, E½NW¼;
Sec. 12, Trs. 3–4;
Sec. 13, E½NE¼NW¼, E½W½NE¼NW¼;
Sec. 21, SE¼SE¼;
Sec. 22, SW¼.

T. 3 N., R. 4 E.,
Sec. 5, W½SW¼;
Sec. 6, lots 3–4, E½SW¼, SE¼;
Sec. 7, E½;
Sec. 8, W½W½;
Sec. 18, NE¼;
Sec. 27, SE¼SW¼, S½SE¼;
Sec. 28, S½S½S½NW¼, N½NE¼SW¼, N½S½NE¼SW¼, N½NW¼SE¼;
Sec. 30, W½ and SE¼ of lot 1, S½S½NE¼NE¼, S½NW¼NE¼, S½NE¼NW¼;
Sec. 32, lot 1, S½S½ of lots 2–3, S½ of lot 4;
Sec. 33, lots 3–4, S½SW¼NE¼SW¼, SW¼SE¼NE¼SW¼;
Sec. 34, NE¼NE¼, N½NW¼NE¼;
Sec. 35, S½NE¼, S½NW¼NW¼, E½SW¼NW¼, SE¼NW¼;
Sec. 36, S½N½, N½N½S½.

T. 4 N., R. 4 E.,
Sec. 13, S½NE¼SE¼, S½S½;
Sec. 14, E½SW¼SW¼SE¼, SE¼SW¼SE¼;
Sec. 16, S½S½;
Sec. 18, lots 3 and 5;
Sec. 19, lots 1–2, NE¼, E½NW¼;
Sec. 20, lot 1, N½, Trs. 41 and 46;
Sec. 21, N½, N½S½;
Sec. 22, S½N½, N½S½;
Sec. 23, N½N½, N½S½NW¼;
Sec. 24, N½N½N½;
Sec. 25, S½N½NW¼SW¼, S½N½SW¼, S½S½, S½NW¼SE¼;
Sec. 26, S½;
Sec. 27, N½SW¼, SE¼;
Sec. 28, S½SW¼, S½S½N½SE¼;
Sec. 29, S½S½;
Sec. 31, lot 1, N½NE¼, NE¼NW¼;
Sec. 32, N½N½;
Sec. 33, N½N½NE¼, N½NW¼;
Sec. 34, N½N½NW¼;
Sec. 36, NE¼NE¼NE¼.

T. 2 N., R. 5 E.,
Sec. 7, lot 4.

T. 3 N., R. 5 E.,
Sec. 25, NE¼NW¼, S½NW¼, N½NW¼NE¼SW¼, NW¼SW¼;
Sec. 26, S½SE¼NE¼, SW¼, N½SE¼, N½SW¼SE¼;
Sec. 27, S½S½;
Sec. 28, S½S½S½;
Sec. 29, SE¼SE¼SE¼SE¼;
Sec. 31, S½ of lot 1, N½NE¼, NE¼NW¼;
Sec. 32, N½N½;
Sec. 33, N½N½N½, N½S½N½N½, S½S½NW¼NW¼;
Sec. 34, N½N½N½NE¼NE¼, N½N½NW¼NE¼, N½N½N½NW¼, N½S½N½NE¼NW¼, S½N½NW¼NW¼, N½N½SW¼NW¼NW¼.

T. 4 N., R. 5 E.,
Sec. 10, SE¼;
Sec. 11, S½S½NE¼, S½;
Sec. 12, S½S½NW¼, SW¼, W½SE¼, W½SE¼SE¼, SE¼SE¼SE¼;
Sec. 13, all;
Sec. 14, all;
Sec. 15, NE¼;
Sec. 17, SW¼NW¼SW¼, W½SW¼SW¼;
Sec. 18, S½ of lot 3, lot 4, S½NE¼SW¼, SE¼SW¼, S½N½SE¼, S½SE¼;
Sec. 19, lots 1–2, NE¼, E½NW¼;
Sec. 20, S½NE¼, W½NW¼NW¼, S½NW¼, S½;
Sec. 21, SW¼, S½N½SE¼, S½SE¼;
Sec. 23, all;
Sec. 24, all;
Sec. 25, N½NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, NW¼, N½SW¼, W½NW¼SE¼;
Sec. 26, N½, N½SW¼, N½S½SW¼, N½SE¼, NW¼SW¼SE¼;
Sec. 27, S½NE¼, W½NW¼, SE¼NW¼, S½;
Sec. 30, S½ of lot 4, S½SE¼SW¼;
Sec. 31, lot 1, S½NE¼, NE¼NW¼;
Sec. 32, S½S½NE¼NE¼, W½NE¼, SE¼NE¼, S½NW¼, NE¼SE¼;
Sec. 33, S½N½, N½S½;
Sec. 34, N½NW¼NE¼, NE¼NE¼NW¼, W½E½NW¼, W½NW¼.

T. 3 N., R. 6 E.,
Sec. 19, portion of Tr. 7;
Sec. 31, W½W½SW¼SE¼NE¼, W½W½W½NE¼SE¼;
Sec. 32, Tr. 3.

T. 4 N., R. 6 E.,

Sec. 7, lot 4, S½SE¼SW¼, S½S½SE¼;
Sec. 8, S½SW¼SW¼, SW¼SE¼SW¼;
Sec. 17, W½NW¼, W½E½NW¼, W½NE¼SW¼, W½SW¼;
Sec. 18, lots 1–4, E½W½, E½;
Sec. 19, lots 1–4, W½NE¼NE¼, NW¼NE¼, E½NW¼;
Sec. 30, NW¼ of lot 1.
T. 3 N., R. 1 W.,
Sec. 15, SW¼;
Sec. 16, S½;
Sec. 17, N½SW¼, SE¼;
Sec. 18, lot 3, NE¼SW¼;
Sec. 23, N½NW¼.
T. 3 N., R. 2 W.,
Sec. 13, SE¼SW¼;
Sec. 30, lots 1–7, SW¼NE¼, E½SW¼, NW¼SE¼.
T. 2 N., R 3 W.,
Sec. 3, lot 4;
Sec. 4, lots 1–2, SE¼NE¼;
Sec. 5, lots 1, 2, and 5;
Sec. 6, lots 6, 8–13, SW¼NE¼;
Sec. 7, lot 1.
T. 3 N., R. 3 W.,
Sec. 25, lots 1–9, N½NE¼, SW¼NW¼;
Sec. 26, lots 1–6, S½NE¼;
Sec. 27, lots 1–2, 4–5, S½NE¼;
Sec. 28, SE¼SE¼;
Sec. 32, lots 1–3;
Sec. 33, lots 1–5, NE¼NE¼, S½NW¼;
Sec. 34, lots 1–7, S½NE¼, SE¼SW¼;
Sec. 35, N½N½;
Sec. 36, N½N½.
T. 2 N., R. 4 W.,
Sec. 1, lots 10–12, NW¼SW¼, N½SE¼;
Sec. 12, lots 1–7.
The areas described aggregate 45,059.53 acres in Fremont County.

The purpose of the withdrawals is to protect capital improvements associated with the Riverton Reclamation Project and, additionally, to protect important recreation and wildlife areas associated with the project. The withdrawals continued will be modified to extend the term for 50 years.

The Bureau of Reclamation proposes termination of withdrawals on 59,472.39 acres of lands withdrawn by the Act of Congress of August 15, 1953, and Bureau of Land Management Order of April 5, 1956. These lands are no longer needed for project purposes and can be managed as public land by the Bureau of Land Management. Future use and disposition of these lands would be based on land use planning, environmental analysis, and public participation. These lands are described as follows:

Wind River Meridian, Wyoming

T. 2 N., R. 1 E.,
Sec. 12, S½NE¼, E½SE¼NW¼.
T. 3 N., R. 1 E.,
Sec. 18, lot 4, SE¼SW¼.
T. 4 N., R. 2 E.,
Sec. 13, Tr. 3.
T. 1 N., R. 3 E.,
Sec. 11, W½NW¼NE¼, N½NW¼SW¼NE¼, SW¼NW¼SW¼NE¼, NE¼NW¼, NE¼SE¼NW¼, E½E½SE¼NW¼, E½E½NE¼NE¼SW¼, E½NE¼SE¼NE¼SW¼, S½S½SW¼;
Sec. 12, S½SE¼.
T. 2 N., R. 3 E.,
Sec. 1, lots 1–2, S½NE¼, SE¼;
Sec. 7, N½SE¼SW¼SE¼;
Sec. 11, S½N½NE¼NE¼SE¼, S½NE¼NE¼SE¼, SE¼NE¼SE¼, E½SE¼SE¼;
Sec. 12, all.
Sec. 13, N½N½, SW¼NW¼;
Sec. 14, E½NE¼NE¼.
T. 3 N., R. 3 E.,
Sec. 2, lots 1–4, S½N½, S½;
Sec. 3, lots 1–4, S½N½, S½;
Sec. 4, lots 1–4, S½N½, S½;
Sec. 5, lots 1–3, S½NE¼, N½SE¼NW¼, N½S½SE¼NW¼, N½S½S½SE¼NW¼, SW¼, SW¼SE¼;
Sec. 8, NE¼, NE¼NW¼, N½NW¼NW¼, N½NE¼SE¼, SE¼NE¼SE¼, N½NE¼NW¼SE¼, SE¼NE¼NW¼SE¼, NW¼NW¼SE¼;
Sec. 9, N½, N½SW¼, NE¼SW¼SW¼, N½SE¼SW¼, N½SE¼SE¼SW¼, SE¼SE¼SE¼SW¼, SE¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, S½NE¼, NW¼, S½;
Sec. 14, N½, N½S½, N½SE¼SW¼;
Sec. 15, NE¼, N½NW¼, NW¼SW¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, N½NE¼SE¼, SW¼NE¼SE¼, N½SE¼NE¼SE¼, SE¼SE¼NE¼SE¼;
Sec. 16, NE¼NE¼;
Sec. 24, NE¼, NE¼SE¼, NE¼SE¼SE¼;
Sec. 36, S½SW¼NW¼, E½NW¼SW¼, E½SW¼, SE¼.
T. 4 N., R. 3 E.,
Sec. 29, W½E½NE¼, W½NE¼, W½, SE¼;
Sec. 32, N½, N½SW¼, N½SW¼SW¼, SE¼SW¼, SE¼;
Sec. 33, all;
Sec. 34, SW¼;
T. 1 N., R. 4 E.,
Sec. 6, lots 3, 4, and 5, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lot 4, SE¼SW¼, S½SE¼;
Sec. 8, S½SW¼.
T. 2 N., R. 4 E.,
Sec. 5, lots 1–4, S½N½, SW¼, N½SE¼;
Sec. 6, lots 1–5, S½NE¼, SE¼NW¼;
Sec. 7, N½SE¼;
Sec. 8, SW¼SW¼NE¼, S½S½NW¼, N½SW¼, W½NW¼SE¼, SE¼NW¼SE¼;
Sec. 20, S½NE¼SE¼, S½SE¼;
Sec. 21, SW¼SW¼, S½SE¼SW¼;
Sec. 26, N½N½, SW¼NW¼, W½SW¼;
Sec. 27, S½NE¼, NW¼, E½SW¼, SE¼;
Sec. 28, N½NE¼, SE¼NE¼, N½NW¼, W½SW¼NW¼, NW¼SW¼, W½SW¼SW¼;
Sec. 29, NE¼, S½;
Sec. 33, W½NW¼NW¼;
Sec. 34, N½NE¼;
T. 3 N., R. 4 E.,
Sec. 1, all;
Sec. 2, all;
Sec. 3, all;
Sec. 4, all;
Sec. 5, N½, E½SW¼, SE¼;
Sec. 6, lots 1–2, NE¼, E½NW¼;
Sec. 7, lots 1–4, E½W½;
Sec. 8, E½, E½W½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, N½, N½SW¼, SW¼SW¼, NE¼SE¼;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1–4, E½W½, SE¼;
Sec. 19, lots 1–4, E½, E½W½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, N½, N½S½;
Sec. 28, NE¼, N½NW¼, N½S½NW¼, N½S½S½NW¼;
Sec. 29, N½N½;
Sec. 30, NE¼ of lot 1, N½N½NE¼, N½S½NE¼NE¼, N½NE¼NW¼;
Sec. 31, lots 4–5;
Sec. 35, N½NE¼, NE¼NW¼, N½NW¼NW¼;
Sec. 36, N½N½.
T. 4 N., R. 4 E.,
Sec. 24, S½N½N½, S½N½, S½;
Sec. 25, S½NE¼SE¼;
Sec. 26, S½S½N½;
Sec. 29, Tr. 41;
Sec. 30, S½S½NE¼, S½SE¼NW¼;
Sec. 31, lots 2–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 32, S½N½, S½;
Sec. 33, S½N½NE¼, S½N½, S½;
Sec. 34, NE¼, S½N½NW¼, S½NW¼, S½;
Sec. 35, all;
Sec. 36, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, S½.
T. 2 N., R. 5 E.,
Sec. 12, S½NE¼NE¼.
T. 3 N., R. 5 E.,
Sec. 1, S½ of lots 1–4, S½N½, S½;
Sec. 2, lots 1–4, S½N½, S½;
Sec. 3, lots 1–4, S½N½, S½;
Sec. 4, lots 1–4, S½N½, S½;
Sec. 5, lots 1–4, S½N½, S½;
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, NE¼, E½W½, SE¼;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec.13, N½NE¼, SW¼NE¼, N½SE¼NE¼, W½, W½SE¼, W½SE¼SE¼;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1–4, E½, E½W½;
Sec. 19, lots 1–4, E½, E½W½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, W½E½E½, W½E½, W½;
Sec. 25, NW¼NW¼;

Sec. 26, NE¼NE¼, W½NE¼, N½SE¼NE¼, NW¼;
Sec. 27, N½, N½S½;
Sec. 28, N½, N½S½, N½S½S½;
Sec. 29, N½, SW¼, NE¼SE¼, W½SE¼, N½SE¼SE¼, SW¼SE¼SE¼, N½SE¼SE¼SE¼, SW¼SE¼SE¼SE¼;
Sec. 30, lots 1–4, E½, E½W½;
Sec. 31, N½ of lot 1.
T. 4 N., R. 5 E.,
Sec. 19, lots 3–4, E½SW¼, SE¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1–3, N½ of lot 4, NE¼, E½NW¼, NE¼SW¼, N½SE¼SW¼, SE¼;
Sec. 31, lots 2–7, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 32, lots 1–4, N½NE¼NE¼, N½S½NE¼NE¼, N½SW¼, NW¼SE¼;
Sec. 33, lots 1–4, N½N½;
Sec. 34, lots 1–3, W½ of lot 4, SE¼ of lot 4, N½SW¼, S½NW¼SE¼;
T. 2 N., R. 6 E.,
Sec. 7, lots 1, 2, and 4, E½NW¼;
Sec. 18, lots 1–2, W½W½SE¼NW¼, W½E½W½SE¼NW¼;
T. 3 N., R. 6 E.,
Sec. 5, lot 4, N½SW¼NW¼, S½S½SW¼;
Sec. 6, lots 1–3, 5–7, E½ and SW¼ of lot 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, E½, E½W½;
Sec. 8, N½NW¼, N½SW¼NW¼, SW¼SW¼NW¼, W½W½SW¼, SE¼SW¼SW¼;
Sec. 17, NW¼NW¼, NW¼SW¼NW¼;
Sec. 18, lot 1, N½ of lot 2, N½NE¼, N½S½NE¼, NE¼NW¼, N½SE¼NW¼.
T. 4 N., R. 6 E.,
Sec. 31, S½SE¼SW¼, S½SE¼;
Sec. 32, SW¼SW¼.
The areas described aggregate 59,472.39 acres in Fremont County.

The Bureau of Reclamation proposes to terminate withdrawals withdrawn by Secretarial Orders of September 27, 1918, and December 31, 1925, the Act of Congress of August 15, 1953, and Bureau of Land Management Orders of April 5, 1956, and May 15, 1956, on 66,332.30 acres of private surface where the only Federal interests are ditches and canals reservations to the United States. The termination is a record clearing action having no effect.

A legal description of the lands are available at the Lander Resource Area Office, Rawlins District Office, or the Wyoming State Office.

The Bureau of Reclamation proposes to terminate withdrawals on 90,405.21 acres of private lands withdrawn by Act of Congress of August 15, 1953, and Bureau of Land Management Order of April 5, 1956, where the United States has a reserved mineral or right-of-way interest. The mineral estate is currently available for development. The termination would be a record clearing action having no effect.

A legal description of the lands is available at the Lander Resource Area Office, Rawlins District Office, or the Wyoming State Office.

The four categories of withdrawn lands may include small, scattered tracts of lands acquired by the Bureau of Reclamation for the project, which are not subject to any withdrawal. Some of these tracts have been identified and legal descriptions adjusted. Additional lands will be identified prior to the actual termination action and the acreages adjusted accordingly.

For a period of 90 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments in connection with this notice of proposed withdrawal continuation may present their views in writing to Ray Brubaker, State Director, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and resources associated with the withdrawn areas proposed for continuation. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if continued, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 24, 1992.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 92–24605 Filed 10–08–92; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

General Management Plan, Kaloko-Honokohau National Historical Park; Availability; Draft General Management Plan/Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service has prepared a draft General Management Plan/Environmental Impact Statement (GMP/EIS) for Kaloko-Honokohau National Historical Park, Hawaii County, Hawaii.

The draft GMP/EIS presents a proposal and three alternatives for the future management, development and use of the park. The proposed action calls for full facility development of the park including a facility for interpretation of traditional Hawaiian ways and the carrying out of resource management strategies to preserve and protect the nationally significant cultural and natural values through an increase in park staffing. The other alternatives include no action, limited facility development, and maximization of vehicle access with more emphasis on recreation use. Impact topics evaluated include cultural resources, plant and animal communities, geology, freshwater and marine resources, visitor services, air quality, local economy and management and operations.

Comments on the draft GMP/EIS should be received no later than December 11, 1992, and should be addressed to Gary Barbano, Park Planner, National Park Service, Pacific Area Office, 300 Ala Moana Blvd., Box 50165, Honolulu, Hawaii 96850. Requests for additional information or copies of the document should be directed to this address or telephone number (808) 541–2693.

Copies of the draft GMP/EIS are available for inspection at the Pacific Area Office, the park and libraries in the vicinity of the park and in Honolulu. Copies are also available for inspection at the following address; Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St., Suite 600, San Francisco, CA 94107–1372.

Dated: September 9, 1992.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 92–24684 Filed 10–8–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte Nos. 339 and 431 (Sub 2)]

Cost Recovery Percentage; Review of the General Purpose Costing System

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments.

SUMMARY: The Commission is requesting comments on a revised make whole adjustment procedure. A make whole procedure reallocates the cost savings of volume shipments to other traffic to ensure that all costs generated are accounted for. The proposed procedure allocates cost savings on an individual railroad basis. The current procedure allocates cost savings on a regional basis. The proposed methodology will produce more accurate costs.

DATES: Comments are due November 9, 1992.

ADDRESSES: Send comments referring to Ex Parte No. 399 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 927–5720 Robert C. Hasek, (202) 927–6239 [TDD for hearing impaired (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision in Ex Parte No. 399, *supra* served May 6, 1992. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 275–1721.]

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

Decided: October 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24632 Filed 10–8–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket NO. AB–374 (Sub-No. 1X)]

Eastern Alabama Railway, Inc.—Abandonment and Discontinuance Exemption—in Calhoun County, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the discontinuance and abandonment by Eastern Alabama Railway, Inc (EARY) as follows: (1) Discontinuance of service over 2.4 miles of track in Anniston, AL from a point formerly known as GP Junction (NS milepost 737.3) to a point 500 feet north of the north switch to Donoho Clay (approximately 11,417 feet north of GP Junction), including switches needed to access shipper Huron Valley Steel, FMC Sand, and Donoho Clay, and crossover tracks now in place between EARY and Norfolk Southern Railway Company; and (2) abandonment of the remaining 12.66 miles of EARY's 15.06-mile rail line extending between Anniston (milepost LAM 507.73) and Wellington, AL (milepost LAM 522.79), in Calhoun County, AL. The discontinuance and the abandonment are subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 8, 1992. Formal expressions of intent to file an offer of financial assistance [1] under 49 CFR 1152.27(c)(2) must be filed by October 19, 1992, petitions to stay must be filed by October 26, 1992, and petitions for reconsideration must be filed by November 3, 1992. Requests for public use conditions must be filed by October 29, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–374 (Sub-No. 1X) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and to petitioner's representative: Fritz R. Kahn, suit 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005–2301.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 (TDD for Hearing Impaired: (202) 927–5721).

SUPPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5712]

Decided: October 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24634 Filed 10–8–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32155]

La Belle Point Railroad Co.; Lease and Operation Exemption; Missouri Pacific Railroad Co.

La Belle Point Railroad Company (La Belle), a noncarrier subsidiary of the Arkansas Shortline Railroad, Inc., has filed a notice of exemption to lease and operate 49.34 miles of rail line (the Paris Branch) owned by Missouri Pacific Railroad Company (MP), extending from milepost 504.03, at Fort Smith, AR to milepost 553.42, at Paris, AR (excluding MP's connecting track to the Arkansas & Missouri Railroad between milepost 504.29 and milepost 504.34 at Forth Smith, AR). The exemption became effective on September 17, 1992.

Any comments must be filed with the Commission and served on: Jay Moody, 2200 Worthen Bank Building, 200 West Capital Ave., Little Rock, AR, 72201–3699.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[2] The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 1, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24636 Filed 10–8–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32159]

Peninsula Corridor Joint Powers Board; Trackage Rights Exemption; Southern Pacific Transportation Co.

Southern Pacific Transportation Company (SPT) has agreed to extend for an additional 60 days, its 90-day grant of 4.7 miles of overhead trackage rights to Peninsula Corridor Joint Powers Board (JPB) between Santa Clara Junction (milepost 44.0), and Tamien, CA (milepost 48.70).[3] The extension was to

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[2] Pioneer Railcorp and Fort Smith Railroad Company have jointly filed a petition to reject or revoke this notice of exemption. The Commission will address that petition in a separate decision. If, as alleged in the petition to reject or revoke, La Belle upon consummation of the lease transaction will become a carrier affiliated with two other rail carriers, then the entity in control must obtain approval from the Commission to continue in control of these carriers pursuant to 49 U.S.C. 11343 and 49 CFR part 1180. Also, MP has advised that it will soon file a petition seeking Commission approval for an adverse discontinuance of service by the current operator, Fort Smith Railroad Company.

[3] SPT and JPB own parallel lines between these points. They recently agreed to grant limited term trackage rights to each other while they studied the feasibility of entering into a coordinated use agreement to achieve more efficient freight, intercity passenger, and commuter train operations in this area. See Finance Docket No. 32094, Penin. Corr. Jt. Powers Bd.—Tr. Rts. Exemp.—Sou. Pac. Transp. Co. (not printed), served July 13, 1992, and Finance Docket No. 32091, Sou. Pac. Transp. Co.—Tr. Rts. Exemp.—Penin. Corr. Jt. Powers Bd. (not printed), served July 13, 1992. This extension is necessary because the parties were unable to complete their negotiations within the original 90-day term. JPB has agreed to grant SPT a similar trackage rights extension in Finance Docket No. 32161.

become effective on or after October 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market St., Suite 2300, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 5, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-24633 Filed 10-8-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32161]

Southern Pacific Transportation Co.—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to extend for an additional 60 days the grant of trackage rights to Southern Pacific Transportation Company (SP), between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.70), a distance of approximately 4.7 miles.[1] The extension of the trackage rights will be effective on or after October 1, 1992, for a period of 60 days.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

[1] In Finance Docket No. 32091, Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Power Board (not printed), served July 13, 1992, the Commission exempted the grant of trackage rights by JPB to SP over JPB's Santa Clara Junction-Tamien line for a period of 90 days. During this time, the parties have been negotiating to coordinate use of their parallel lines in order to achieve more efficient freight, intercity passenger, and commuter train operations. Additional time is need to complete their negotiations.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 1, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-24635 Filed 10-8-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Stipulation and Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed stipulation and settlement will be lodged with the United States Bankruptcy Court for the District of Utah, Central Division in *In re CF&I Fabricators of Utah, Inc., et al.*, Case No. 90B-6721. The proposed stipulation and settlement resolves the claims of the United States under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") in the consolidated bankruptcy proceedings of CF&I Steel Corporation and its subsidiaries, with respect to the Roebling Steel Superfund Site, located in the Village of Roebling, Florence Township, New Jersey.

The proposed stipulation and settlement between the United States, CF&I Steel Corporation and the Committee representing the unsecured creditors of CF&I Steel Corporation gives the United States an allowed claim of $27,098,870 for its claim for pre-petition and post-petition response costs incurred or to be incurred at the Roebling Steel Superfund Site.

The Department of Justice will receive comments relating to the proposed stipulation and settlement from the date of this publication until October 23, 1992. Comments on the stipulation and settlement should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington DC 20044, and should refer to In re CF&I Fabricators of Utah, Inc., et. al., DOJ Ref. No. 90-7-1-618.

A copy of the proposed stipulation and settlement may be examined at the Office of the United States Attorney, District of Utah, U.S. Courthouse, room 478, 350 South Main Street, Salt Lake City, Utah 84101. A copy of the proposed stipulation and settlement may also be examined or obtained by mail at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004 (202-347-2072). When requesting a copy of the proposed stipulation and settlement, please enclose a check in the amount of $2.00 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92-24655 Filed 10-8-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing or the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Kansas:
KS91-17 (Oct. 9, 1992)..... p. All.

Modification to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA91-4 (Feb. 22, 1991)..... p. All.
GA91-31 (Feb. 22, 1991)..... p. All.
New Jersey:
NJ91-2 (Feb. 22, 1991)..... p. 701
pp. 705-706
p. 708
New Jersey:
NY91-3 (Feb. 22, 1991)..... p. 721
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New York:
NY91-2 (Feb. 22, 1991)..... p. 777
p. 781
NY91-3 (Feb. 22, 1991)..... p. 797
p. 798
NY91-7 (Feb. 22, 1991)..... p. 837
p. 840

Michigan *Volume II*
Illinois:
IL91-1 (Feb. 22, 1991)..... p. 69
p. 79
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IL91-11 (Feb. 22, 1991)..... p. 163
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IL91-13 (Feb. 22, 1991)..... p. 183
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IL91-15 (Feb. 22, 1991)..... p. 205
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Kansas:
KS91-11 (Feb. 22, 1991)..... p. All.
Michigan:
MI91-4 (Feb 22, 1991)..... p. 491
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 2402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 2d day of October 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-24350 Filed 10-8-92; 8:45 am]
BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on October 27, 1992, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-4215 A and B, Washington, DC. The meeting is open to the public and will begin at 9 a.m.

The agenda for this meeting includes reports regarding Office of Construction and Engineering activities, Office of Occupational Medicine activities, the OSHA/EPA incinerator inspection protocol, evaluation of state plan state OSHA programs, non-rulemaking changes in OSHA safety standards, OSHA's response to the March 13, 1990 Advisory Committee recommendations, and construction industry participation in the Voluntary Protection Program. The Advisory Committee will also

receive the report of the Lead Work Group. In addition, members of the public will make presentations regarding crane operator certification and the indemnification of general contractors by subcontractors.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202-219-8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 7th day of October, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92-24631 Filed 10-8-92; 8:45 am]

BILLING CODE 4510-26-M

Office of Federal Contract Compliance Programs

Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corp.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation.

SUMMARY: This notice advises of the Debarment of Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation as eligible bidders on Government contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Jaime Ramon, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., room C-3325, Washington, DC 20210 (202-219-9475).

SUPPLEMENTARY INFORMATION: On September 29, 1992, pursuant to 41 CFR 60-30.30 and 60-30.37, the Secretary of Labor issued a Decision and Final Administrative Order: (1) Finding Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation in violation of Executive Order 11246, as amended (30 FR 12319, September 28, 1965; 32 FR 14303, October 13, 1967; 43 FR 46501, October 5, 1978), section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 793, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended, 38 U.S.C. 4212, and their respective implementing regulations; (2) cancelling all Federal contracts and subcontracts of Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation which were awarded after June 5, 1992; and (3) declaring Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation, and their successors, officers, or subsidiaries ineligible for the award of any Government contracts or subcontracts and ineligible for extensions or other modifications of any existing Government contracts or subcontracts until such time as Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation satisfy the Director of OFCCP that they are in compliance with the laws found to have been violated. The Decision and Order is set forth below.

The debarment from future Government contracts and subcontracts and the ineligibility for extensions or other modifications of any existing Government contracts or subcontracts is effective immediately. The contract cancellation part of the Order will not become effective until the relevant contracting agencies have been consulted in accordance in section 209(a)(5) of Executive Order 11246, as amended by Executive Order 12086.

Signed October 5, 1992, Washington, DC.

Jaime Ramon,

Director, OFCCP.

Date: September 29, 1992.
Case No. 92-OFC-11.

In the matter of United States Department of Labor, office of Federal Contract Compliance Programs, Plaintiff, v. Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation, Defendants. Before: the Secretary of Labor.

Decision and Final Administrative Order

Plaintiff filed a complaint under the expedited hearing procedures, 41 CFR 60-30.31 to 37 (1990), on June 5, 1992, in this case arising under Executive Order No. 11,246, 3 CFR 339 (1964-1965), reprinted as amended in 42 U.S.C. 2000e note (1988), section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (1988), and section 402 of the Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C.A. 4211-4212 (West 1991) [1] (the Acts), alleging that Defendants violated a conciliation agreement entered into on December 19, 1988. The conciliation agreement resolved findings of noncompliance made by Plaintiff in a May 1988 compliance review of Defendants' plant in Aguadilla, Puerto Rico, where Defendants manufacture a wide variety of industrial protective clothing and protective products. 41 CFR part 60-2; 41 CFR 60-1.33; 41 CFR 60-741.25; 41 CFR 60-250.25. After a hearing on August 6 and 7, 1992, the Administrative Law Judge (ALJ) found that Defendants repeatedly violated the conciliation agreement, describing many of the violations in considerable detail. Recommended Decision and Order (R. D. and O.) at 4-7.

Plaintiff repeatedly notified Defendants of their failure to comply with specific requirements of the conciliation agreement in the agreed time limits. For example, Defendants failed to submit progress reports on time, and after repeated notification by Plaintiff, Defendants often submitted inadequate or incomplete reports, or reports containing significant errors. Defendants also failed to carry out actions to which they had committed themselves in their progress reports, such as a review of all physical and mental job qualification requirements for compliance with section 503, 41 CFR 60-741.6(c), or conducting outreach and positive recruitment for Vietnam Era veterans or handicapped workers. The ALJ found that

> Defendants' failure to comply with the specific requirements of the December 1988 Conciliation Agreement was not merely a failure to comply with "paperwork" rules, nor merely a failure to file routine reports on time, but rather a deliberate, complete violation of that agreement and of substantive equal employment opportunity law.

Id. at 13.

Defendants' vice-president and manager of the Aguadilla plant from the time of the compliance review and conciliation agreement until May 1991 was generally hostile toward and uncooperative with Plaintiff's investigators, R. D. and O. at 7-8, and Defendants' coordinator of equal

[1] The authority delegated to the Assistant Secretary for Employment Standards to issue final decisions under sections 504 and 402, 41 CFR 60-741.29(b)(3) and 60-250.29(b)(3) (1990), is withdrawn for purposes of this case.

employment opportunity had no training or background in the field and was given no training or support by Defendants after assuming those duties in 1989. *Id.* at 8–9. Even after the vice-president left the company, his successors as plant manager did little to bring Defendant into compliance. Francisco Martinez, the current plant manager, could offer only his assurance at the hearing that Defendants recognized their obligation to comply with the Acts and would do so after the hearing. T. (transcript of hearing) 230–33.

Defendants conceded they had violated the conciliation agreement, and I adopt the ALJ's findings in this regard. Defendants also had agreed to additional requirements and progress reports by acknowledging the terms of a letter sent by the Office of Federal Contract Compliance Programs (OFCCP) Caribbean District Director on April 17, 1990, P (Plaintiff's Exhibit)–22, characterized by Plaintiff as a Letter of Commitment, 41 CFR 60–1.33(b), but Defendants did not comply with the terms of that letter.

Plaintiff sought debarment of Defendants from the award of future contracts, but requested cancellation only of contracts awarded to Defendants after the date of filing of the administrative complaint. Thus Defendants' contract with the Department of Defense, Defense Personnel Support Center, P–27, for over $500,000 entered into on October 30, 1991, would not be canceled.

Finding "special factors" present here, however, the ALJ did not recommend that Defendants be declared ineligible for future contracts or that any of their current contracts be canceled. R.D. and O. at 13. The ALJ found that "there is persuasive evidence of clear resolve [by Defendants] to achieve compliance," because the uncooperative vice-president had been dismissed and the current plant manager promised to comply in the future. *Id.* at 14. He opined that "the jobs of 168 minority group workers should not be placed at risk [by debarment]." *Id.* The ALJ recommended entry of an order imposing detailed requirements with specific time limits to bring Defendants into compliance, including periodic progress reports, and permitting Plaintiff to seek debarment and contract cancellation through a subsequent expedited proceeding if Defendants failed to comply by the time of the due date for the second progress report, 90 days after entry of the order in this case. *Id.* at 14–16.

I.

The Secretary's authority to order debarment under the Acts is clear and Defendants do not contest it. See, e.g., *First Alabama Bank of Montgomery, N.A.* v. *Donovan*, 692 F.2d 714, 722 (11th Cir. 1982); *Uniroyal, Inc.* v. *Marshall*, 482 F. Supp. 364, 375 (D.D.C. 1979). Under Executive Order No. 11,246, for example, the Secretary has authority, after finding noncompliance, to order any of the sanctions listed in section 209(a) of the Order, including debarment and cancellation of contracts. See 29 U.S.C. 793(a) and 41 CFR 60–741.28 (1990); 38 U.S.C.A. 4212(a) and 41 CFR 60–250.28. I recently noted that

> [t]he usual practice in cases under the Executive Order where a violation has been found, has been to give the defendant a reasonable period of time to come into compliance on the specific violation(s), and to order cancellation of contracts and debarment if the defendant has not demonstrated compliance within that time * * *. When so framed, the final administrative order encourages compliance and is not punitive or draconian.

OFCCP v. *Lasko Metal Products, Inc.*, Case No. 87–OFC–00009, Sec. Dec., Aug. 31, 1992, slip op. at 11–12 (citations omitted).

However, where the facts are not in dispute and the law is settled, the Secretary has ordered debarment and contract cancellation without providing an additional period of time to demonstrate compliance. *Compare OFCCP* v. *Bruce Church, Inc.*, Case No. 87–OFC–7, Sec. Dec., June 30, 1987, slip op. at 5 (rejecting claimed lack of coverage as reason for failure to submit affirmative action program and imposing immediate sanctions), *with OFCCP* v. *Star Machinery Co.*, Case No. 83–OFCCP–4, Sec. Dec., Sept. 21, 1983 slip op. at 7 (resolving undecided question of coverage and giving defendant 120 days to prepare and submit AAP). See also *OFCCP* v. *The Prudential Insurance Company of America*, Case No. 80–OFCCP–19, Sec. Dec., July 27, 1980 (imposing sanctions for failure to provide copies of personnel computer tapes in compliance review); *U.S. Dep't of Housing and Urban Development* v. *S.T.C. Construction Co.*, Case No. 77–OFCCP–5, Sec. Dec., June 24, 1980, slip op. at 10–11 (imposing sanctions for failure to provide required reports and access to books and records); *OFCCP* v. *Uniroyal, Inc.*, Case No. OFCCP 1977–1, Sec. Dec., June 28, 1979, slip op. at 68 (imposing sanctions for failure to comply with discovery in enforcement proceeding), *aff'd as modified sub nom Uniroyal, Inc.* v. *Marshall*, 482 F. Supp. 364 (D.D.C. 1979).

Here, by entering the conciliation agreement, Defendant had an opportunity to demonstrate compliance for almost four years without being subjected to sanctions, but did almost nothing and concedes as much. On this record, which has been fully reviewed, I cannot accept the ALJ's conclusion that "there is persuasive evidence of clear resolve [by Defendants] to achieve compliance," R. D. and O. at 14, because they fired the uncooperative manager and hired a new one who "promises * * * to put things right, and to do so promptly." *Id.* at 13. The Secretary rejected a similar recommended finding in S.T.C. Construction, where the contractor also admitted failing to comply, repeatedly ignoring the requirements of the Executive Order, and blamed its failures on one of its managers but had given assurances of future compliance. The Secretary held those assurances could not be relied on and concluded that "[i]t is appropriate to impose sanctions where a clear violation of the Executive Order has occurred and impairment of the Government's monitoring and enforcement of the Order has resulted." *U.S. Dep't of Housing and Urban Devel.* v. *S.T.C. Construction Co.*, slip op at 10.

Here Defendants took no action to require their uncooperative vice-president to meet the compliance responsibilities, nor did they remove him until long after they were put on notice, repeatedly, of the plant's violations. The President of the parent company in New York received a copy of the August 1990 notice of violations, P–25, following the second compliance review, but did not order the vice-president to bring the plant into compliance and did not dismiss him until May 1991. Since May 1991, two new plant managers have also done virtually nothing to achieve compliance beyond assuring the ALJ that, right after the hearing, significant changes will be made.[2]

It appears that the ALJ was substantially influenced by the potential impact of debarment on the jobs of current employees. There have been no cases under the Acts addressing the question whether the Secretary should refrain from exercising her discretion to impose sanctions, after an unequivocal finding of violations, because of the possible impact on a contractor's business and on the jobs of the workers

[2] The hearing was held August 6 and 7, and Defendants' response before me is dated September 9, 1992. This three page response and two page cover letter continues to blame Defendants' former vice-president for the non-compliance with "paperwork procedures." There is no hint in either document that any effort to "put things right, and to do so promptly" has begun.

covered by these laws.[3] Useful analogies may be found, however, in cases under the Fair Labor Standards Act (FLSA) where district courts exercise similar discretion in fashioning remedies and imposing sanctions.

In *Donovan* v. *Sovereign Sec., Ltd.*, 726 F.2d 55 (2d Cir. 1984), the court of appeals reversed a district court order eliminating pre- and post-judgment interest on back pay due under the FLSA from earlier orders enjoining continued withholding of unpaid overtime compensation. The court said the defendant should have been found in contempt for violating the earlier orders and that "[t]he employer's financial difficulty * * * did not outweigh the strong policies favoring award of interest on back pay." 726 F.2d at 58. The court recognized that "it would be a Pyrrhic victory to force the company out of business, so that it could not pay even the back wages and current employees would lose their jobs. But the proper way to avoid this calamity is to formulate a manageable payment schedule, not to extinguish part of the debt." *Id.* The court deemed the district court's investigation of the company's ability to pay inadequate because based only on a conclusory affidavit by the company treasurer and the company tax returns. To avoid a contempt order, Defendants must carry a heavy burden of showing inability to comply. *Id.* at 59–60.

Similarly, in *Hodgson* v. *A–1 Ambulance Serv., Inc.*, 455 F.2d 372 (8th Cir. 1972), when an employer violated an injunction ordering it to comply with FLSA minimum wage and record keeping provisions, the Department of Labor sought contempt. The district court found the company in contempt, but imposed a fine of only $1,000 and refused to order payment of the wage deficiencies, based on balancing the equities of the impact of a back wage order on the company and the individual Defendants and their ability to remain in business, the impact on the city of cessation of ambulance service, and the impact on the employees who might get nothing and might lose their jobs. The court of appeals reversed, holding that in light of the "national policy involved in the Fair Labor Standards Act" the district court should have entered an order for payment of back wages. 455 F.2d at 374. "The financial ability or inability of the employer at the time of the contempt hearing to make payment * * * has nothing to do with the court's duty, in furtherance of the policy involved in the Act, to make an order for payment * * *." *Id.* Entry of such an order itself might "prompt the Company and its officers to extra endeavors [to make the payments and comply with the Act] * * *." *Id.* Quoting from *Hodgson* v. *Taylor*, 439 F.2d 288, 290 (8th Cir. 1971), the court said " '[t]he Act does not exempt employers who are in financial difficulties * * *.' [F]inancial hardship caused by the order is not a valid basis on which to deny the employees their remedy or to allow a wrong against the public to go uncorrected." 455 F.2d at 375. The court also noted that the district court did not have before it Defendant's financial records or income tax statements, and that the company was an "operating business [that] apparently desired to remain so." *Id.* at 374. The court of appeals noted, however, that after entering a "contempt-purging wage-payment order," *Id.*, the district court had the discretion to provide for "reasonable terms of time and manner of payment." *Id.* at 375.

Here, the ALJ did not have Defendants' financial statement or tax returns before him, and he noted the plant manager's concession that he was not familiar with Defendants' net sales or what portion of the sales were federal contracts.[4] *Id.* at 11. Indeed, the ALJ found that "there is no documented, objective evidence of record to support Defendants' assertion that debarment could cause closing the Aguadilla plant * * *." *Id.* at 13. Defendants' parent company, Eastco Industrial Safety Corporation, reported on its 10–K report to the Securities and Exchange Commission that "this [Defendants'] segment of the Company is not dependent upon any single customer or any few customers, the loss of any one or more of whom would have an adverse effect on the business of the Company. No one company or customer accounts for more than 10% of this segment's sales." P–28, pages 6–7.

It is not clear on this record, therefore, that debarment would have any significant impact on Defendants business, and it is entirely speculative whether Defendants would be awarded the large contract for gloves or other federal contracts mentioned by the plant manager. R.D. and O. at 11 and n.3 above. Loss of the opportunity to bid on federal contracts should sting enough to gain Defendants' attention, to "prompt" [them] to extra endeavors, "*Hodgson* v. *A–1 Ambulance Service, Inc.*, 455 F.2d at 374, but is unlikely to drive them out of business. As suggested by the FLSA cases, Defendants should bear the burden of showing that sanctions would so adversely affect their business as to threaten their existence, particularly after entering into a conciliation agreement which forestalled enforcement action in 1988.

"The purpose of debarment is * * * to encourag[e] compliance," *First Alabama Bank of Montgomery, N.A.* v. *Donovan*, 692, F.2d at 722, and I find the record here shows immediate imposition of sanctions is the appropriate next step to achieve that purpose. Defendants ignored their obligations under the Acts both before 1988 and after signing the conciliation agreement. Plaintiff could have filed an expedited proceeding in 1988 and, had the Secretary issued an order then giving them time to comply before being debarred and had they treated it as cavalierly as they have the conciliation agreement, Defendants likely would have been debarred several years ago. Defendants' latest filing before me shows they still view their noncompliance as technical in nature, no more than "solely * * * processing paperwork." Defendants' Response to Plaintiff's Exceptions at 1. Defendants attribute their problems to a "personal feud" with Plaintiff's compliance officer, still blame the uncooperative vice president, who has been gone for over a year, for their noncompliance, *id.* at 3, and seek to deflect the focus from their own failures by the *ad hominem* argument that Plaintiff's counsel is "conducting a vendetta" against them. Covering letter to Responses to Exceptions at 2. To paraphrase the court in Uniroyal, "the policy and program [of the Acts] would be nothing more than an empty shell, an abstract statement of principles, unless it is backed by adequate means of enforcement," 482 F. Supp. at 375, and the will to employ those means when a violator has had

[3] Plaintiff cited a number of cases arising under the Service Contract Act of 1965, as amended (SCA), 41 U.S.C. 351–58 (1988), which have addressed considerations similar to those relied on by the ALJ here for recommending against debarment. However, I find analogies to cases under the SCA of limited utility in Executive Order cases because of significant differences in the scope of the Secretary's discretion after a violation has been found. Under the SCA, a contractor *must* be debarred for a period of three years where the act has been violated, unless the Secretary "recommends otherwise because of unusual circumstances." 41 U.S.C. 354(a); 29 CFR § 4.188 (1991). The SCA debarment provision has been described as "particularly unforgiving", requiring violators who would avoid its impact to "run a narrow gauntlet." *A to Z Maintenance* v. *Dole*, 710 F. Supp. 853, 855 (D.D.C. 1989). By contrast the Secretary has broad discretion under the Executive Order to take any of the actions enumerated in section 209, and has similar discretion under sections 503 and 402 to "take such action * * * as the facts and circumstances warrant." 29 U.S.C. 793(b).

[4] The manager also expressed concern that debarment would deprive Defendants of an opportunity to bid on a large contract for gloves as well as other contracts.

more than adequate opportunity to comply. "Effective enforcement * * * depends" on voluntary compliance and "meaningful sanctions" when voluntary compliance repeatedly is not forthcoming. *Id.*

Plaintiff's request for debarment was tempered by restraint in not seeking cancellation of all current contracts. If Defendants can demonstrate compliance in 90 days, the period recommended by the ALJ, their names can be removed from the ineligibility list at that time and debarment should have little impact on their viability. If they do not comply, however, under the ALJ's recommended order. Plaintiff would be required to initiate new enforcement proceedings and, even under the expedited procedures, it could be well into next year before the matter is resolved. Under the order entered below, the burden is on Defendants to demonstrate that they are responsible contractors.

II.

Accordingly, I *adopt* paragraphs 1 and 2 of the Recommended Order of the ALJ. R.D. and O. at 14–16.

In addition, it is *ordered* that all Federal Government contacts, and subcontracts of Defendant Disposable Safety Wear, Inc., and Defendant Puerto Rico Safety Equipment Corporation awarded after June 5, 1992, shall be canceled, and Defendants, their officers, subsidiaries and successors shall be ineligible for the award of any Federal Government contracts or subcontracts and shall be ineligible for any extensions or other modifications of any existing Federal Government contracts or subcontracts until Defendants have satisfied the Secretary of Labor, in the manner provided in paragraphs 1 and 2 of the ALJ's Recommended Order, that they are in compliance with the provisions of Executive Order No. 11,246, section 503, section 402, the rules, regulations and orders issued thereunder, and the Conciliation Agreement of December 19, 1988, which have been found to have been violated in this case. After submission of the second progress report required in paragraph 2(g)(2) of the ALJ's Recommended Order, Defendants may petition for reinstatement as an eligible bidder for government contracts in accordance with 41 CFR § 60–1.31.

So ordered.

Washington, D.C.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–24666 Filed 10–8–92; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92–62)]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Aerospace Medicine Advisory Committee.

DATES: October 19, 1992, 8:30 a.m. to 5 p.m.; October 20, 1992, 8:30 a.m. to 5 p.m.; and October 21, 1992, 8:30 a.m. to 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–5, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Dr. J. Richard Keefe, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1530).

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Tuesday, October 20, 1992, from 8:30 a.m. to 10 a.m. to allow for a discussion on qualifications of individuals being considered for membership to the Committee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Life Sciences in NASA
—Status of the Biomedical Monitoring and Countermeasures Program
—Status of the Aerospace Medicine Advisory Committee Strategy Study

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 2, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92–24624 Filed 10–8–92; 8:45 am]

BILLING CODE 7510–01–M

[Notice (92–61)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATES: October 21, 1992, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–3, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0346.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public from 3:15 p.m to 4:30 p.m. for a discussion of the qualifications of additional candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Developments since June 1992 Meeting
—Current Status of High Energy Astrophysics Missions
—Pluto Flyby/Neptune Orbiter Program
—Potential Measures of the Scientific Productivity of Astrophysics Missions
—Reexamination of the Final Report of the Astronomy and Astrophysics Survey Committee (Bahcall Report) Recommendations
—Discussion of Subcommittee Membership (Closed Session)

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 2, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92–24625 Filed 10–8–92; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multidisciplinary Arts Section) to the National Council on the Arts will be held on October 27, 1992 from 9:15 a.m.–6 p.m., October 28–29 from 9 a.m.–6 p.m. and October 30 from 9 a.m.–5:30 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on October 27 from 9:15 a.m.–10:30 a.m. and October 30 from 3 p.m.–5:30 p.m. for opening remarks, general program overview, and policy discussion.

The remaining portions of this meeting on October 27 from 10:30 a.m.–6 p.m., October 28–29 from 9 a.m.–6 p.m., and October 30 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these questions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: October 6, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–24663 Filed 10–8–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting Notice Amendment

The Advisory Committee for Astronomical Sciences is meeting in Washington, DC, on October 22 and 23, 1992. This notice serves to amend the announcement by providing for a closed session on October 22 from 2:30 to 5:30 p.m. in which the roles of the National Astronomy Centers and University Facilities will be discussed. It is necessary to close this session because discussions will cover topics which, if disclosed prematurely, would significantly frustrate the Foundation's implementation of proposed agency action. These matters are exempt under 5 U.S.C. 552b(c)(9)(B) of the Government in the Sunshine Act. There are no other changes to the agenda. For further information, please contact Dr. M. Kent Wilson, Director, Division of Astronomical Sciences, 202–357–9488.

This meeting was originally announced in the **Federal Register** on page 45407, October 1, 1992, (57 FR 45407).

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24573 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Chemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting.

Date and Time: October 29, 1992, 9 a.m.–5 p.m. October 30, 1992, 9 a.m.–3 p.m.

Place: October 29, 1992, room 540, October 30, 1992 room 543, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Kenneth G. Hancock, Director, Division of Chemistry, room 340, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–7947.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research and education in chemistry.

Agenda: Long range planning for the Division of Chemistry, review of current activities, and discussion of new programs and procedures.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24580 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 26, 1992; 8:30 a.m.–5:30 p.m. October 27, 1992; 8:30 a.m.–3 p.m.

Place: Diplomat Room, State Plaza Hotel, 2117 E Street, NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. Irene C. Peden, Division Director, Electrical and Communications Systems, room 1151, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7925.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide oversight review of the ECS Programs.

Agenda: To hear reports from subgroups of the Committee, which will provide oversight on the management of program activities of the Division, and to provide input to future directions that the Division should take. The Committee will provide advice on personnel and funding priorities, and on other interactions between the Division and the engineering community.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24584 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunity in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE)

Date and Time: October 28, 1992; 1 p.m.–1:30 p.m. (Open), 1:30 p.m.–3:30 p.m. (Closed), 3:30 p.m.–5:30 p.m. (Open). October 29, 1992; 8:30 a.m.–3:30 p.m. (Open), 3:30 p.m.–5 p.m. (Closed). October 30, 1992; 8:30 a.m.–12 p.m. (Open).

Place: Rooms 540 and 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part-Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 1800 G Street, NW., Rm. 1225, Washington, DC 20550. Telephone: (202) 357–7461.

Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To review programs designed to attract the participation of women, minorities, and persons with disabilities in science and engineering; to review assessments of participation rates of all segments of society in science and engineering, and to prepare the Report to Congress.

Agenda: Open Sessions, October 28: 1 p.m. to 1:30 p.m.—Opening of the Meeting and report of the NSF National Conference on Diversity in the Scientific and Technological Workforce. 4 p.m. to 5:30 p.m.—Meeting with the Education and Human Resource Policy Committee to discuss the status of NSF programs to attract women, minorities, and persons with disabilities to science and engineering and to discuss the CEOSE strategic plan. October 29: 8:30 a.m. to 3:30 p.m.—Review of programs to attract women, minorities, and persons with disabilities to science and engineering; assessments of outcomes; and review of the CEOSE strategic plan. 5:30 p.m., Reception. October 30: 8:30 a.m. to 12 p.m.—Plans for future programs and future NSF directions, and planning of Report to Congress. *Closed Sessions,* October 28, 1:30 p.m.–3:30 p.m. and October 29, 3:30 p.m.–5:00 p.m. Working sessions to review program performance and draft Report to Congress.

Reason for Closing: The Committee will discuss individual performances of NSF employees in the context of the report; therefore, these portions are closed to the public. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 2, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24576 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 29–31, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1242, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Philip Harriman, Program Director, Molecular and Cellular Biosciences, National Science Foundation, room 325I, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9687.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate genetic biology research proposals (Panel A) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Bebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24582 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Linguistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 29–30, 1992; 9 a.m. to 5 p.m.

Place: Georgetown Harbour Mews 1000 29th Street, NW Washington, DC 20007

Type of Meeting: Closed.

Contact Person: Paul G. Chapin, Program Director for Linguistics, Division of Behavioral and Cognitive Sciences, room 320, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7696.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate linguistics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24577 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: October 26–27, 1992 8:30 a.m. til 5 p.m.

Place: National Science Foundation, 1800 G St., NW., Washington DC, room 540.

Type of Meeting: Open.

Contact Person: Dr. Bernard R. McDonald, Acting Director, Division of Mathematical Sciences, room 339, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9669. Anyone planning to attend this meeting should notify Dr. McDonald no later than October 22, 1992.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research, education, and human resources in the mathematical sciences.

Agenda: Monday, October 26, 1992: 8:30 a.m. til 5 p.m.

Welcome and Introductions

Status of the Division

—Data on FY 1992

—Information on FY 1993 Budget

Planning at the National Science Foundation

—Commission on the Future of the National Science Foundation

Discussion on Funding Modes for the Division of Mathematical Sciences

—Flat Rate Demonstration Project, Tuesday, October 27, 1992 8:30 a.m. til 5 p.m. discussion on Funding Modes for the Division of Mathematical Sciences, Discussion with Foundation Administration, Advisory Committee Plans for Future Activities.

—Subcommittee Assignments

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24575 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date & Time: October 26–28, 1992, 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. Vincent P. Gutschick, Program Director, IBN, room 321, National Science Foundation, 1800

G St. NW., Washington, DC 20550. Telephone: (202) 357–7975.

Agenda: Open session: October 27, 4 p.m. to 5:30 p.m. at which time both the Division Director for IBN and the Assistant Director of the BIO Directorate will give a brief talk on new research in Foundation and Physiological Ecology.

Closed session: October 26 & 28, 8:30 a.m. to 5 p.m. and October 27, 8:30 a.m. to 4 p.m. To review and evaluate Functional and Physiological Ecology proposals as part of the selected process for awards.

Date & Time: October 26–27, 1992, 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC.

Contact Person: Barbara Zain, Program Director, IBN, room 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7975.

Agenda: Open session: October 27, 4 p.m. to 5:30 p.m. at which time both Division Director for IBN and the Assistant Director for the BIO Directorate will give a brief talk on new research trend in Animal Systems Physiology.

Closed session: October 26, 8:30 a.m. to 5 p.m. and October 27, 8:30 a.m. to 4 p.m. To review and evaluate Animal Systems Physiology proposals as part of the selection process for awards.

Date & Time: October 26–27, 1992.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC. 20550.

Contact Person: Elvira Doman, Program Director, IBN, room 321, National Science Foundation, 1800 G Street NW., 20550. Telephone: (202) 357–7975.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: October 27, 4 p.m. to 5 p.m. at which time both the Division Director for IBN and the Assistant Director for the BIO Directorate will give a brief talk on new research trends in Endocrinology.

Closed session: October 26, 8:30 a.m. to 5 p.m. and October 27, 8:30 a.m. to 4 p.m. To review and evaluate Endocrinology proposals as part of the selection process for awards.

Date & Time: November 4–6, 1992, 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. Fred Stollnitz, Program Director, IBN, room 321, 1800 G Street NW., Washington, DC.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: November 6, 9:30 a.m. to 11 a.m. at which time both the Division Director for IBN and the Assistant Director of the BIO Directorate will give a brief talk on new research trends in Animal Learning Behavior.

Closed session: November 4–5, 8:30 a.m. to 5 p.m. and November 6, 8:30 a.m. to 9:30 a.m. & 11 a.m. to 5 p.m. To review and evaluate Animal learning Behavior proposals as part of the selection process for awards.

Type of meeting: Part—Open.

Purpose of meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24581 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

President's Committee on the National Medal of Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: Tuesday, October 27, 1992; 8:30 a.m.–3 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Staff Assistant, room 545, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7512.

Purpose of meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a person natural where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24583 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Workshop

The National Science Foundation (NSF) will hold a two day workshop on the Role of Professional Societies in Two-Year College Science, Mathematics, and Engineering Education. The meeting will begin at 8:30 a.m. October 29, 1992, and end at 5 p.m. on October 30, 1992, and will be held at the Washington Hotel, 515 15th Street, NW., Washington, DC 20550.

The primary focus of the meeting will be professional society activities to strengthen the role of two-year colleges in improving the mathematical, scientific, and technological levels of students at all levels. The types of items to address at the workshop include:

(1) Professional society actions to support the integrated teacher/scholar role of lower division science, engineering and mathematics faculty.

(2) Formation of networks among two-year college leaders from varied scientific, engineering and mathematics organizations.

(3) Promotion of two-year faculty leadership in professional organizations.

(4) Professional society services to enhance lower division education, particularly those directed to two-year faculty.

(5) Professional society roles in developing initiatives to increase the number and quality of proposals to NSF, and other funding agencies, from two-year college faculty.

Although the workshop will not operate as an advisory committee, the public is invited to attend. Participants will include two-year college faculty, four-year and university faculty, and members and staff from approximately 25 professional societies. A report of the workshop will be published.

For additional information, contact John Clevenger, NSF/AACJC Fellow, Division of Undergraduate Education, NSF, 1800 G Street, NW., Washington, DC 20550 (202) 357–7051.

Dated: October 5, 1992.

Dr. Robert Watson,

Director, Division of Undergraduate Education.

[FR Doc. 92–24574 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Social Psychology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 29–30, 1992; 9 a.m.
Place: National Science Foundation, 1800 G Street, NW., room 523, Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. Jean B. Intermaggio, Program Director, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9485.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Social Psychology proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24579 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the Following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.
Date and Time: October 26, 1992; 8:30 a.m. to 5 p.m. October 27, 1992; 8:30 a.m. to 5 p.m.
Place: National Science Foundation, 1110 Vermont Avenue, Washington, DC.
Type of Meeting: Closed.
Contact Person: Dr. Curtis Sears, Program Director, 1800 G Street, NW., rm 1210, Washington, DC 20550. Telephone: (2020 357–7051.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: A reverse site visit panel meeting for proposals submitted to the Teacher Preparation Collaboratives (TPC) Program.
Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24585 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–90]

Initiation of Section 302 Investigation Concerning Indonesian Pencil Slats and Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of an investigation pursuant to section 302(a) of the Trade Act of 1974, as amended (Trade Act); request for public comment.

SUMMARY: Pursuant to section 302(a) of the Trade Act, 19 U.S.C. 2412(a), the United States Trade Representative (USTR) has determined to initiate an investigation of Indonesia's policies and practices with respect to the exportation of pencil slats. USTR invites public comment concerning the matter under investigation.

DATES: Written comments from the public are due on or before November 2, 1992.

ADDRESS: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director, Southeast Asian Affairs (202) 395–6813; Joseph Papovich, Deputy Assistant United States Trade Representative for Industry and Labor (202) 395–6160; or Tim Reif, Associate General Counsel (202) 395–6800. For information concerning filing procedures, contact Dorothy Balaban, Special Assistant to the Section 301 Committee (202) 395–3432.

SUPPLEMENTARY INFORMATION: On August 18, 1992, P&M Cedar Products, Inc. and Hudson ICS filed a petition pursuant to section 302(a) of the Trade Act alleging that various Indonesian practices concerning pencil slats are unreasonable and burden or restrict United States commerce. The petition alleges that the following practices by Indonesia have the effect of enhancing exports of Indonesian pencil slats to third-country markets and are actionable under section 301: (1) The imposition of differential export taxes, with an extremely high tax on logs and no tax on finished products such as pencil slats; (2) underpricing of government-owned timber stock; and (3) failure to enforce the terms of timber concession arrangements.

According to petitioners, the combined effect of these practices has resulted in a substantial decline in their sales to third-country markets. Petitioners contend that these actions are part of Indonesia's plan to target exports of wood products, including pencil slats, a practice which is actionable under section 301(d)(3)(E) of the Trade Act, 19 U.S.C. 2411(d)(3)(E).

Copies of the public version of the petition are available for public inspection in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20506. An appointment to review the docket (Docket No. 301–90) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Investigation and Consultations

Section 302(a)(1) of the Trade Act provides that "[a]ny interested person may file a petition with the Trade Representative requesting that action be taken under section 301 and setting forth the allegations in support of the request." On October 2, 1992, after reviewing the allegations set forth in the petition filed by P&M Cedar Products, Inc. and Hudson ICS, the Trade Representative determined to initiate an investigation of Indonesia's acts, policies, and practices concerning pencil slat exports. USTR also requested consultations with the Government of Indonesia, as required by section 303(a) of the Trade Act. USTR will seek information and advice from the petitioners and the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for the consultations.

Public Comment

Interested persons are invited to submit written comments concerning the issues raised in the petition and any other submissions to USTR in this investigation. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed by November 2, 1992. Comments must be in English and provided in 20 copies to: Chairman, Section 301 Committee, room 223, USTR

600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301-90) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92-24659 Filed 10-8-92; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31284; File No. SR-NASD-92-33]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Enforcement of Arbitrators' Orders Under the NASD Code of Arbitration Procedure

October 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Part III, Section 35 of the NASD Code of Arbitration Procedure ("Code"). Below is the text of the proposed rule change. Proposed new language is in italics, proposed deletions are in brackets.

CODE OF ARBITRATION PROCEDURE

PART III—UNIFORM CODE OF ARBITRATION

Interpretation of Provisions of Code and Enforcement of Arbitrator Rulings

Sec. 35. The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code *and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such* [which] interpretations *and actions to obtain compliance* shall be final and binding upon the parties.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend section 35 of Part III of the Code to emphasize the authority of arbitrators to enforce orders they issue in the course of an arbitration proceeding. The proposed rule change states that arbitrators may take appropriate action to obtain compliance with their rulings, and that such action is final and binding on the parties. The proposed rule change was prompted by reports of situations in which parties have not complied with orders issued by arbitrators, and in which no specific provision of the Code could be cited to encourage compliance. The proposed rule change highlights existing arbitral authority to issue sanctions, and is to be accompanied by an addition to the Arbitrator's Manual, which lists the types of sanctions that may be applied by arbitrators.

The proposed rule change and additions to the Arbitrator's Manual were adopted by the Securities Industry Conference on Arbitration ("SICA") at its meeting on January 7, 1992. In adopting the change to the Code, SICA acknowledged that, although arbitrators have inherent authority to frame sanctions for non-compliance with their orders, they may not always exercise this authority because they are unaware of the extent of their authority. In addition, since no Code provision referred specifically to the enforcement of orders, SICA felt that parties might also be unaware that they can request arbitrators to issue sanctions for non-compliance with their orders. SICA determined that the proposed change to the Code and related addition to the Arbitrator's Manual would remedy these problems, and recommended that the self-regulatory organizations make similar changes to their arbitration rules.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act.[1] In pertinent part, section 15A(b)(6) requires that the rules of a national securities association be designed to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." The NASD believes that the proposed rule change will facilitate the arbitration process, and therefore, is in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] 15 U.S.C. 78o-(1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24612 Filed 10-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31285; File No. SR-NYSE-92-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendments to Rule 421 (Periodic Reports)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 12, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 421 (Periodic Reports) concerning the submission of monthly short position reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require the electronic transmission of monthly short position reports by members and member organizations.

Rule 421 requires members and member organizations to report total "short" positions (*i.e.*, positions resulting from short sales, as that term is defined in Securities Exchange Act Rule 3b-3)[1] in listed securities on a monthly basis. Currently, reports are made on Form MF-2 or MF-2 Summary Form and submitted in "paper" form to the Exchange. The Exchange utilizes such data, in general, for surveillance of market activity. In addition, the Exchange publishes a monthly release of short interest information as a service to listed companies, the investing public, market professionals and other interested parties.

The proposed amendments to Rule 421 will eliminate the use of the paper forms currently used to report short position information and, instead, will require the electronic transmission of such information through the Securities Industry Automation Corporation ("SIAC").

Requiring electronic transmission of monthly short interest data will improve the Exchange's efficiency in the processing and compilation of such data and facilitate the Exchange's continuing efforts to reduce key-punching. The information required to be submitted to the Exchange will not be changed under the proposed rule amendment. There will be alternative methods of electronically reporting the short position information (*e.g.*, by P.C. or by CPU (Central Processing Unit) to CPU), through SIAC.

[1] 17 CFR 240.3b-3 (1992).

2. Statutory Basis

The proposed rule change is consistent with the requirements of section 6(b)(5) of the Act. By providing for enhanced automation, the proposed rule change will help ensure that the Exchange's regulatory and surveillance capabilities keep pace with today's market environment and thereby protect investors and the public interest in accordance with section 6(b)(5) of the Act. The proposed rule change is also consistent with section 6(b)(5) of the Act in that it will assist in preventing fraudulent an manipulative acts and practices and thereby promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-21 and should be submitted by October 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24611 Filed 10-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18995; 812-7994]

IBM Mutual Funds et al.; Application

October 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: IBM Mutual Funds that consist of three series, IBM Large Company Index Fund, IBM Small Company Index Fund, and IBM U.S. Treasury Index Fund (collectively, the "Funds"), and IBM Credit Investment Management Corporation, the investment adviser to the Funds (the "Manager"), and future funds for which the Manager or any person or entity in the future controlling, controlled by, or under common control with the Manager, acts as adviser, sub-adviser, or distributor (the "Future Funds," and, together with the existing Funds, the "Funds".

RELEVANT ACT SECTIONS: Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the operation of a joint trading account to be used to enter into repurchase agreements.

FILING DATE: The application was filed on July 21, 1992.[1]

[1] In a letter dated September 29, 1992 from applicants' counsel, such counsel represented that applicants will submit an amendment during the notice period clarifying certain statements made in the application, the substance of which are incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 27, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o IBM Credit Corporation, 290 Harbor Drive, Stamford, Connecticut 06904-2399.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack-Matz, Senior Attorney at (202) 504-2801 or Nancy M. Rappa, Branch Chief at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The existing Funds are registered open-end management investment companies, authorized by their investment policies and limitations to invest in repurchase agreements. The Manager serves as investment adviser to each of the existing Funds.

2. Currently, the daily uninvested cash balances of the existing Funds are separately invested in individual repurchase agreements. Each morning the Funds' custodian, State Street Bank and Trust Company (the "Custodian"), determines each Fund's short-term cash availability balance. Once this amount is established, it is relayed to the Manager who, on behalf of the Funds, negotiates or approves the proposed interest rate for repurchase agreements for that day. The Custodian determines the securities required for collateral in connection with the repurchase agreements and such collateral is approved by the Manager. The estimated amount of collateral required is based on the amount of the current day's available cash. This projection may be adjusted during the day to reflect additional cash that becomes available.

3. Each of the existing funds has established similar standards, including quality standards for issuers of repurchase agreements, and requirements that the repurchase agreements be at least 102% collateralized at all times.

4. Currently, the Manager must separately pursue, secure, and implement the repurchase agreement investments. This has resulted in certain inefficiencies, and may limit the result that some or all Funds achieve. Therefore, the Funds seek permission to deposit the uninvested cash balances remaining at the end of each trading day into a joint account, the daily balance of which would be used to enter into one or more short-term repurchase agreements in a total amount equal to the aggregate daily balance in the account. Each Fund would participate in the joint account on the same basis as every other Fund in conformity with its fundamental investment objectives and policies.

5. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations that satisfy the policies and guidelines of the Funds concerning repurchase agreements. Particular types of obligations permitted as collateral by the Funds would be identified and the Funds' custodian bank would be notified. The securities would be either wired to the account of the custodian bank at the proper Federal Reserve Bank, transferred to a subcustodian account of the Funds at another qualified bank, or redesignated and segregated on the records of the custodian bank if the custodian bank is already the recorded holder of the collateral for the repurchase agreement.

6. The obligations of the Funds to counterparties in any particular repurchase transaction will be several in proportion to their respective participation in the account and not joint. Applicants believe that a Fund's investment in the joint account will not be subject to the claims of creditors (whether brought in bankruptcy, insolvency, or other legal proceeding) of any other participant Fund in the joint account.

7. The custodial account will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that monies from the Fund may be deposited on a commingled basis. The custodial account will not have any separate existence that would have indicia of a separate legal entity. Each Fund will transfer cash it wishes to invest in a joint account after the conclusion of its daily trading activity

into such account. The sole function of the custodial account will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management by each Fund of its uninvested cash balances. In addition, there will be no opportunity for one Fund to use any part of a balance in the account credited to another Fund, since no Fund will be allowed to create a negative balance in the account for any reason.

Applicants' Legal Analysis

1. The Manager and each Fund could be deemed to be a "joint participant" in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed joint account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d-1 under the Act.

2. The Funds will benefit by participating in the joint account for the following reasons: (a) It is possible to negotiate a higher rate of return on large short-term repurchase agreements that is greater than the rate of return that can be negotiated for smaller repurchase agreements, and (b) by reducing the number of trade tickets that each non-bank government securities dealer or major brokerage house will have to write, transactions should be simplified for those organizations, with a related reduction in the opportunities for errors.

3. Applicants believe that the proposed method of operating the account will not result in any conflicts of interest among the joint participants.

4. Although the Manager can gain some benefit through administrative convenience and some possible reduction in its clerical costs, the primary beneficiaries will be the participating Funds and their shareholders because the joint account may earn higher returns for the Funds.

5. For the reasons set forth in the application as summarized above, applicants submit that the criteria of rule 17d-1 for issuance of an order under Section 17(d) are met by the joint account.

Applicant's Conditions

As express conditions to obtaining an order granting the relief requested, applicants agree that the proposed joint account will operate as follows:

1. A separate cash account will be established at one or more custodian banks into which each participating Fund would deposit some or all of its daily uninvested net cash balances. Each Fund that has a custodian bank other than the bank at which the proposed joint account is maintained and that wishes to participate in the joint account will appoint the latter bank as a sub-custodian for the limited purpose of receiving cash for deposit into the proposed joint account.

2. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations which satisfy the policies and guidelines of the Funds concerning repurchase agreements.

3. Each repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration and in no event will it have a duration of more than seven days.[2]

4. All investments held by the joint account will be valued on an amortized cost basis.

5. Each participating Fund relying upon rule 2a-7 under the Act permitting valuation on the basis of amortized cost will use the weighted average maturity of the repurchase agreements purchased by the Funds participating in the joint account for the purpose of computing that Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

6. In order to assure that there would be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund will be allowed to create a negative balance for any reason, although it will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the joint account will be solely at its option; a Fund will not be required either to invest a minimum amount or to maintain a minimum balance. Each Fund will retain the sole rights of ownership to all of its assets invested in the joint account, including any interest payable on the assets invested in the joint account. Each Fund's investment in the joint account will be documented daily on the books of the Fund as well as on the books of the custodian bank.

7. Each Fund will participate in the net income earned or accrued in the account and all instruments held in the joint account (i.e., cash and U.S. Government securities subject to repurchase agreements) on the basis of the percentage of the total amount in the account on any day represented by its share of the account or of such particular instruments.

8. Under the general terms of each Fund's Investment Advisory Contract, ("Contract"), the Manager will administer the investment of the cash balances in and operation of the joint account and will not collect any separate fees for the management of the joint account. The Manager will collect its fees based upon the assets of each separate Fund as provided in each respective Contract.

9. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 thereunder.

10. The Board of Trustees of the Funds and any Future Funds participating in the joint account will evaluate annually the joint account arrangement, and will continue participation in the account only if they determine that there was a reasonable likelihood that the participating Fund and its shareholders would benefit from continued participation and that no participant will be treated on a less advantageous basis than another participant.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24614 Filed 10-8-92; 8:45 am]

BILLING CODE 8010-01-M

[2] For example, repurchase agreements may be of a longer duration than overnight or over-the-weekend in cases of a three-day holiday weekend, or instances where a better return would be obtained on a repurchase agreement extended longer than overnight or over-the-weekend but not longer than seven days.

[Release No. 35-25646]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 2, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rule promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 26, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing,

if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Cogenex Corporation

[70–8003]

EUA Cogenex Corporation ("Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, a wholly-owned subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act and rule 51 thereunder.

Cogenex proposes to acquire all of the outstanding shares of capital stock of New England Sun Control, Inc. ("NESC"), a Rhode Island corporation, consisting of 100 shares of no par common stock ("Shares"), from the sole stockholder of NESC ("Seller"). The purchase price will be $5.1 million, subject to certain adjustments, plus an amount not exceeding $3.5 million to be paid out over a four year period if certain objectives are achieved during that period.

NESC currently provides integrated lighting efficiency services designed to achieve an efficiency gain through integration of lamps, ballasts, and light reflectors. After performing a lighting survey, NESC manufactures light reflectors from aluminum sheets which are coated with a special material to maximize lighting efficiency and quality for its customers using computer controlled metal stamping presses which are fully integrated with a computer-aided design process. In addition, NESC sells and installs other energy-efficient equipment, including: (1) Lamps, ballasts, sensor switches and exit sign retrofit kits, (2) energy saving air conditioning equipment, (3) energy-efficient electric motors, (4) building automation systems, and (5) window film which reduces heat transfer through glass and screens sunlight.

Prior to the acquisition, NESC will transfer its wholesale window film distribution business to the Seller or his designee. After the acquisition, NESC will be merged into and operated as a division of Cogenex.

In the alternative, the manufacturing business of NESC will be transferred to a new company of the Seller or his nominee ("Newco") prior to the Acquisition. Cogenex would then enter into a supply contract with Newco for the supply of the reflectors. However, Newco would not be the exclusive source of reflectors for Cogenex. In addition, Cogenex would enter into an option agreement with Newco for the purchase of the assets and attendant liabilities of Newco at the then fair market value as of the date of the exercise of the option, but in no event, less than $60,000 nor more than $150,000.

In connection with the acquisition, Cogenex will enter into an employment agreement with the Seller, whereby the Seller will be retained as a divisional president of Cogenex. In addition, Cogenex, as tenant, will enter into a lease agreement with the Seller, as landlord, for office and manufacturing space which NESC now occupies and which is owned by the Seller.

Cogenex will purchase the Shares with funds obtained from: (1) Short-term borrowings through existing lines of credit; (2) internally generated funds; (3) capital contributions from EUA; and/or (4) purchases of Cogenex common stock by EUA. The application states that Cogenex has authorization to obtain such funds under prior Commission order dated October 24, 1991 (HCAR No. 25396).

The Official Bondholders' Committee of EUA Power Corporation

[70–8034]

The Official Bondholders' Committee of EUA Power Corporation ("Committee"), c/o State Street Bank and Trust Company, Corporate Trust Department, 5th Floor, One Heritage Drive, North Quincy, MA 02171–2128, has filed an application-declaration, as amended, including a modified second amended plan of reorganization ("Plan") and a modified first amended disclosure statement, under sections 11(f), 11(g), 12(c) and 12(d) of the Act and rules 42, 44, 62, 63 and 64 thereunder.[1] The Committee requests the Commission to issue (1) a report on the Plan pursuant to section 11(g) that may be included in a solicitation of creditors for approval of the Plan in bankruptcy court proceedings,[2] and (2) an order approving the Plan and related transactions under section 11(f).[3] In addition, the Committee states that it will file a declaration on Form U–R–1 pursuant to rule 62 prior to the solicitation.

EUA Power Corporation ("EUA Power"), a wholly-owned electric public-utility subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code, as amended ("Bankruptcy Code") on February 28,1991 in the United States Bankruptcy Court, District of New Hampshire ("Bankruptcy Court").[4] EUA Power's principal assets are an undivided 12.1324% interest in the Seabrook Nuclear Power Project ("Seabrook") and the electricity associated therewith and certain causes of action.[5] Since filing for bankruptcy, EUA Power has remained in operation as a debtor in possession pursuant to section 1107 of the Bankruptcy Code.

On March 14, 1991, the United States Trustee appointed the Committee as the duly authorized representative of the bondholders holding the Series B Notes and Series C Notes in the aggregate principal amount of approximately $280 million issued by EUA Power (collectively, "Notes"). EUA Power is in default under the indenture pursuant to which the Notes were issued.

Under the proposed Plan, all existing equity securities of EUA Power and certain contingent interest certificates issued by EUA Power in connection with the Series A and Series B Notes would be extinguished.[6] Reorganized

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[1] An original notice of the filing of the application-declaration was issued by the Commission on August 26, 1992 (HCAR No. 25614).

[2] Section 11(g) requires that any solicitation for consent or authorization with respect to any reorganization plan of a registered holding company or any subsidiary company thereof be "accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission."

[3] Section 11(f) provides, in pertinent part, that "a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court."

[4] On July 2, 1991, the Bankruptcy Court refused to extend EUA Power's exclusive right to file a plan. on August 12, 1992, the Committee submitted a plan of reorganization and a disclosure statement to the Bankruptcy Court. No other party (including EUA Power), other than the Committee, has filed a plan of reorganization to date. The application-declaration states that the Bankruptcy Court held a hearing on the disclosure statement of September 8, 1992 and decided to continue the hearing until October 5, 1992 on all issues except those arising under the Act until December 8, 1992 on all the issues arising under the Act.

[5] EUA Power financed its acquisition of its interest in Seabrook through the issuance and sale of $180 million of 17.5% secured notes ("Series A Notes") due November 15, 1991 pursuant to an indenture (HCAR Nos. 24244 and 24245; both dated November 21, 1986). As a result of its inability to pay the interest due on these notes, EUA Power exchanged and retired the Series A Notes for a new series of secured notes ("Series B Notes") (HCAR Nos. 24641; May 12, 1988). The Series B Notes provide for the payment of interest thereunder through issuance of up to $100 million in additional secured notes ("Series C Notes") instead of cash. EUA Power has issued to date approximately $100 million of the Series C Notes (HCAR No. 24879; May 5, 1989).

[6] Rule 64 states that "[a]ny application for approval of a plan of reorganization under section

Continued

EUA Power would then issue a single class of common stock [7] in exchange for the secured debt held by the bondholders ("Class One Claims") equal to each bondholder's proportionate share of 95% of the new securities; [8] all unsecured claims, including deficiency claims of the bondholders, in an amount in excess of $25,000 ("Class Three Claims") would be converted into the remaining 5% of the new securities.[9] The Plan incorporates a provision to permit the Bankruptcy Court to allocate the new securities between Class One Claims and Class Three Claims differently than the 95%/5% allocation depending upon the Bankruptcy Court's determination of the scope and value of the lien of Class Three Claims.[10] Each holder of a Class Three Claim will also receive a *pro rata* share of 100% of the beneficial interests of the Litigation Trust. The sole asset of the Litigation Trust will be the right to receive a certain number of additional shares of the new securities reflecting the value received by reorganized EUA Power from the causes of action, if any, which are currently being litigated or may be litigated in the future.

The taxing authorities with claims for unpaid real property taxes would receive payment in three equal annual installments of principal and interest, having a present value, as of the date the Plan becomes effective ("Effective Date"),[11] of not less than the value of the taxing authority's lien on EUA Power's interest in the property which secures such claims. The holders of unsecured claims of $25,000 or less would be paid 50% of the allowed amount of their claims in cash. The Plan contemplates that reorganized EUA Power would enter into the Plan Facility prior to the Effective Date. In addition, the Plan provides that reorganized EUA Power will retain a preference claim against EUA, as well as any other claims, including claims for breach of fiduciary duty, fraudulent conveyances, conversion and other causes of action and claims under a tax allocation agreement,[12] which EUA Power or its creditors may have against EUA or others for the benefit of reorganized EUA Power.[13] Upon consummation of the Plan, reorganized EUA Power will replace EUA Power as owner of the Seabrook interest.

After the confirmation of the Plan by the Bankruptcy Court, the Committee expects to enter into a commitment letter for the syndication of a secured revolving credit facility to finance the Plan.[14] The Plan Facility would be in a principal amount of not less than $45 million and not more than $60 million.[15] It is anticipated that reorganized EUA Power would issue warrants to the participants in the Plan Facility in the amount of the economic value of up to 15% of the equity interests in reorganized EUA Power on a fully diluted basis, excluding, however, any value attributable to recoveries that may be received as a result of any litigations. The Plan Facility is likely to bear interest at a floating rate of prime plus 5% to 7% *per annum*, with a minimum rate of 13% to 14%. Taking into account the various anticipated fees, the effective interest rate, with the base rate of 13%, is expected to be approximately 15.82% per annum.[16] It is expected that the Plan Facility will have a final maturity of no later than December 1997 and will be secured by a first priority lien and mortgage on all assets of reorganized EUA Power. In addition, EUA Power may be required to indemnify the lender and certain other indemnitees against any liabilities arising out of a commitment letter to provide the Plan Facility.

The Committee states that it will use its best efforts to obtain a Plan Facility on substantially the terms stated above. The Plan will not become effective unless such Plan Facility is obtained. In the event the Committee is unable to enter into a Plan Facility on above terms and the Committee deems it necessary to enter into a facility on terms materially less favorable than above terms, the Plan authorizes the Committee to enter into such other facility, subject to the approval of the Bankruptcy Court and any regulatory bodies with jurisdiction under applicable law, including this Commission.

In the meantime, EUA Power will continue to be funded by two of the joint owners of Seabrook, namely Connecticut Light and Power Company (CL&P) and United Illuminating Company ("UI"). By order dated August 21, 1992 (HCAR No. 25609), the Commission authorized CL&P, UI and EUA Power to extend the borrowing period to February 28, 1994 and to

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11, or otherwise, shall be deemed to include all applications and declarations under the Act which would otherwise be required as to any action necessary to consummate such plan." The Plan contemplates the cancellation of existing equity securities currently held by EUA under section 12(c) and the sale of utility assets by EUA to the bondholders under section 12(d). The Committee requests that the Commission address these transactions under rule 64 notwithstanding that EUA has not requested approval under sections 12(c) and 12(d).

[7] It is contemplated that a total of 12 million shares of common stock, at $0.01 par value, will be issued by reorganized EUA Power and that such securities, when issued, will be fully paid and non-assessable. Reorganized EUA Power will use its good faith efforts to have the new securities listed for trading on a national stock exchange.

[8] As a condition to participation under the Plan a holder of the Note that desires to receive its proportionate share of the new securities must surrender such Note.

[9] In each instance, these equity percentages would be calculated prior to any dilution resulting from the issuance of any securities such as the warrants that may be issued as part of a financing facility ("Plan Facility") under the Plan, but would be subject to dilution by the issuance of the new securities that may be issued pursuant to a certain litigation trust to be established ("Litigation Trust").

[10] There is a dispute between the holders of Class One Claims and EUA with respect to whether the lien of Class One Claims includes the entitlement to the electricity associated with EUA Power's interest in Seabrook. EUA and EUA Power argue that the lien is confined to the real estate and equipment comprising Seabrook and not to the electricity and that virtually all of the new securities should be allocated to the holders of Class Three Claims. This valuation issue may not be resolved by the Bankruptcy Court until after the Plan is confirmed.

[11] The Plan, by its terms, will not become effective until certain conditions are satisfied or waived. The Effective Date will not be later than August 26, 1993 unless further extended by the Committee.

[12] EUA Power is a party to certain federal income tax allocation agreements between EUA and its subsidiary companies pursuant to rule 45(c). The Committee states that it believes that EUA Power is entitled to receive certain tax benefit payments, although the amount cannot be determined presently, under the tax allocation agreements. However, three of EUA's subsidiaries have filed proofs of claim in the amount of $8,176,759 against EUA Power claiming that they overpaid EUA Power for tax benefits due to EUA Power for the years 1988 and 1989.

[13] The preference suit against EUA in the amount of approximately $38 million was filed on May 30, 1991, contending that one of the factors leading to EUA Power's bankruptcy was its preferential transfers to EUA. In addition, the Committee sought leave of the Bankruptcy Court to file an adversary complaint on behalf of EUA Power and its creditors against EUA and others for a variety of tort, contract and bankruptcy law claims. The proceeds of such claims, if successful and depending on when such proceeds are received, will be used to pay down the Plan Facility or the DIP Financing (defined hereinafter) or for working capital or for general corporate purposes of reorganized EUA Power.

[14] The Committee obtained a commitment letter ("Shearson Commitment") from Shearson Lehman Brothers Inc. ("Shearson") to provide the Plan Facility. However, at a hearing on July 21, 1992, the Bankruptcy Court declined to approve entry into the Shearson Commitment apart from the confirmation process so that it will not be possible to obtain a committed Plan Facility prior to the confirmation of the Plan. The Shearson Commitment expired on July 22, 1992. The Committee states that, in order to ensure impartial, arms-length negotiations, it established a special subcommittee to negotiate with Shearson because Shearson is a member of the Committee.

[15] The Plan permits the Plan Facility to be in an amount less than $45 million in the event there are net proceeds from the litigations. In such event, the sum of the net proceeds from the litigations and the amount of the Plan Facility will be at least $45 million.

[16] This figure does not include the economic value of any warrants.

increase the borrowing amount from $15 million to $22 million ("DIP Financing").

In addition, the Plan provides that, during the period between confirmation of the Plan and the Effective Date, EUA Power must employ agents designated by the Committee to act as (1) a marketing agent to maximize the value of reorganized EUA Power's assets, and (2) a managing agent to manage and maintain EUA Power's business, pursuant to written agreements to be approved by the Bankruptcy Court and any regulatory body with jurisdiction under applicable law, including this Commission.[17] On the Effective Date, all directors of EUA Power shall be deemed to have resigned without any further action on the part of any person and the Committee shall appoint the new board of directors or reorganized EUA Power.

Upon consummation of the Plan, any bondholder that receives 10% or more of the new securities would become a "holding company" within the meaning of section 2(a)(7). The application-declaration states that any such bondholder will file a separate application prior to the Effective Date for an order under section 3(a)(4) exempting such bondholder from all provisions of the Act, except section 9(a)(2). The Plan will not become effective if such exemption is not granted by the Commission.

Indiana Michigan Power Company

[70–8044]

Indiana Michigan Power Company ("I&M"), One Summit Square, Ft. Wayne, Indiana 46801, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration under Section 12(c) of the Act and rule 42 thereunder.

I&M intends to issue and sell, in one or more transactions from time-to-time through June 30, 1993, up to $30 million aggregate par value of one or more new series of its cumulative preferred stock, par value $25 per share and/or par value $100 per share ("Preferred"), in connection with its 1992 long-term financing program under rule 52 of the Act. If market conditions require the Preferred to include a sinking fund and/or an optional redemption provision, I&M requests authorization to acquire or redeem through the operation of such sinking fund or optional redemption provision up to the entire amount of the Preferred to be issued and sold.

It is expected that the Preferred will be subject to optional redemption at a price per share equal initially to the par value plus the annual dividend per share declining on an annual basis to par value not later than the year in which the Preferred would be retired pursuant to the provisions of the mandatory sinking fund, provided that, the Preferred could only be redeemed during the first five years at a price equal to par value plus the annual dividend. Also, if market conditions require, the Preferred may be issued for the same period subject to a provision prohibiting any redemption if accomplished through a borrowing or stock issuance at an effective cost less than the effective dividend cost of the Preferred.

The terms of the Preferred may also include a sinking fund provision pursuant to which I&M would be required to retire annually at par value, commencing not earlier than two years after the first day of the month in which shares of any particular series are first sold, a number of shares of such series equal to between 5% and 20% of the number of shares of such series initially issued. Such sinking fund provision may give I&M the option to retire annually an additional number of shares of such series equal to the number of shares of such series required to be retired annually pursuant to such sinking fund provision. Such provision would also give I&M the option to credit against any sinking fund requirement Preferred of that series previously purchased or otherwise acquired by I&M and not previously credited against any sinking fund requirement. It is proposed that I&M will decide on the necessity for a sinking fund provision and its pricing terms, and the precise redemption terms, if any, for each series of Preferred at a subsequent date, depending on market conditions at the time of issuance.

Entergy Corporation

[70–8055]

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its operating public-utility subsidiary companies, Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("LP&L") New Orleans Public Service Inc. ("NOPSI"), both located at 317 Baronne Street, New Orleans, Louisiana 70112, Mississippi Power & Light Company ("MP&L"), 308 East Pearl Street, Jackson, Mississippi 39201, (AP&L, LP&L, NOPSI and MP&L, collectively, "Operating Companies"), System Energy Resources, Inc., a nuclear generating public-utility subsidiary of Entergy ("SERI"), Entergy Operations, Inc., a nuclear management operating public-utility subsidiary of Entergy ("EOI"), both located at 1349 Echelon Parkway, Jackson, Mississippi 39213, System Fuels, Inc., a fuel supply subsidiary of the Operating Companies ("SFI") and Entergy Services, Inc., a service company subsidiary of Entergy ("Services"), both located at 639 Loyola Avenue, New Orleans, Louisiana 70113 have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 40, 43 and 50(a)(5) thereunder.

Each of the applicants-declarants proposes, through November 30, 1994, to lend money to the Entergy system money pool ("Money Pool") through November 30, 1994. The Operating Companies, SERI, SFI, EOI and Services further propose, through November 30, 1994, to borrow from the Money Pool. Entergy may lend to the Money Pool, but may not borrow therefrom.

The Operating Companies and SERI propose to borrow from the Money Pool and/or issue and sell unsecured promissory notes to banks ("Notes") and commercial paper to commercial paper dealers ("Commercial Paper") (collectively, "Short-Term Borrowings") up to an aggregate principal amount of: (1) $255 million for AP&L; (2) $259 million for LP&L; (3) $113 million for MP&L; (4) $43 million for NOPSI; and (5) $238 million for SERI, in any combination thereof. The record is complete with respect to the Short-Term Borrowings of the Operating Companies and SERI up to an aggregate principal amount of: (1) $125 million for AP&L; (2) $125 million for LP&L; (3) $100 million for MP&L; (4) $43 million for NOPSI; and (5) $125 million for SERI. The Operating Companies and SERI request that the Commission reserve jurisdiction, pending completion of the record, over Short-Term Borrowings, up to an aggregate principal amount of: (1) $130 million for AP&L; (2) $134 million for LP&L; (3) $13 million for MP&L; and (4) $113 million for SERI, in any combination thereof.

The Notes will mature in less than one year from the date of issuance, and bear interest at a rate per annum no greater than 1.5 percentage points over the prime commercial bank rate in effect on the date of issuance or renewal or from time to time, depending upon the arrangements with the lending bank; provided that the rate of interest on the Notes may be based upon other market rates or indices such that, as a result of

[17] Such services are currently performed by EUA Service Corp., an affiliate of EUA Power, pursuant to a written service agreement. The Plan contemplates that such service agreement with EUA Service Corp. will be terminated as of the date the Plan is confirmed by the Bankruptcy Court.

fluctuations in such rates or indices, the rate may exceed, for certain brief periods, the above-described maximum rate of interest. However, the effective interest rate for any 30-day period, on an annualized basis, may not exceed the above-described maximum rate of interest.

The Commercial Paper will be in the form of unsecured promissory notes having varying maturities not to exceed 270 days. No commission or fee will be payable by the Operating Companies or SERI in connection with the issuance and sale of the Commercial Paper. The Operating Companies and SERI have requested authorization to issue the Commercial Paper under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). The proceeds to be received by the Operating Companies and SERI from borrowings through Short-Term Borrowings will be used to provide interim financing for construction expenditures, to meet long-term debt maturities and satisfy sinking fund requirements, as well as for possible refunding, redemption purchase or other acquisition of all or a portion of certain outstanding series of high-cost debt and preferred stock.

SFI proposes to borrow from the Money Pool up to an aggregate principal amount of $65 million. The proceeds from the borrowings of SFI through the Money Pool or lines of credit available to SFI pursuant to other borrowing arrangements with one or more commercial banks will be used for the repayment of other borrowings and for the expenditures associated with the acquisition, ownership and financing of nuclear materials and related services and acquisition and ownership of fuel oil inventory.

EOI and Services propose to borrow up to $15 million and $90 million respectively, in any combination, from: (1) The Money Pool; (2) Entergy under loan agreements; and/or (3) banks pursuant to loan agreements.

By orders dated June 6, 1990 (HCAR No. 25100) and April 29, 1992 (HCAR No. 25526), EOI and Entergy were authorized, among other things, to enter into a loan agreement ("Loan Agreement") whereby EOI would borrow up to $15 million, at any one time outstanding through November 30, 1992. Borrowings by EOI from Entergy under the Loan Agreement were evidenced by a note. EOI and Entergy now propose to extend such authorization, through November 30, 1994, and provide for the issuance of a new note ("New Note") stated to mature on November 30, 1994. The New Note shall represent the borrowings of EOI from Entergy under the amended Loan Agreement ("New Loan Agreement") and replace and supersede the existing note and shall bear interest at a rate of the prime rate of interest publicly announced, from time to time, by Chemical Banking Corporation.

EOI further proposed to borrow up to an aggregate principal amount of up to $15 million from one or more banks pursuant a loan agreement(s) ("Bank Loan Agreements") by issuing unsecured promissory notes that bear interest at a rate per annum no greater than 1.5 percentage points over the prime commercial bank rate in effect on the date of issuance or renewal or from time to time, depending upon the arrangements with the lending bank; provided, that the rate of interest on the notes may be based upon other market rates or indices such that, as a result of fluctuations in such rates or indices, the rate may exceed, for certain brief periods, the above-described maximum rate of interest. The aggregate principal amount of borrowings by EOI outstanding at any one time pursuant to the Money Pool, the New Loan Agreement, the Bank Loan Agreements, and through such other borrowing arrangements as may hereafter be entered into by EOI pursuant to Commission authorization shall not exceed $15 million. The proceeds from borrowings by EOI through the Money Pool, the Loan Agreement, and the Bank Loan Agreement will be used to finance its interim capital needs.

By orders dated September 17, 1991 (HCAR No. 25376) and October 23, 1991 (HCAR No. 25395), the Commission authorized Services, among other things, through December 31, 1993, to borrow up to $90 million pursuant to: (1) A loan agreement entered into with Entergy ("Services Loan Agreement"); and/or (2) loan agreements with one or more banks which would correspondingly reduce the amount of Entergy's commitment to Services under the Services Loan Agreement. Borrowings by Services from Entergy under the Services Loan Agreement were evidenced by a note.

Services now proposed to extend such authorization, through November 30, 1994 pursuant to an amendment to the Services Loan Agreement ("New Services Loan Agreement") and a new loan agreement with one or more banks ("New Bank Loan Agreements"). Services' borrowings under the New Bank Loan Agreements would correspondingly reduce the amount of Entergy's commitment to Services under the New Services Loan Agreement.

Borrowings under the New Services Loan Agreement will be evidenced by the issuance and sale of a new note ("New Services Note") stated to mature on November 30, 1994. The New Services Note shall replace and supersede the existing note and shall bear interest at a rate of the prime rate of interest publicly announced, from time to time, by Chemical Banking Corporation. Borrowings under the New Bank Loan Agreements will be evidenced by the issuance and sale of unsecured bank notes by Services to one or more banks and would be at the same terms as those of EOI's Bank Loan Agreements discussed above. The aggregate principal amount of borrowings by Services outstanding at any one time pursuant to the Money Pool, the New Services Loan Agreement, the New Bank Loan Agreements and through such other borrowing arrangements as may hereafter be entered into by Services pursuant to Commission authorization shall not exceed $90 million. The proceeds from the borrowings by Services through the Money Pool, the New Services Loan Agreement and the New Bank Loan Agreements will be used for repayment of other borrowings, ongoing expenditures incurred in connection with the purchase of the Bulk Power Management system, the purchase of micro-computers and other computer equipment and furnishings, the implementation leasehold improvements to office space, the purchase and acquisition of aircraft to replace older aircraft, and the ongoing construction of an Entergy System management training and conference center.

Entergy proposes to guarantee: (1) EOI's obligations under the Bank Loan Agreements; and (2) Services' obligations under the New Bank Loan Agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24613 Filed 10-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18996; 811-5733]

Woodstock Collective Investment Trust; Deregistration

October 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Woodstock Collective Investment Trust.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 17, 1992, and amended on September 8, 1992 and September 29, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 27, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 181 Second Street South, Wisconsin Rapids, Wisconsin 54494.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was an open-end, diversified investment company organized as a collective investment trust under Wisconsin law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on May 25, 1989. Applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act on June 20, 1989, which was declared effective on May 30, 1991.

2. Applicant offered five portfolios for the collective investment and reinvestment of monies held in accounts for which the Wood County Trust Company (the "Trustee") serves as trustee and possesses investment discretion. Accounts included individual retirement trust accounts, simplified employee pension plans, and single or commingled tax qualified pension or profit sharing trusts. The Trustee is empowered with managing the funds of an account in its trustee capacity.

3. Applicant determined that it was not beneficial to continue the use of the portfolios offered by it, primarily as a result of the Wisconsin Commissioner of Banking's requirement that applicant comply with regulations of the Office of the Comptroller of the Currency which conflicted with certain provisions of the Act. Applicant's Supervisory Committee approved the termination and liquidation of one of the portfolios on September 9, 1991, and the remaining four portfolios on October 22, 1991. At such time, the Supervisory Committee directed the Trustee to liquidate the portfolios and distribute all proceeds to security holders. As a result, applicant sold all securities held by it at market prices through brokers transactions. Applicant distributed the proceeds of such sales to security holders *pro rata* based upon their ownership of units of benefical interest. Such distribution was completed as of November 1, 1991.

4. Expenses incurred in connection with the liquidation consisted of accounting expenses and brokerage commissions. Such expenses were allocated to accounts *pro rata* based upon their ownership of units of beneficial interest. Applicant's legal and organizational expenses were paid by the Trustee.

5. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any current or pending litigation or administrative proceeding.

6. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant's existence as a collective investment trust was terminated upon applicant's liquidation on October 31, 1991. Applicant filed appropriate documents with the Wisconsin Office of the Commissioner of Securities to effect applicant's liquidation under state law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24604 Filed 10–8–92; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2589]

North Carolina Declaration of Disaster Loan Area

Pender County and the contiguous counties of Bladen, Brunswick, Columbus, Duplin, New Hanover, Onslow, and Sampson in the State of North Carolina constitute a disaster area as a result of damages caused by flooding which occurred on August 17–19, 1992. Applications for loans for physical damage may be filed until the close of business on November 9, 1992 and for economic injury until the close of business on June 8, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.0
Homeowners without credit available elsewhere	4.0
Businesses with credit available elsewhere	6.0
Businesses and non-profit organizations without credit available elsewhere	4.0
Others (including non-profit organizations) with credit available elsewhere	6.50
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.00

The number assigned to this disaster for physical damage is 258906 and for economic injury the number is 769700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–24606 Filed 10–8–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 92–8–39, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning October 1, 1992, we have projected non-fuel costs based

on the year ended June 30, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92–10–7 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic—1.2688

Western Hemisphere—1.1938

Pacific—1.6383

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: October 5, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–24569 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interm SFFL, and Order 92–8–40 established the currently effective two-month SFFL applicable through September 30, 1992.

In establishing the SFFL for the two-month period beginning October 1, 1992, we have projected non-fuel costs based on the year ended June 30, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92–10–4 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.5414

Latin America—1.4438

Pacific—2.1028

Canada—1.4624

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: October 1, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–24572 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

U.S.-Brazil Service; Notice Inviting Applications

By this Notice we invite U.S. air carriers interested in providing scheduled combination service as the third designated carrier for service between the United States and Brazil to file certificate applications to provide such service.

In August 1991 the Department instituted the *U.S.-Brazil Combination Service Case* to select one primary and one backup carrier/gateway for scheduled combination service between the United States and Brazil (Orders 91–8–4 and 91–8–25). Subsequent to the hearing in this proceeding, but prior to the issuance of the Administrative Law Judge's decision, Pan American World Airways, Inc., one of the two designated carriers serving Brazil, ceased all air services and applications were filed with the Department for transfer of Pan American's Latin America authority to United Air Lines, including its U.S.-Brazil route authority. In light of these circumstances, the Department terminated the *U.S.-Brazil Combination Service Case*, Stating that the issues were best considered after completion of the pending route transfer application (Orders 92–3–44 and 92–8–19).

By order 92–7–9, the Department approved the transfer of Pan American's U.S.-Brazil as well as other Latin and South American authorities to United Air Lines. As that case is completed, we are now prepared to consider the issue of new U.S. carrier combination service in the Brazil market and applications by carriers interested in providing that service beginning in calendar year 1993 as the third designated carrier.[1] Nine weekly frequencies are currently available for these services.[2] Effective January 1, 1993, an additional five frequencies, for a total of fourteen weekly frequencies, will be available for combination services.

Certificate applications to provide combination service in the U.S.-Brazil market should be filed no later than October 19, 1992. Answers (including competing applications) shall be due no later than October 26, 1992, and further responsive pleadings no later than November 2, 1992. Applications should be filed pursuant to part 302, subpart Q.[3] Docket numbers will be assigned individually by the Department for each application received.[4] Applications should be filed with the Department's Docket Section, room 4107, 400 Seventh Street, SW., Washington, DC 20590. Procedures for acting on the applications filed will be established by future Department order.

Should no combination carriers be interested in serving Brazil in 1993, we might consider using that designation for all-cargo operations. Under the U.S.-Brazil bilateral aviation agreement, the United States may designate a total of five U.S. carriers provided that no more than three designations are used for combination services. Therefore, carriers that are interested in using the designation as the third U.S. carrier for all-cargo services should notify the Director, Office of International Aviation, by letter of their interest no later than October 26, 1992.[5]

This notice will be served on all certificated U.S. air carriers and will be published in the **Federal Register.**

Dated: October 5, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 24626 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

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[1] American Airlines and United Air Lines are the two other designated combination carriers serving the market.

[2] American and United have been allocated these frequencies temporarily (seven to American, two to United) pending a final decision on use of the frequencies on a long-term basis. See Order 92–8–57.

[3] We expect applications to include all of the information required by subpart Q.

[4] Interested carriers should not file their applications in the former *U.S.-Brazil Combination Service Case*, Docket 47676, since that case has been terminated.

[5] Federal Express and Challenge Air Cargo are the two air carriers already designated for all-cargo service.

[Order 92–10–8; Docket 48199]

Application of Executive Flight Management d/b/a Trans American Charter, Ltd. for a Domestic Charter Certificate

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation directing all interested persons to show cause why it should not issue an order finding Executive Flight Management d/b/a Trans American Charter, Ltd., fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than October 19, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 48199 and addressed to the

Documentary Services Division (C–55, room 4107), U.S. Department of Transportation 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: October 2, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–24571 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Kauai, Hawaii

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 (EIS) will be prepared for a proposed highway project in the County of Kauai, State of Hawaii.

FOR FURTHER INFORMATION CONTACT: William B. Lake, Division Administrator, Federal Highway Administration, P.O. Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii, Department of Transportation, Highways Division, will prepare an Environmental Impact Statement for proposed improvements to Kuhio Highway (FAP 56) on the island of Kauai. This proposed project would involve either the widening, bypassing, or some combination of the two along Kuhio Highway between Hanamaulu and Kapaa.

The purpose of the proposed project is to provide a ground transportation system within the study corridor that will provide for the safe, convenient, and economical movement of people and goods. There is a need to improve Kuhio Highway within this study corridor to alleviate current traffic congestion and provide sufficient highway capacity to meet the expected increase in traffic volumes over the next 20 years.

There are a total of ten alternatives under consideration which includes taking no action (No Action Alternative). The nine remaining build alternatives involve the widening, bypassing or some combination of the two along Kuhio Highway. Design variations of grade and alignments are planned to be incorporated into and studied with the various build alternatives.

Letters along with copies of the State EIS Preparation Notice describing the proposed project and soliciting comments will be sent to appropriate Federal, State, and County agencies, and to private organizations and individuals. Two public informational meetings are planned to be held on Kauai to receive comments and concerns from the public on alternatives being considered. In addition, a formal public hearing will be held after publication of the Draft EIS for the proposed project. Public notices will be appropriately given of the time and place these meetings and hearing will be held. The Draft EIS will be available for public and agency review and comment.

The ensure that all pertinent and significant issues related to this proposed project are addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and the EIS to be prepared should be directed to the FHWA at the address provided above.

Issued on: October 1, 1992.

Abraham Wong,

Assistant Division Administrator, Honolulu, Hawaii.

[FR Doc. 92–24471 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Docket No. 48383; Notice No. 92–18]

Air Carrier Groupings for Publications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice.

SUMMARY: This notice requests comments on the criteria the Department uses to group large certificated air carriers for the purpose of publishing financial, traffic, and other statistical information on the air transportation industry.

DATES: Comments submitted in response to this notice must be received on or before December 8, 1992.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr. or Jack M. Calloway, Office of Airline Statistics, DAI–10, Research and Special Program Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4385 and 366–4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

Prior to 1981, air carriers were grouped, for publication purposes, based on the type of operation being performed by the carrier, as designated by the carrier's certificate. For example, two of the groups were "trunk" and "local service" air carriers.

A "trunk" air carrier was defined as a class of certificated rout air carriers receiving original certification under the "grandfather clause" of the Civil Aeronautics Act (August 22, 1938) and whose primary operations were in domestic scheduled passenger service between medium and large air traffic hubs. In addition, these carriers may have had authority for scheduled all-cargo, scheduled international passenger and/or cargo, and nonscheduled service.

By comparison, a "local service" carrier was defined as a group of air carriers originally established in the late 1940's to foster and provide scheduled air service to small and medium communities on relatively low density routes and to feed that traffic to trunk air carriers. Over time, these carriers evolved from their "feeder" operations into "regional" operations with their own distinct route networks.

With the passage of the Airline Deregulation Act of 1978 (Pub. L. 95–504), the air transportation industry began a dynamic period of transition to a deregulated operating environment. One of the cornerstones of deregulation was the elimination, as of December 31, 1981, of the authority of the Civil Aeronautics Board (CAB) to regulate the domestic routes that a carrier could serve. Thus, carrier managements were given the freedom to make major changes to their domestic route networks by exercising the right to enter and exit markets as they saw fit.

During 1981, the CAB renamed the air carrier groups because the certificate designations had become meaningless. It also revised the methodology used to group large certificated air carriers for comparative purposes in its recurrent air transportation statistical publications, such as the Air Carrier Financial Statistics Quarterly and the Air Carrier Traffic Statistics Monthly. A "large certificated air carrier" is an air carrier operating under a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended, using aircraft with over 60 seats or over 18,000 pounds of

payload capacity, or operating internationally (14 CFR 241.03).

As a result, the criterion for grouping carriers was changed from the type of certificate operation conducted to the level of total annual operating revenues. The 1981 initial grouping of carriers was based on the total annual operating revenue boundaries shown below:

Carrier groups	Carriers with annual operating revenues of
Majors	$1,000,000,000+
Nationals	$75,000,000–$1,000,000,000
Large Regionals	$10,000,000–$74,999,999
Medium Regionals	$0–$9,999,999

In early 1991, the revenue boundaries were re-evaluated in light of the increase in airline operating revenues. As a result, the air carrier groupings for financial and statistical aggregation and analysis were restructured based on the revised operating revenue levels shown below.

Carrier groups	Carriers with annual operating revenues of
Majors	$1,000,000,000+
Nationals	$100,000,000–$1,000,000,000
Large Regionals	$20,000,000–$99,999,999
Medium Regionals	$0–$19,999,999

Request for Comments

The Department is currently reviewing the grouping of large certificated air carriers in various statistical publications to determine if further adjustment of the operating revenue criteria is needed. The aggregation of air carriers into the various group classifications is intended to facilitate data analysis and carrier comparisons. Carrier groupings are reflected in publications that are issued by the Research and Special Programs Administration (RSPA). They also affect consumer publications, issued by the Department's Office of the Secretary, that contain tables based upon airline economic data collected by RSPA.

RSPA is requesting comments from the airline data user community as to whether there is a need to change the carrier group criteria. Comments supporting change should describe what groupings are recommended.

The Department further requests that comments submitted in support of changing the criteria for grouping carriers include, in detail, the reasons for supporting a particular change as well as an explanation how the change would improve the overall value of the data used to measure and analyze trends within the air transportation industry.

Issued in Washington, DC on October 5, 1992.

Richard R. John,

Acting Associate Administrator for Research, Technology and Analysis, Research and Special Programs Administration.

[FR Doc. 92–24570 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at The Department of Veterans Affairs Medical Center, 1000 Bay Pines Blvd. N., St. Petersburg, FL 33504, from October 21, 1992, through October 23, 1992. The meeting will convene at 9 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), room 275, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: September 28, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–24665 Filed 10–8–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

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).

U.S. COMMISSION ON CIVIL RIGHTS

October 7, 1992.

DATE AND TIME: Friday, October 16, 1992, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., room 512, Washington, DC 20425.

STATUS: Open to the Public.

October 16, 1992

I. Approval of Agenda
II. Approval of Minutes of September Meeting
III. Announcements
IV. *Minority Elderly Access to Health Care and Nursing Homes,* New York SAC
V. 1993 Commission Meeting Calendar
VI. Staff Director's Report
VII. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105, (TDD 202–376–8116), at least five (5) working days before the scheduled date of the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Emma Monroig,
Solicitor.

[FR Doc. 24803 Filed 10–7–92; 1:48 pm]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, October 16, 1992.

PLACE: 2033 K St., NW., Washington DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–24808 Filed 10–7–92; 2:01 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Monday, October 19, 1992.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the MidAmerica Commodity Exchange, Inc. for contract designation in MidAm U.S. Dollar Composite Index futures
—Chicago Board of Trade Proposed Project A Automated Trading System
—Proposed rules on Optical Storage Systems and Electronic Filing

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–24809 Filed 10–7–92; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:30 p.m., Monday, October 19, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–24810 Filed 10–7–92; 2:01 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, October 13, 1992, 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.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Delegation of authority to issue rulings on procedural matters in enforcement proceedings.

Memorandum re: Review of the Corporation's 1991/1992 Business Plan.

Memorandum of Understanding relating to the Inter-Agency Clearinghouse Pilot Program for affordable Housing.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Deposit Insurance Coverage."

Memorandum and Resolution re: Proposed statement of policy for FDIC-supervised banks regarding notices of branch closing.

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.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898–6745 (Voice); (202) 898–3509(TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: October 6, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 92–24732 Filed 10–7–92; 9:21 am]

BILLING CODE 6714-0-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, October 13, 1992, 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), (c)(9)(B), and (c)(10) 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.

Reports of the office of Inspector General.

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 depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions 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.

Discussion Agenda:

Matters relating to the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,818 (Amendment)
Silverado Banking, Savings and Loan Association, Denver, Colorado
Case No. 47,829 (Amendment)
Various Failed Depository Institutions, Nationwide

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions 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)).

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)).

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) 898–6757.

Dated: October 6, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–24733 Filed 10–7–92; 9:21 am]

BILLING CODE 6714-0-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS COMMITTEE MEETING

Notice

TIME AND DATE: Meetings of the Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services, Office of the Inspector General Oversight, and Audit and Appropriations Committees will be held on October 18, 1992. The meetings will commence at 12:00 p.m. and will be held in the following order, with each meeting continuing until all business has been concluded:

1. Provision for the Delivery of Legal Services Committee;
2. Office of the Inspector General Oversight Committee; and
3. Audit and Appropriations Committee.

PLACE: The Legal Services Corporation, 750 1st Street, NE., The Board Room, Washington, DC 20002, (202) 336–8896.

Provision for the Delivery of Legal Services Committee Meeting

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of August 8, 1992 Meeting Minutes.
3. Consideration of Status Report on the Staff Analysis of Law School Clinical Programs.
4. Consideration of Status Report on Development of Options for a Loan Repayment Program for the Recruitment and Retention of Staff Attorneys of LSC-Funded Grantees.
5. Consideration of Status Report on the Alternative Dispute Resolution Project.

Office of the Inspector General Oversight Committee Meeting

STATUS OF MEETING: Open, except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Committee will consider and vote on approval of the draft minutes of the executive session held on August 10, 1992. In addition, the Committee will hear and consider the report of the Inspector General on several investigations. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(7) (C) and (D)], and the corresponding regulation of the Legal Services Corporation [45 CFR Sections 1622.5(f)(3)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC, 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of August 10, 1992 Meeting.
3. Consideration of Inspector General's Report on the General Activities of the Office of the Inspector General.
4. Consideration of Inspector General's Report on the Fiscal Year 1993 Budget Request for the Office of the Inspector General.

Closed Session:

5. Approval of Minutes of August 10, 1992 Executive Session.

Open Session: (Resumed)

6. Consideration of Motion to Adjourn Meeting.

Audit and Appropriations Committee Meeting

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 26, 1992 Meeting.
3. Consideration of Report by the Provision for the Delivery of Legal Services Committee.
4. Consideration of Status Report on the Leasing of the Corporation's Former Headquarters Office Space.
5. Consideration of Inspector General's Report on the Fiscal Year 1993 Budget Request for the Office of the Inspector General.
6. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget.

CONTACT PERSON FOR INFORMATION:

Patricia Batie (202) 336–8896.

Date issued: October 7, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–24826 Filed 10–7–92; 3:44 pm]

BILLING CODE 7050-01 M

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[1] As to the Board's consideration and approval of the draft minutes of the executive session held on the above-noted date, the closing is authorized as noted in the **Federal Register** notice corresponding to that Board meeting.

Corrections

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

University Research Instrumentation Program 1993

Correction

In notice document 92-23740 beginning on page 45041 in the issue of Wednesday, September 30, 1992, make the following correction:

On page 45041, in the second column, in **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the tenth line from the bottom, "Instruction" should read "Instrumentation".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-92-3411; FR-3195-N-02]

Fund Availability (NOFA) for Supportive Housing for Persons With Disabilities-Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus

Correction

In notice document 92-23618, beginning on page 45065 in the issue of Wednesday, September 30, 1992 make the following correction:

On page 45065, in the second column, in the **DATES** section, in the second line the date should read November 16, 1992.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket Nos. HM-181, HM-181A, HM-181B, HM-181C, HM-181D, HM-142A, HM-189, and HM-204; Amdt. Nos. 106-8, 107-23, 171-111, 172-123, 173-224, 174-68, 175-47, 176-30, 177-78, 178-97, 179-45, and 180-3]

RIN 2137-AA01, 2137-AB87, 2137-AB88, 2137-AA10, 2137-AB56, and 2137-AB90

Performance-Oriented Packaging Standards; Revisions and Response to Petitions for Reconsideration

Correction

In rule document 91-28240 beginning on page 66124 in the issue of Friday, December 20, 1991, on page 66254, in the third column, in § 172.313, paragraph (a) was incorrectly printed. Paragraph (a) is revised as set forth below:

§ 172.313 Poisonous hazardous materials.

(a) For materials poisonous by inhalation (see § 171.8 of this subchapter), the package shall be marked "Inhalation Hazard" in association with the required labels or placards, as appropriate, or shipping name, when required. (See § 172.302(b) of this subpart for size of markings on bulk packages.) Bulk packagings must be marked on two opposing sides.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974; Publication of an Existing System of Records

Correction

In notice document 92-22718 beginning on page 43485 in the issue of Monday, September 21, 1992, make the following correction:

On page 43486, in the 1st column, in the 1st full paragraph, in the 13th line after "or" insert "settlement negotiations, in response to a court-ordered subpoena, or".

BILLING CODE 1505-01-D

federal register

Friday
October 9, 1992

Part II

Consumer Product Safety Commission

16 CFR Part 1500

Labeling Requirements for Art Materials Presenting Chronic Hazards; Guidelines for Determining Chronic Toxicity of Products Subject to the FHSA; Supplementary Definition of "Toxic" Under the Federal Hazardous Substances Act; Final Rules

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Labeling Requirements for Art Materials Presenting Chronic Hazards; Guidelines for Determining Chronic Toxicity of Products Subject to the FHSA; Supplementary Definition of "Toxic" Under the Federal Hazardous Substances Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: This document announces three actions taken by the Consumer Product Safety Commission.[1] The Commission is finalizing the codification of ASTM standard D–4236 as a Commission rule which was mandated by the Labeling of Hazardous Art Materials Act ("LHAMA").

LHAMA also directed the Commission to issue guidelines specifying criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. The Commission is issuing final chronic hazard guidelines as directed by LHAMA. Because the substance of the guidelines directed by LHAMA applies equally to materials other than art materials, these guidelines also may be used by the manufacturers of other products subject to the FHSA to determine whether their products present a chronic hazard and, therefore, require labeling under section 2(p) of the FHSA. The guidelines are not mandatory.

Finally, the Commission is issuing a final regulatory definition of toxic that will define chronic toxicity under the Federal Hazardous Substances Act (FHSA). This definition supplements the Commission's existing regulatory definition of toxic that concerns acute toxicity. The definition will apply to all products subject to the FHSA.

DATES: The codification of ASTM D–4236 (31500.14(b)(8)) which is effective on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400.

SUPPLEMENTARY INFORMATION:

[1] Copies of statements issued by each of the three Commissioners are available from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0800.

This document is effective on January 7, 1993.

I. Introduction

A. The Proposals

On April 17, 1991, the Commission proposed (1) a codification of ASTM D–4236 standard for labeling hazardous art materials as a Commission rule under the Labeling of Hazardous Art Materials Act ("LHAMA"); (2) guidelines for determining when an art material or other product subject to the FHSA may present a chronic health hazard; and (3) a supplemental regulatory definition of "toxic" (under the FHSA) to include chronic toxicity. 56 FR 15672 and 56 FR 15705 (1991). (The proposed guidelines and definition were together in one document.) The Commission proposed that the guidelines and the supplemental definition would apply to all products subject to the Federal Hazardous Substances Act ("FHSA").

The proposal originally provided for submission of comments until July 1, 1991. In response to numerous requests for more time to respond, the Commission extended the comment period to October 1, 1991.

LHAMA required the Commission to conduct a public hearing on guidelines issued under LHAMA. 15 U.S.C. 1277(d)(1). The Commission originally scheduled a hearing for July 18, 1991. However, when the period for written comments was extended, the Commission rescheduled the public hearing for October 17, 1991. The Commission has considered all written and oral comments on the three proposed actions.

This document summarizes the most significant public comments received and explains the Commission's responses to those comments. It attempts to clarify some points in the proposed actions that engendered confusion, and in doing so it addresses the major issues raised by comments. The preamble also explains the statutory bases for the Commission's actions and makes some changes in the proposals.

B. Overview of this Document

The Commission is finalizing three actions. Each is described in greater detail in a separate section of this preamble. First, the Commission is issuing the final codification of ASTM D–4236. LHAMA made this voluntary standard for labeling hazardous art materials a mandatory Commission rule under section 3(b) of the FHSA. Congress made some changes in provisions of ASTM D–4236, such as the definition of art material. Although LHAMA did not require the Commission to codify ASTM D–4236, the Commission decided to do so for the convenience of those subject to the LHAMA. Since the codification reflects changes by Congress, contains some editorial changes to make the standard consistent with other standards in the Code of Federal Regulations, and reflects the Commission's interpretation of the standard, the Commission determined to publish the codification as a proposed rule. 56 FR 15705. Today the Commission issues the codification in final form. The substance of the codification and the Commission's interpretation of certain provisions are explained in section III. of the preamble.

The second action taken by the Commission is the finalization of guidelines for determining chronic toxicity. LHAMA required the Commission to issue guidelines for determining when customary or reasonably foreseeable use of an art material can result in a chronic hazard. 15 U.S.C. 1277(d)(1). The guidelines proposed by the Commission on April 17, 1991, explained the principles used by the Commission staff in making this determination. The proposed guidelines specified conditions under which an art material would be considered to contain a carcinogen, neurotoxin, or a developmental or reproductive toxicant. The proposed guidelines also explained certain principles to be used in evaluating the risk resulting from exposure.

Because the principles behind the proposed guidelines apply to other products subject to the FHSA as well as to art materials, the Commission proposed that the guidelines could be used by manufacturers of all products subject to the FHSA to determine if the product presents a chronic hazard. As explained more fully in section II A. of this preamble, the FHSA requires that all products subject to that act must be properly labeled if they present a chronic hazard.

The Commission continues to believe that the principles behind the guidelines are applicable to all products subject to the FHSA. Thus, manufacturers of all such products may use the final guidelines to aid in their determination of whether their products present chronic health hazards. The Commission reiterates that the guidelines are not mandatory. Producers of art materials or any other product will not be required to follow the guidelines in determining chronic toxicity. However, as explained in section V.C. of the preamble, the Commission does expect that products subject to the FHSA will be appropriately labeled according to section 2(p) of the FHSA if they present a chronic hazard. The Commission may bring enforcement actions against such misbranded products.

Finally, the Commission is issuing a final rule under section 10 of the FHSA to supplement the current regulatory definition of "toxic." The existing

regulatory definition specifies tests to determine if a substance presents an acute toxic hazard but does not specify a similar means for defining a chronic toxicant. As explained more fully in section VII A. of this preamble, the statutory definition of "toxic" is quite broad and includes chronic as well as acute toxicity. The supplemental definition will close this gap between the statutory definition and the regulatory definition. As the definition is issued under the FHSA, it will apply to all products subject to the FHSA, not just art materials. As explained in section VII.B. of the preamble, the final definition is broader and more flexible than the one proposed.

II. Applicable Statutes

The Commission's actions are taken pursuant to two statutes: LHAMA and the FHSA. It is important to understand both statutes and how they work together.

A. The Federal Hazardous Substances Act

The FHSA, enacted in 1960, requires labeling of "hazardous substances" if they are "intended, or packaged in a form suitable, for use in the household or by children." 15 U.S.C. 1261(p). A hazardous substance that does not bear the labeling specified by section 2(p)(1) of the FHSA is misbranded and its introduction or receipt in interstate commerce is a prohibited act under the FHSA, 15 U.S.C. 1263, subjecting the violator to certain penalties, 15 U.S.C. 1264.

A hazardous substance under the FHSA includes "any substance or mixture of substances which (i) is toxic * * * if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." 15 U.S.C. 1261(f)(1)(A). This definition encompasses two components: that the substance be "toxic" and that its reasonably foreseeable or customary use may cause substantial personal injury or illness.

The FHSA broadly defines the term "toxic" to apply to "any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." 15 U.S.C. 1261(g).

The FHSA's labeling requirement for a hazardous substance (as defined in the act) that is intended or packaged for household use or for children is essentially self-executing. The FHSA does not establish a program of pre-marketing approval of products. Nor does it require the Commission to develop lists of hazardous substances. Rather, it is the manufacturers' responsibility to determine if their products are or contain a hazardous substance and must be labeled under the FHSA. Section 3(a)(1) of the FHSA does provide for the Commission to declare a particular substance to be a "hazardous substance" under the act in order to avoid or resolve uncertainty 15 U.S.C. 1262. But the Commission is not required to designate a substance as hazardous before enforcing the labeling requirements of section 2(p).

The Commission's regulations specify tests that can be used to determine whether a product presents a hazard of acute toxicity. 16 CFR 1500.3(c)(2). The existing regulations do not contain criteria to determine if a product presents a risk of chronic toxicity.

B. The Labeling of Hazardous Art Materials Act

The Labeling of Hazardous Art Materials Act (LHAMA), enacted November 18, 1988, amended the FHSA. 15 U.S.C. 1277. It provided that, as of November 18, 1990, the requirements for the labeling of art materials set forth in the 1988 version of ASTM D–4236 shall be deemed to be a Commission regulation issued under section 3(b) of the FHSA. Section 3(b) of the FHSA authorizes the Commission to issue labeling regulations different from or in addition to those of section 2(p)(1).

ASTM D–4236 requires producers and repackagers of art materials to submit the material's formulation to a board certified toxicologist for review. The toxicologist must determine whether the art material has the potential to produce a chronic health hazard and must recommend appropriate labeling. The requirements of ASTM D–4236 are explained in greater detail in section III. of this preamble.

LHAMA made some changes and additions to ASTM D–4236. LHAMA requires each producer or repackager of art materials to describe in writing the criteria used to determine whether the product has the potential to produce chronic adverse health effects. The producer or repackager must submit to the Commission those criteria and a list of the art materials that require chronic hazard warning labels. *Id.* sec. 1277(b)(3). Upon request of the Commission, the producer or repackager must also submit to the Commission the product formulations. *Id.* sec. 1277(b)(4).

In addition to the labeling required by ASTM D–4236, LHAMA provides that art materials that require chronic hazard labeling must include on the label the name and address of the producer or repackager, an appropriate telephone number, and a statement that the art materials are inappropriate for use by children. *Id.* sec. 1277(b)(5). LHAMA requires that 12 months after a producer or repackager has discovered significant information regarding hazards of the art material or ways to protect against the hazards, the new information must be incorporated into the chronic hazard label. *Id.* sec. 1277(b)(6).

LHAMA states that a toxicologist must "take into account opinions of various regulatory agencies and scientific bodies" in determining whether an art material has the potential to produce adverse chronic health effects. 15 U.S.C. 1277(b)(8). In a separate section, the statute requires the Commission to issue guidelines containing criteria for determining when "customary or reasonably foreseeable use of an art material can result in a chronic hazard." Congress directed the Commission to issue these guidelines within one year of enactment of LHAMA. *Id.* sec. 1277(d)(1). Due to the complexity of the scientific issues involved and the lack of a Commission quorum for a period of time, issuance of the guidelines was delayed.

III. Issues Concerning the Codification of D–4236

A. General Requirements

ASTM D–4236 requires the producer or repackager of an art material to submit the product's formulation to a toxicologist who will review the formulation to determine if the art material has the potential to produce chronic adverse health effects through customary or reasonably foreseeable use. The toxicologist will advise the producer or repackager of appropriate chronic hazard labeling and the producer or repackager must adopt suitable precautionary labeling. The labeling recommended must be in accordance with section 5 of ASTM D–4236. Such labeling includes a signal word, a list of potential chronic hazards, the name(s) of the chronically hazardous component(s), safe handling instructions, a list of sensitizing components, an identification of a source for additional health information, and, where appropriate, more detailed technical information in supplemental documents.

If the art material presents an acute hazard the labeling must also warn of it. Labeling of art materials subject to LHAMA must also conform to labeling

requirements of section 2(p) of the FHSA and regulations issued thereunder.

ASTM D–4236 states certain considerations that the reviewing toxicologist must "take into account." These include "opinions of various regulatory agencies and scientific bodies * * *on the potential for chronic adverse health effects of the various components of the formulation."

B. Statement of Conformance

ASTM D–4236 provides for a statement of conformance that informs the purchaser that the product complies to the standard. The standard specifies that the conformance statement "should appear whenever practical on the product," but it could also be placed on (1) the individual product package, (2) a display or sign at the point of purchase, (3) separate explanatory literature available on request at the point of purchase, or (4) a response to a formal request for bid or proposal.

The Commission interprets this provision of ASTM D–4236 to require that with every art material product there must be a conformance statement or, if it presents a chronic hazard, the product must have an appropriate precautionary label. Although the language of ASTM D–4236 does not clearly mandate a conformance statement for all art materials, the Commission believes that allowing use of conformance statements for some products but not others would result in confusion to purchasers. Purchasers would be in doubt whether an unmarked art material has been found not to present a chronic hazard or simply has not been reviewed at all. ASTM D–4236 expresses a preference that the conformance statement appear on the product, but the other options mentioned in the standard will also satisfy the conformance statement requirement.

C. Telephone Number

ASTM D–4236 requires that the precautionary label on an art material that has been determined to present a potential chronic health hazard must identify a source for additional health information. The ASTM D–4236 standard provides three examples of such a statement: (1) provision of a 24-hour toll free telephone number, (2) a statement to contact a physician, or (3) a statement to call the local poison control center.

The LHAMA requires, however, that "art materials that require chronic hazard labeling * * * must include on the label * * *. an appropriate telephone number." 15 U.S.C. 1277(b) (5). Thus, Congress has required that an actual telephone number appear on the label. The Commission believes that "an appropriate telephone number" is one which will enable the purchaser to obtain additional information about the product's potential chronic hazard. The number could be that of the producer or repackager or another source that could provide such information. However, the label must contain a phone number, not just a statement to contact a doctor, and it must be a United States telephone number.

D. Standard is Applicable only to Art Materials

The Commission emphasizes that the requirements of ASTM–D4236 as modified by LHAMA are applicable only to art materials. Thus, only producers and repackagers of art materials must submit product formulations to toxicologists to determine the product's chronic hazard potential and appropriate labeling. Non-art materials must be properly labeled under the FHSA if they are hazardous, but the FHSA does not impose any specific review procedure upon manufacturers of non-art materials. Rather it is the manufacturers' responsibility to determine by appropriate means whether their non-art material product is hazardous.

Congress provided a very broad definition of art material or art material product in LHAMA. The term is defined as "any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium," excluding products subject to the Federal Insecticide, Fungicide, and Rodenticide Act or to the Federal Food, Drug, and Cosmetics Act. Although the Commission believes that the determination of what is or is not an art material must be made on a case by case basis, there are some general principles that the Commission believes will be helpful in enforcing the requirements for art materials.

The broad statutory definition could be interpreted to include many items not traditionally considered art materials, such as the many kinds of tools and implements used in the process of creating a work of art. The Commission does not believe that such a broad sweeping definition was intended by Congress. Statements during floor debates on the LHAMA amendment indicate a narrower interpretation. Examples noted are solvents in cements, permanent markers, and inks; lead in paints, clay, and glazes; cadmium in silver solders. 134 Cong. Rec. S16838 (Oct. 19, 1988) (statement of Sen. Gore). Similar examples also cited were solvents in oil painting and silk screening; solders for stained glass; lead in paints and ceramics; and asbestos in talcs and clays. *Id.* at S16838 (statement of Sen. McCain).

The Commission believes that under the statutory definition of "art material" three general categories can be discerned as follows:

1. Those products which actually become a component of the work of visual or graphic art, such as paint, canvas, inks, crayons, chalk, solder, brazing rods, flux, paper, clay, stone, thread, cloth, and photographic film.

2. Those products which are closely and intimately associated with the creation of the final work of art, such as brush cleaners, solvents, ceramic kilns, brushes, silk screens, molds or mold making material, and photo developing chemicals.

3. Those tools, implements, and furniture that are used in the process of the creation of a work of art, but do not become part of the work of art. Examples are drafting tables and chairs, easels, picture frames, canvas stretchers, potter's wheels, hammers, chisels, and air pumps for air brushes.

Although products falling in the third category could come within a broad interpretation of the term "art material," the Commission does not believe that Congress intended such a sweeping interpretation. Therefore, as a matter of enforcement policy, the Commission will not require that products falling in this third category comply with the standard for art materials. This means that the Commission will not require that formulations for such products be reviewed by a toxicologist. Manufacturers of such products would not be required by the Commission to submit their review criteria or lists of products requiring chronic hazard labels to CPSC. Nor do they have to provide a conformance statement for their products. However, the FHSA requires that all household or children's products (whether art materials or not) must be appropriately labeled if they are or contain a hazardous substance. 15 U.S.C. 1261(p). Thus, even a product that falls in the third category above must be appropriately labeled if it is toxic (acutely or chronically) and may cause serious injury or illness through reasonably foreseeable use.

This discussion is intended to provide some guidance on how the Commission interprets the statutory definition. Examples given are intended to illustrate the categories the Commission envisions. In making the determination of whether a product is an art material,

the Commission would consider the intended and anticipated uses of the product as indicated by, for example, its packaging and promotion. Firms that are uncertain whether their materials fall within the scope of this enforcement policy may request guidance from the Commission staff by addressing their inquiries to the compliance staff of the headquarters or the regional offices.

LHAMA made ASTM D–4236 a Commission regulation issued under section 3(b) of the FHSA. Section 3(b) authorizes the 'Commission to issue additional labeling requirements for "hazardous substance(s) intended, or packaged in a form suitable, for use in the household or by children." 15 U.S.C. 1262(b). When Congress enacted LHAMA it did not expand the Commission's authority under section 3(b) of the FHSA. Thus, there is a very narrow category of art material products, those that have no significant marketing except to schools for adults or to businesses for the use of adults away from the household, that are not subject to the FHSA. The Commission anticipates that very few products would fall within this category. The Commission's regulations at 16 CFR 1500.3(c)(10)(i) provide guidance on what types of products are considered to be intended, or packaged in a form suitable for use in the household. That regulation states in part: "the test shall be whether under any reasonably foreseeable condition of purchase, storage, or use the article may be found in or around a dwelling."

E. Board-Certified Toxicologist

ASTM D–4236 requires that art material formulations be reviewed by a toxicologist. It defines the term "toxicologist" as "any individual who through education, training, and experience has expertise in the field of toxicology, as it relates to human exposure, and is either a toxicologist or a physician certified by a nationally recognized certification board."

LHAMA did not alter this requirement of review or the definition of toxicologist. Several commenters expressed concern that allowing only board-certified toxicologists and physicians is too limited and that many toxicologists who are not certified would also be capable of making the determinations required under ASTM D–4236. However, this requirement of board certification is part of the standard made mandatory by LHAMA. LHAMA provides for the Commission to amend the standard if it follows certain procedures. The Commission cannot abolish the requirement of board certification without following these procedures. However, in enforcing LHAMA the Commission is primarily concerned that the person reviewing formulations has sufficient knowledge based on a combination of education, training, and experience and that the reviewer uses appropriate criteria to recommend complete and accurate labeling. Any enforcement action would be based on the failure to conduct an adequate product review resulting in noncomplying cautionary labeling, rather than on the fact that a toxicologist is not certified. As a matter of enforcement policy, the Commission will not require that all art material reviews be done by a board-certified toxicologist. When the Commission considers rulemaking to amend the codified ASTM standard, it will consider deleting the requirement of board certification.

F. Amendment of ASTM D–4236

Congress provided that the Commission can revise the standard LHAMA mandated if the Commission determines that the standard is "inadequate for the protection of the public interest" and that the Commission's amendment will adequately protect the public interest. The amendment must be issued in accordance with the procedures of section 553 of the Administrative Procedure Act allowing an opportunity for notice and comment. In addition, the Commission must allow interested persons an opportunity to present oral comments.

If ASTM proposes a revision to D–4236, LHAMA provides that the Commission shall incorporate it if the Commission determines that the revision is in the public interest. The Commission must provide for notice and comment concerning the revision. 15 U.S.C. 1277(c).

G. Annexes and Appendix

ASTM D–4236 contained two annexes and one appendix. One of the annexes provides chronic hazard statements. Section 5.2 of ASTM D–4236 (§ 1500.14(b)(8)(i)(E)(*2*) in the codification) states that potentially chronic hazards must be stated "substantially in accordance with statements" in the first annex. The second annex provides precautionary statements. Section 5.4 (§ 1500.14(b)(8)(i)(E)(*4*) in the codification) states that "appropriate precautionary statements as to work practices, personal protection, and ventilation requirements shall be used substantially conforming to those" in the second annex. These annexes are §§ 1500.14(b)(8)(i) (F) and (G) in the codification below.

The Commission considers the chronic hazard statements and the precautionary statements to be examples of appropriate statements when a product presents a chronic hazard. The Commission considers these lists to be suggestive, and does not consider these to be the only statements of hazard or precaution that could be used.

Because products other than art materials that are subject to the FHSA may present similar chronic hazards, manufacturers of non-art materials may find these lists of chronic hazard statements and precautionary statements helpful in labeling their products under section 2(p) of the FHSA. All products subject to the FHSA must be appropriately labeled for any acute hazards they present.

In addition, the staff is in the process of updating its 1979 labeling guide for products that present an acute hazard. The updated version would include recommendations on designing warning labels and examples of warning statements for products that pose a chronic hazard. This labeling guide would be appropriate for all products subject to the FHSA.

ASTM D–4236 also contained an appendix which provided guidelines for organizations that certify an art material conforms to the requirements of ASTM D–4236. In the proposed codification published on April 17, this appendix was erroneously listed as § 1500.14(b)(8)(i)(H) of the codified standard rather than as an appendix. The final codification corrects this and clarifies that these guidelines are not mandatory.

IV. Issues Concerning the Chronic Hazard Guidelines

A. Broad Scope

LHAMA requires the Commission to issue guidelines for determining when an art material presents a chronic hazard. When the Commission published proposed guidelines, it stated that the guidelines could be used for non-art materials as well because the basic principles behind the guidelines would apply broadly to all products subject to the FHSA. Although the Commission received several comments concerning the scope of the guidelines, the Commission is maintaining the broad scope of the proposed guidelines.

Essential to understanding this view is the fact that the guidelines are not mandatory. The Commission's purpose in issuing these guidelines is not to

create a static classification system that must be followed by manufacturers. Rather, the FHSA makes it the manufacturers' responsibility to properly label their products. The guidelines are intended to help the manufacturer in making that determination. The process set out in the guidelines would not be affected by the classification of a product as an art material or other product subject to the FHSA. The scientific principles upon which the guidelines are based are the same. It makes sense then, that the guidance available for art materials would also be useful for non-art materials. (The codification of ASTM D–4236, however, applies only to art materials. Thus, only manufacturers and repackagers of art materials must submit their products' formulation to a toxicologist and must supply the Commission with their criteria for determining chronic toxicity and a list of art materials that require chronic hazard labeling.)

The Commission has authority to issue these guidelines under the FHSA as part of its ability to regulate hazardous substances under that statute. As discussed in section VII.A. of the preamble, the FHSA provides the Commission with clear authority over household and children's products that present a chronic hazard. Section 2(p) of the FHSA requires appropriate labeling of hazardous substances, chronic as well as acute. It is within the Commission's general authority under the FHSA to provide guidance to manufacturers on determining whether a product presents such a hazard and therefore must be labeled. By issuing the guidelines the Commission is not imposing new requirements beyond those already made by section 2(p) of the FHSA.

B. Complexity of Determination

The Commission recognizes that determining if a product presents a chronic hazard is highly complex and often relies upon incomplete or non-conclusive data. The determination requires the exercise of professional judgment.

Under the FHSA, for a substance to be a "hazardous substance" (and thus require labeling) it must have the potential both to be toxic *and* to "cause substantial personal injury or illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." The fact that a product contains a toxic substance does not make the product a "hazardous substance" under the FHSA. The second component of the definition must be considered. For instance, the manufacturer must account for the amount of the substance in the product, for the bioavailability of the substance, and for exposure to the substance. This second aspect of the definition makes the determination of the need for labeling a complex decision.

C. Customary or Reasonably Foreseeable Handling or Use

Some comments expressed concern that the Commission had not provided sufficient guidance on the meaning of the phrase "customary or reasonably foreseeable handling or use" that is part of the definition of "hazardous substance" in the FHSA. The precise meaning of the phrase will, of course, depend on the product at issue. However, the Commission's regulations at 16 CFR 1500.3(c)(7)(iv) provide some general guidance and state:

> Reasonably foreseeable handling or use includes the reasonably foreseeable accidental handling or use, not only by the purchaser or intended user of the product, but by all others in a household, especially children.

Thus, in general, the Commission has taken a fairly broad view of what is reasonably foreseeable handling or use.

As far as the guidelines are concerned, defining a reasonable use scenario can be the most uncertain part of exposure assessment. As the guidelines indicate, there are many variables to consider. Exposure assessment is a mixture of science, knowledge of the product under consideration, and common sense. Unfortunately, due to the large number of art materials and other household and children's products, it is impossible to specify typical scenarios for all cases. Nevertheless, scientists have conducted exposure and risk assessments for many products.

D. Guidelines Do Not Require Submission of Data

The guidelines are intended as an aid to manufacturers in making their determination of whether a product is a hazardous substance due to chronic toxicity and thus would require labeling under the FHSA. The guidelines themselves establish no mandatory requirements.

LHAMA and the modified version of ASTM D–4236 mandated by that law do place certain requirements upon the manufacturers and repackagers of art materials. Thus, only the formulations of art materials must be submitted to a toxicologist for review. For other products, as has always been the case under the FHSA, it is up to the manufacturer to determine proper labeling. The FHSA does not establish a required procedure for doing this. The guidelines do not change this arrangement, but they provide guidance for making that determination.

E. Risk Assessment for Children's Products

For the reasons explained below, the Commission has decided not to include additional safety factors for children's products in the final guidelines and definition. As with other scientific issues of this type, support exists both for applying an additional safety factor of ten for children's products and for not doing so. For example, a child might be more sensitive than an adult in the case of lead poisoning, while adults may be more sensitive than children in the case of neurotoxicity of certain pesticides.

Since, on the basis of much of the theory and data, it was very possible that children would be more susceptible to many substances, the additional factors of ten were proposed to provide an extra margin of safety for children. After reviewing the comments relating to this issue and considering how the additional protective levels would be implemented, the Commission has decided not to include these additional safety factors for children's products. A more detailed response to these comments and a discussion of the analysis followed by the Art & Craft Materials Institute ("ACMI") compared with that recommended in the guidelines is contained in the comment section of the preamble, section VIII.

As a result of analysis of the comments, several overall themes have become clear. First, CPSC's proposed methods of calculating the allowable daily intake ("ADI") for adults are similar, or result in a lower allowable risk, to those allowed by other agencies for both children and adults. Second, ACMI's conclusion that the labeling status of many art materials would be affected is not consistent with the intended use of CPSC's guidelines, since it appears that in many cases, ACMI has applied redundant safety factors in its exposure assessments which result in the overestimation of risk. Third, the ten-fold factor for children, if applied as the staff intended and without redundant safety factors, would have minimal economic impact.

However, there are difficulties in determining if a product that poses a chronic hazard would be used by children. Because many factors would have to be considered, determination of whether children would use these materials would have to be made on a

case-by-case basis. Factors that would be considered include the appeal of the product in attracting and sustaining use; ability of a child to use the product; ability to appreciate the product; adult's perception of intended use, marketing, packaging, advertising, and promotion of the product; and the manufacturer's stated intent. In many cases, it may be impossible to conclude that a given product would not be used by children. Thus, most products could be subject to the additional factor of ten for children. A net effect of requiring labeling for all products exceeding a cancer risk of 1×10^{-7}, for example, was not the intent of the proposed guidelines. Thus, the final guidelines do not provide additional safety factors for children's products.

F. Legal Effect of Guidelines

The guidelines are not issued as substantive binding rules, but are a non-mandatory statement of Commission policy. They explain how the Commission determines whether a product presents a chronic hazard, and they provide guidance to those in industry whose responsibility it is to determine if their product is properly labeled under the FHSA. Some minor changes have been made in the final guidelines to clarify their non-mandatory nature.

LHAMA required the Commission to issue chronic hazard guidelines for art materials. Congress directed the Commission to develop guidelines, not a binding rule that would automatically categorize all art materials. Thus, the guidelines set forth recommended procedures to be followed with the use of expert judgment rather than mechanically. As explained elsewhere, the Commission believes that these guidelines will also be helpful to the manufacturers of non-art materials subject to the FHSA.

V. Issues Pertinent to All Three Actions

A. Preemption

The Commission received numerous comments concerning the issue of preemption of state laws and regulations.

Section 18(b)(1)(A) of the FHSA provides generally that:

> If a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

15 U.S.C. 1261n.

LHAMA mandated ASTM D–4236, with certain modifications, as a Commission rule under section 3(b) of the FHSA. Since LHAMA amended the FHSA, the FHSA's preemption provision applies. Thus, this standard for labeling of art materials, as a 3(b) rule, preempts non-identical state and local labeling requirements that are designed to protect against the same risk of illness or injury as ASTM D–4236, as modified by LHAMA.

LHAMA directed the Commission to issue chronic hazard guidelines. The guidelines finalized today are issued pursuant to that provision of LHAMA and the Commission's general authority under the FHSA. As explained above, the standard ASTM D–4236 as mandated by LHAMA has preemptive effect if the other conditions of FHSA section 18(b)(1)(A) are met. The guidelines, however, are not a labeling requirement. They do not require that any particular product be labeled. The requirement that hazardous substances be labeled appropriately comes from section 2(p), not the guidelines. The guidelines are a non-mandatory guide for determining whether a product presents a chronic hazard. Thus, the guidelines themselves do not have a direct preemptive effect. As may affect labeling for chronic hazards, however, they may have an indirect preemptive impact because the labeling requirement of section 2(p) could preempt different state or local requirements.

The supplemental definition of "toxic" is not itself "a cautionary labeling requirement" and would not, in itself, preempt a state or local definition of "toxic." However, the supplemental definition defines a term that is necessary to the labeling requirements of section 2(p) and section 3(b) just as the existing regulatory definition of toxic, which applies to acute toxicity, works together with the labeling requirement. For example, while a different state definition of "toxic" might not be preempted automatically, a state labeling requirement that exempts from labeling a hazardous substance that is hazardous because of the risk of chronic toxicity (as defined by the supplemental regulatory definition) could be preempted.

B. The CHAP Process

Another comment raised frequently concerned the appropriateness of convening a Chronic Hazard Advisory Panel ("CHAP") to develop or evaluate chronic hazard guidelines. As most commenters seemed to recognize, neither the FHSA nor LHAMA requires the Commission to convene a CHAP before issuing chronic hazard guidelines. The Commission must establish a CHAP before initiating rulemaking to ban a substance under section 2(q)(1) of the FHSA relating to the risk of cancer, birth defects, or gene mutations from a consumer product. 15 U.S.C. 2080(b)(1). The CHAP must submit a report to the Commission concerning whether a substance in the product is a carcinogen, mutagen, or teratogen. *Id.* Thus, the only action under the FHSA that requires the Commission to consult a CHAP is rulemaking to ban a particular substance.

In issuing these guidelines, however, the Commission is not promulgating a binding rule, is not seeking to ban a substance, and is not taking action with respect to any particular substance. Issuance of these guidelines is not appropriate for CHAP review. The CHAP's purpose is to review particular products and advise the Commission on the chronic risk posed by that product or by specific substances contained in the product. The chronic hazard guidelines being issued do not relate to any particular products or substances, but they provide guidance for determining, in general, whether a product can present a chronic health hazard.

The Commission certainly agrees that the guidelines should reflect sound scientific judgment and should be widely reviewed and commented upon. Other Federal agencies and interagency groups have reviewed relevant parts of the guidelines at CPSC staff's request prior to their publication for public comment, to ensure that the latest science has been addressed. The Commission published proposed guidelines and sought written comments even though LHAMA did not require the Commission to do so. The Commission also received comments as a result of the public hearing held in October. The Commission does not believe, however, that the CHAP process is the most appropriate means to obtain views on the guidelines.

CPSC staff is involved in many government and nongovernment activities to ensure consistency, use of the latest data, and use of the most current scientific approaches to the risk assessment process. These groups include the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET), the International Life Sciences Institute (ILSI), and the National Academy of Sciences (NAS) Committee on Risk Assessment Methodology (CRAM) processes. CPSC staff is also involved with a number of

interagency committees such as the Interagency Pharmacokinetics Group and the Interagency Committee on Neurotoxicity (which, at CPSC's request, reviewed the neurotoxicity guidelines before they were proposed). Participating in these efforts, the consideration of the comments received by expert scientists, and the fact that there are very few departures in the guidelines from generally accepted risk assessment methodology, lends credence to the assertion that the guidelines are scientifically defensible and reasonable.

C. Enforcement

The Commission emphasizes that there has not been, nor will there be, enforcement of the guidelines as such. Even once the guidelines become final they will not be treated as mandatory requirements which must be followed by manufacturers. A firm could follow a different but sound and scientifically supportable analysis to determine whether a product presents a chronic hazard.

However, the Commission has enforced, and will continue to enforce, the FHSA requirements that a household product that is or contains a hazardous substance must be appropriately labeled to advise of the hazard. In addition, the Commission has sought to enforce the specific, and largely procedural, requirements that LHAMA mandated for art materials. During 1991, the Commission staff contacted all known manufacturers and repackagers of art materials to advise them of the procedural requirements of LHAMA which went into effect on November 18, 1990. In 1992, inspections are being made of firms that have not given some indication of compliance or if there is some other reason to suspect noncompliance. When firms are found with products or practices that are not in compliance, they will normally be given the opportunity to voluntarily make the necessary corrections. Only when a firm has demonstrated a refusal to cooperate voluntarily would legal action be sought to obtain compliance.

VI. The Chronic Hazard Guidelines

A. General

1. Toxicity and Exposure

As explained earlier, the definition of "hazardous substance" requires both that the substance fall into one of the designated hazard categories, in this case that of "toxic," and that the substance "may cause substantial personal injury or illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." Any of the chronic hazards, including but not limited to cancer, neurotoxicity, or developmental or reproductive toxicity addressed by this notice constitute "substantial personal injury or illness." In order to determine whether a product should be regarded as a hazardous substance, one must determine not only that the product has the potential to be toxic, but that in any customary or reasonably foreseeable handling or use persons are exposed to the toxic component(s) in a way that presents a significant risk of the substantial adverse health effect potentially associated with the product. This latter factor can be considered to reflect the person's exposure to the toxic component or the bioavailability of the component.

2. Nature of the Guidelines

Except as specifically noted, the current scientific knowledge concerning chronic hazards is insufficient to allow the guidelines to specify criteria that can be mechanically applied to determine whether a product is toxic. Interpretation of certain points in the guidelines will likely require expert knowledge and the application of professional judgment. Thus, the guidelines do not present a simple blueprint into which a given set of facts may be inserted to receive a certain determination. Rather, careful expert judgment must be used. If questions arise concerning matters not clarified by these guidelines, guidance may be obtained from previous Commission toxicity, exposure, and risk assessments; or from the Commission's Directorate for Health Sciences.

These guidelines contain a number of assumptions, methodologies, and procedures for determining chronic hazard and risk. While these are currently the most scientifically justified choices in the opinion of the Commission, the Commission recognizes that new data and methodologies continue to be developed. Accordingly, all default assumptions (i.e., numerical factors to be used in the absence of data for the particular substance or circumstance) contained in the following sections on hazard and risk determination may be replaced as new data become available.

In determining whether a substance should be regarded as hazardous all available scientific evidence should be considered. However, the guidelines do not require any additional laboratory tests to determine toxicity or exposure.

A condensed version of the guidelines will appear at 16 CFR 1500.135. A supplemental definition of "toxic" that defines chronic toxicity will appear at 16 CFR 1500.3(c)(2)(ii). The guidelines summarize discussions contained in documents prepared by the Commission's Directorate for Health Sciences. This preamble is also drawn from the backup documents and is intended to aid in interpretation of the guidelines. Copies of the backup documents are available at the Commission's Office of the Secretary, Consumer Product Safety Commission, room 428, 5401 Westbard Avenue, Bethesda, Maryland.

B. Carcinogenicity

1. Introduction

This section discusses the chronic hazard guidelines concerning carcinogenicity. The guidelines for determining chronic hazards by reason of carcinogenicity are especially needed because of (1) the long latency period between the initial exposure to a carcinogen and the appearance of tumors, (2) the fact that humans are exposed to multiple carcinogenic agents during the latency period under generally uncontrolled conditions (and other factors discussed below), and (3) the controversies that have surrounded the conditions under which tests showing a carcinogenic response in animals should be considered relevant to human risk. These factors make it impossible to demonstrate conclusively that such substances are human carcinogens. Nevertheless, considerable agreement exists in the scientific community as to the nature and amount of evidence that should exist in order to conclude that a substance is a likely human carcinogen.

The intent of the guidelines is to incorporate those areas where there is a substantial consensus as to the evidence needed to support a conclusion that a substance is a likely human carcinogen. For substances where the available evidence does not meet this standard, or where there is controversy about how the evidence should be evaluated, the Commission may proceed by rulemaking, as provided in section 3(a) of the FHSA, or by enforcement actions on a case-by-case basis to resolve the question of whether the substance presents sufficient evidence of an ability to be carcinogenic in humans that the substance should be considered toxic.

Evidence for carcinogenicity largely comes from two sources: Human studies (epidemiology) and animal studies (long-term carcinogen bioassay). Epidemiology is a broad medical science that deals with the incidence,

distribution, and control of disease in a population. Results from these epidemiologic and animal studies are supplemented with available information from short-term tests, pharmacokinetics (absorption, distribution, metabolism, and elimination of substances), and other relevant toxicological data. The guidelines would evaluate the toxicity of a substance on the basis of potential carcinogenicity by evaluating the available human and animal data. Under the guidelines, substances for which "sufficient evidence" exists to demonstrate carcinogenicity from studies in humans would be considered to be toxic. In addition, those substances for which there is "limited evidence" of carcinogenicity in humans or "sufficient evidence" of carcinogenicity in animals are considered toxic, except that evidence derived from animal studies that has been shown not to be relevant to humans is not included.

As noted above, it will be necessary to continue to rely on rulemaking under section 3(a) of the FHSA, or on enforcement actions, to resolve uncertainties that are not addressed by these guidelines. In this regard, the Commission is aware that the criteria stated in the guidelines do not lend themselves to a mechanical application. A number of the criteria include statements that themselves can be applied to particular chemicals only by the exercise of expert technical judgment. For example, one of the factors stated below for determining that an epidemiological study shows a causal relationship between exposure to an agent and cancer is that all possible confounding factors which could account for the observed association are eliminated after consideration. Expert technical judgment is required to identify possible confounding factors and to evaluate whether the available data are adequate to eliminate the factors as causes of the observed association. In some instances, this determination will not be straightforward. In these cases, the guidelines will not resolve the controversy, and it may be appropriate for the Commission to conduct rulemaking to resolve the controversy, or to bring enforcement actions in which the toxicity of the substance would be established on a case-by-case basis.

Although there are many difficult issues related to the interpretation of cancer studies in animals and humans, criteria for defining carcinogenicity have been established by several groups, such as the International Agency for Research on Cancer (IARC), the American National Standards Institute (ANSI), and the U.S. Environmental Protection Agency (EPA)

The following discussion explains the scientific principles and evidentiary approach upon which a determination that a substance is a "sufficient evidence" human or animal carcinogen or a "limited human evidence" carcinogen would be based. The criteria that are commonly used to evaluate the evidence derived from human and animal carcinogenesis data outlined in the following sections are similar to those of IARC and EPA, except for a few differences that are explained below.

2. Assessment of Evidence for Carcinogenicity from Studies in Humans.

a. *Discussion.* Epidemiological studies are the only direct means of assessing carcinogenicity of a substance in humans (the Office of Science Technology Assessment and Policy (OSTP), 1985, Principle # 15). Epidemiologic data are obtained from occupational, therapeutic or consumer exposure to a substance. These studies can provide sufficient evidence for a causal hypothesis (such as that between cigarette smoking and lung cancer) and compelling reasons for prevention of a health hazard (OSTP, 1985, p. 10421). They examine both the distribution of a disease using descriptive studies (correlational approaches) and determinants of a disease using analytical studies (case control and cohort methods) (OSTP, 1985, Principles ##16 & 17, p. 10377).

A good quality epidemiological study should have a clear and detailed description of the study population, disease, and exposure. The design of the study should have dealt with bias and confounding factors that can influence the risk of disease by matching, or the analysis should have dealt with bias and confounding factors by statistical adjustments (IARC, 1987, Suppl. 7, p. 26). The study should describe the determination of statistical parameters, such as relative risk, odds ratio, absolute disease rate, confidence intervals, significance tests, and adjustments made for confounding factors. The study should also describe the selection and characterization of exposed and control population, the adequacy of duration, the quality of follow up, and the identification of bias and confounding factors. A causal relationship is strengthened by the observation of a dose-response relationship, the consistency and reproducibility of results, the strength and specificity of the association, the mechanism of action, and other considerations (OSTP, 1985, p. 10421).

In assessing the strength of epidemiological studies, it is necessary to take into account the possible role of bias, confounding factors, and chance (IARC, 1987, Suppl. 7, p. 26; OSTP, 1985, Principle #18, p. 10377). "Bias" means that the operation of certain factors in the design and execution of a study lead erroneously to a stronger or weaker association between an agent and the disease than in fact exists. Confounding factors are factors associated with a test agent which create a situation in which the relationship between the test agent and a disease is made to appear stronger or weaker than it truly is as a result of the association between the confounding agent(s) and the test agent. Chance relates to the statistical significance of the observed causal association between the exposure to the agent and the development of the disease. This is ascertained by proper statistical analysis of the data. The statistical power of a study depends upon the size of the study group, the number of subjects exposed, and the level of excess risk which is required to be detected (OSTP, 1985, p. 10423).

The common problems encountered in epidemiological studies involving chemicals are: Long latent periods that exist between exposure to a carcinogenic agent and the development of cancer; inability to control for confounding risk factors; exposures to mixtures of chemicals; frequent absence of appropriate groups from the study; and difficulty in obtaining accurate and unbiased historical exposure assessment, disease ascertainment, and direct detection of relatively low level cancer risk (OSTP, 1985, p. 10424). These studies are inherently capable of detecting only comparatively large increases in the relative risk of cancer. Negative results even from high quality epidemiological studies cannot prove the absence of an association between the carcinogenic effect and the exposure (OSTP, 1985, Principle # 19, p. 10377). However, a well-designed and - conducted epidemiological study with well-defined and usable exposure data can be used to assess upper limits of risk. Such a study is especially useful in this regard if there is animal evidence from well-conducted studies to show that the agent is potentially carcinogenic in humans (EPA, 1986, p. 33996).

The criteria stated below for assessing the evidence of carcinogenicity derived from human studies agree with those outlined by EPA, except that the "No Data Available" and the "No Evidence of

Carcinogenicity" classifications are deleted because they are not necessary for the purpose of determining toxicity. The criteria also agree with those of IARC, except that the "Evidence Suggesting Lack of Carcinogenicity" classification is deleted for the same reason, and the criteria suggested below include life-threatening benign tumors in the evaluation of human studies for the purpose of protecting public health. In this regard, the Commission agrees with EPA's position on benign tumors, because the threat to life is the most important consideration in health risk evaluations. Benign tumors could be life threatening if they are critically located, such as brain tumors (gliomas), which can compress and destroy the surrounding brain tissue, or tumors located in endocrine glands (hormone producing glands, like the pancreas, or pituitary), which can cause an imbalance of critical hormones.

The American National Standards Institute (ANSI, Z129.1–1988) did not specify criteria for the evidence of carcinogenicity derived from epidemiological studies but made use of epidemiological data in its overall categorization of carcinogens.

A causal relationship between exposure to an agent and cancer is established if one or more epidemiological investigations that meet the following criteria show an association between cancer and exposure to the agent: (1) No identified bias that can account for the observed association has been found on evaluation of the evidence, (2) all possible confounding factors which could account for the observed association can be ruled out with reasonable confidence, and (3) based on statistical analysis, the association has been shown unlikely to be due to chance.

b. *Categories of human evidence.* The following categories of evidence from human studies have been developed.

i. Sufficient evidence of carcinogenicity in humans. The evidence is considered sufficient when all three of the above criteria for establishing a causal relationship between exposure to the agent and development of cancer are fully met. Evidence in this category would establish that a substance is toxic.

ii. Limited evidence of carcinogenicity in humans. The evidence is considered limited for establishing a causal relationship between exposure to the agent and cancer when a causal interpretation is credible, but chance, bias, or other confounding factors could not be ruled out with reasonable confidence. Evidence in this category would establish that a substance is toxic.

iii. Inadequate evidence of carcinogenicity in humans. The evidence is considered inadequate when all of the above three criteria for establishing a causal relationship between exposure to the agent and cancer are not met, leaving an alternative explanation to be equally likely. Evidence in this category is insufficient to establish that a substance is toxic, but does not imply that non-carcinogenicity has been proven.

3. Assessment of Evidence for Carcinogenicity in Animals

a. *Relevance of animal data to humans.* In the absence of adequate human data, the next best source of evidence of the carcinogenicity of chemicals is animal data, which are considered relevant to humans for the following reasons. (1) Mechanistically, an induction of heritable changes in the cellular DNA is generally considered to be the first and major event in carcinogenesis, and DNA is chemically similar in humans and animals. (2) Several agents, *e.g.*, 4-aminobiphenyl, bis (chloromethyl) ether, diethylstilbestrol, melphalan, methoxalen plus ultraviolet radiation, mustard gas and vinyl chloride were first found to be carcinogenic in animal studies before they were found to be carcinogenic in human studies (IARC, 1987, Suppl. 7, p. 22). (3) Information evaluated by IARC shows that, out of the 44 agents for which there is "sufficient" or "limited" evidence of carcinogenicity to humans available, all 37 agents that have been tested adequately were found to produce cancer in at least one animal species. Based on this observation, IARC stated: "Although this association can not establish that all agents that cause cancer in experimental animals also cause cancer in humans, nevertheless, in the absence of adequate data on humans, it is biologically plausible and prudent to regard agents for which there is sufficient evidence (see p. 30) of carcinogenicity in experimental animals as if they presented a carcinogenic risk to humans." (IARC, 1987 Suppl. 7, pp. 22 & 30).

b. *Factors in the consideration of animal data.* Animal studies to determine the carcinogenicity of an agent involve both exposure of laboratory animals to the agent for a long period of time (several months to the entire life span) and histopathologic examination of the animals at the end of the study to detect an exposure-related increase in tumor incidence. Criteria for assessing the quality and adequacy of animal studies have been discussed by various groups (OSTP, 1985; National Toxicology Program (NTP), 1984). A good animal study (carcinogen bioassay) requires consideration of a variety of factors. For example: (1) The species and strain of animals used in the study should have a sufficient historical data base; (2) animals should be disease free and kept under good housing conditions and animal care; (3) the number of animals/group/sex should be adequate; generally 50 or more animals of each sex/group should be used; (4) animals should be randomly distributed in the groups; (5) dose levels selected should be adequate; at least one of the doses should be close to the maximum tolerated dose (MTD); doses in excess of the MTD may lead to increased mortality excessive toxicity, or other unphysiologic conditions not considered desirable in a carcinogen bioassay (OSTP, 1985, p. 10413, Principle #4, p. 10376); and (6) exposure duration and frequency should be adequate (daily exposure by oral or inhalation routes for a two-year period is generally used in rodents) (NTP, 1984).

Other factors associated with a good animal cancer bioassay or study that must be considered in assessing the evidence are: (1) Whether data collection and reporting are complete and clear, (2) whether routes, exposure patterns, and possible mechanisms of cancer induction are relevant to the human situation, *e.g.*, tumor development only at the site of transplant or injection of a material, or bladder tumors in the presence of bladder stones (OSTP, 1985, p. 10414; Principle # 4, p. 10376), (3) whether metabolic-pharmacokinetic properties are affected, and whether pathways required for activation of the agent to produce cancer are lacking in humans; if humans do not have the same metabolic pathway found necessary in the test animal for the carcinogenic effect, the evidence may not be relevant to humans, (4) results of short-term *in vivo* and *in vitro* tests provide additional information concerning a judgment of carcinogenicity of a chemical (OSTP, 1985, Principle #5, p. 10376), and (5) whether the methods used for statistical analysis are clearly stated and are generally accepted techniques for analyzing carcinogen bioassays (IARC, 1987, Suppl. 7, p. 26; OSTP, 1985, p. 10417).

The confidence in evidence of carcinogenicity derived from animal studies increases: With an increase in the number of responding species, strains, sites, dose levels, experiments, or unusual tumor types; with the

increase in the statistical significance of increased tumor incidence over controls; with dose-related increases in the proportion of malignant tumors and total tumors; and with shorter times between the start of chemical exposure and the onset of the tumor.

Benign tumors in experimental animals frequently represent a stage in the evolution of malignant neoplasms, but they may be endpoints that do not readily undergo transition to malignancy (IARC, 1987, Suppl. 7, p. 23; OSTP, 1985, p. 10416). However, if an agent is found to induce only benign neoplasms, it should be suspected of being a carcinogen and it requires further investigation. Consistent with this observation is a recent review of over 300 National Toxicology Program (NTP) cancer bioassays which found only a few chemicals (3%) causing only benign tumors (Huff, 1988). Thus, when benign tumors occur together with malignant tumors from the same cell type in an organ or tissue, the benign tumors should be combined with the malignant tumors for evaluating the carcinogenic effect (OSTP, 1985, principle 8, p. 10376; see McConnell et al., 1986 for guidelines for combining benign and malignant tumors).

In evaluating carcinogenicity studies, tumor data at sites with high background rates, such as testicular, pituitary, and mammary tumors in certain strains of rats and lung and liver tumors in certain strains of mice, may require special consideration (OSTP, 1985, p. 10417; principle #9, p. 10377). For example, in the case of the male $B6C3F_1$ mouse (which has a high background of liver tumors), if the only tumor response is the increase in liver tumors in males, the evidence will normally be considered "sufficient" evidence of carcinogenicity if the other criteria of "sufficient" evidence as outlined in the following section (such as, tumor response in another strain, species, or experiment) are met. However, the determination could be changed on a case-by-case basis to "limited evidence" if the liver response or other high background response is necessary for the original "sufficient evidence" determination but consideration of certain factors, stated below, relating to the high background response support such a change. Factors to be considered are: (1) The tumor incidence is increased only in the highest dose, and/or only at the end of the study; (2) the proportions of malignant tumors are not substantially increased in a dose-related manner; (3) the tumors are predominantly benign; (4) shortening of the time to the appearance of tumors did not occur in a dose-related manner; (5) negative or inconclusive results are obtained from a spectrum of short-term tests for mutagenic activity; and (6) excess tumors are found to occur only in a single sex (EPA, 1986).

c. *Comparison with EPA criteria.* The guidelines concerning carcinogenicity derived from evidence from animal studies agrees with criteria promulgated by EPA, except for the following differences.

i. The "No Data Available" and the "No Evidence of Carcinogenicity" classifications of EPA are not used because they are not necessary for the purpose of assessing the toxicity of consumer products. CPSC does not maintain an inventory of chemicals, as EPA does for all chemicals in commerce (except for drugs, food additives, and cosmetics), and therefore such categories are not needed.

ii. An increased incidence of benign tumors, with an indication that the tumors have the ability to progress to malignancy, is included as a contributing response in the criteria for "sufficient evidence" of carcinogenicity. Such evidence of carcinogenicity would not be treated this way by EPA's criteria. The Commission, after careful review of the available studies, has concluded that if a benign tumor is known to have the potential to progress to malignancy, then for all practical purposes the tumor should be considered to have the same potential health risk as if it is a malignant tumor. In addition, benign tumors in experimental animals frequently represent a stage in the evolution of a malignant tumor, as stated earlier.

iii. Increased tumor incidences at independent multiple sites of origin in the same species and study are considered as separate responses. Such evidence would be considered as a single response by the EPA's criteria. The Commission believes that the ability of a chemical to independently produce tumors at multiple sites indicates that it has a wide range of carcinogenic potential, similar to such an indication from responses in multiple strains, species, or experiments.

d. *Comparison with IARC's criteria.* The consideration of carcinogenicity derived from animal studies is also in agreement with that formulated by IARC, with the following exceptions.

i. The "Evidence Suggesting Lack of Carcinogenicity" classification is deleted since it is not necessary for the purpose of determining toxicity.

ii. According to IARC's criteria, increases in incidence rates of certain neoplasms that are known to have high background rates could be viewed as a "limited evidence," as opposed to a "sufficient evidence," classification. EPA's criteria, on the other hand, provide that such evidence should contribute to the "sufficient evidence" determination, which could be changed to "limited evidence" on a case-by-case basis, depending upon the specific information as described above in the section dealing with tumor data at sites with high background rates (EPA, 1986). The Commission, after careful review of available data, concludes that EPA's criteria provide a more thorough analysis of whether the high background rate of tumors is confounding the observed correlation between exposure and cancer.

iii. An increased incidence of benign tumors only, with an indication of the ability of the tumors to progress to malignancy, would contribute to the "limited evidence" classification by IARC's criteria. However, such evidence is viewed by the Commission as a contributing response in the criteria for "sufficient evidence" of carcinogenicity, for the reasons described above in section B.3.c.(ii) discussing how the criteria differ from EPA's classification scheme.

iv. Increased incidence of tumors at independent multiple sites of origin in the same species and study are treated as discussed above in section B.3.c.(iii) concerning differences from EPA's classification scheme. IARC's approach is similar to that of EPA's.

e. *ANSI definitions.* ANSI Z129.1 (1988) did not specify criteria for the evidence of carcinogenicity derived from animal studies, but it made use of animal data in its overall definitions of carcinogenicity.

f. *Categories of animal evidence.* Based on current information, the Commission concludes that the following classifications represent the best scientific assessment and are most appropriate to classify the evidence derived from animal cancer bioassay studies.

i. Sufficient evidence of carcinogenicity in animals. "Sufficient evidence" of carcinogenicity requires that the substance has been tested in well-designed and -conducted studies (*e.g.*, as conducted by National Toxicology Program, or consistent with the OSTP guidelines) and has been found to elicit a statistically significant ($p<0.05$) exposure-related increase in the incidence of malignant tumors, combined malignant and benign tumors, or benign tumors if there is an indication of the ability of such benign tumors to progress to malignancy: (a) in one or

both sexes of multiple species, strains, or sites of independent origin or in experiments using different routes of administration or dose levels; or (b) to an unusual degree in a single experiment (one species/strain/sex) with regard to unusual tumor type, unusual tumor site, or early age at onset of the tumor. The presence of positive effects in short-term tests, dose-response effects data, or structure-activity relationships are considered additional evidence. If evidence of carcinogenicity in animals is sufficient, the substance will be considered toxic, in the absence of adequate conflicting data.

ii. Limited evidence of carcinogenicity in animals. "Limited evidence" of carcinogenicity means that the substance has been tested and found to cause any of the following: (a) a statistically significant ($p<0.05$) exposure-related increase in malignant, benign, or combined malignant and benign tumors in one or both sexes of only one species, strain, and site and such evidence otherwise does not meet the criteria defined for "sufficient evidence" in the above section; (b) evidence derived from studies which can be interpreted to show positive carcinogenic effects but which have some qualitative or quantitative limitations with respect to particulars, such as doses, exposure, followup, survival time, number of animals/group, or reporting of the data, which would prevent consideration of the evidence as "sufficient" (category i above); or (c) an increase in the incidence of benign tumors if there is no indication of the ability of the tumors to progress to malignancy. If only "limited" animal data exist for a substance, the substance will not be considered toxic under the definition on the basis of the limited animal data.

iii. Inadequate evidence of carcinogenicity in animals. "Inadequate evidence" of carcinogenicity includes that evidence which cannot be placed into "sufficient" or "limited" categories, or which is derived from poorly conducted studies with major qualitative and quantitative limitations, such as inadequate doses, too few animals/group, poor survival, or inadequate reporting, so that there can be no interpretation of the data as showing either the presence or absence of a carcinogenic effect. Data in this category do not establish a substance as toxic.

C. Neurotoxicity

1. Introduction.

This section discusses "neurotoxicity" for purposes of providing guidelines concerning neurotoxicity. The discussion presents a synopsis of criteria for the determination of the neurotoxicity of substances based on animal or human data. All neurotoxic effects, except those immediate effects which are rapidly and completely reversible following a short-term exposure, are considered chronic effects in the guidelines.

This discussion reflects the Commission's assessment of the most current scientific knowledge and consensus in this field (WHO, 1986; EPA, 1985; Spencer and Schaumburg, 1985; Hartman, 1988; OTA, 1990). For substances where the available evidence does not meet this standard, or where there is controversy about how the evidence should be evaluated, the Commission may proceed by rulemaking, as provided in section 3(a) of the FHSA, or by enforcement actions on a case-by-case basis to resolve the question of whether the substance presents sufficient evidence of an ability to be neurotoxic in humans that the substance should be considered toxic.

Test methods to determine certain neurotoxicity endpoints (manifestation of a neurotoxicological effect) are available (Anger, 1985, 1986, 1989; Baker, *et al.*, 1990; Johnson and Anger, 1983; Hartman, 1988; Tilson, 1989; EPA, 1985; WHO, 1986). Several federal agencies regulating toxic substances and drugs have guidelines to evaluate neurotoxicity as a part of acute and chronic toxicity testing and safety evaluation. The EPA has published neurotoxicity test guidelines (EPA, 1985) and is currently developing neurotoxicity risk assessment guidelines.

The U.S. National Institute of Occupational Safety and Health (NIOSH) has recommended national strategies for the prevention of neurotoxic disorders (NIOSH, 1988). NIOSH has listed 65 historically established human neurotoxic agents, major sources of exposure to them, neurotoxic effects associated with various agents, and chemicals for which neurobehavioral effects have been reported.

Evidence of neurotoxicity is evaluated by the quality and adequacy of the data and consistency of responses induced by a suspect neurotoxicant. Criteria to evaluate evidence derived from human and animal neurotoxicity data and the associated terminology outlined in the following sections are based on those of the World Health Organization (WHO), NTP, EPA, and NIOSH.

Evidence for neurotoxicity comes largely from human studies and animal studies. The guidelines would evaluate the toxicity of a substance on the basis of potential neurotoxicity based on available human and animal data. Under the guidelines, substances would be considered to be toxic if "sufficient evidence" or "limited evidence" exists to demonstrate neurotoxicity from studies in humans. In addition, those substances for which there is "sufficient evidence" of neurotoxicity in animals are considered toxic except that evidence derived from animal studies that has been shown not to be relevant to humans is not included.

The criteria in these guidelines are not intended to be mechanically applied, but rather should be interpreted with the exercise of expert technical judgment.

a. *Definition of neurotoxicity.* Neurotoxicity is any adverse effect on the structure or function of the nervous system by any substance, physical, chemical or biological in nature. The term "adverse effect" as used here means any undesirable effect on the nervous system caused by direct or indirect actions on the nervous system following acute, subchronic, or chronic exposures. The effect may be immediate or delayed, reversible or irreversible.

Characteristics of "adverse effects" include the following: (1) Side effects (unwanted effects) or effects due to overdosing; (2) functional or structural responses in the nervous system that promote compensation to restore normal function; or (3) any alteration from baseline (the individual's particular normal state), although still within "normal" range, which may diminish the ability to survive, undergo repair, or adapt to the environment. This definition includes chemicals that act directly on elements within the nervous system, such as glutamate which directly stimulates receptors, or indirectly, such as carbon monoxide which decreases the availability of oxygen.

"Adverse effects" must be considered within the context of agent usage and exposure scenario (ICON, 1990).

b. *The nervous system: Background and definition.* Effects on the nervous system will be considered in relation to the two major anatomical divisions: central and peripheral. The central nervous system consists of the parts of the nervous system contained within the skull (brain) and the vertebral column (spinal cord). The peripheral nervous system consists of nerve cells (neurons)

and their processes (axons, dendrites) which conduct information between muscles, glands, sense organs, and the spinal cord and brain. The peripheral nervous system includes afferent (sensory) and efferent (motor) fibers; both types of fibers are represented in the components of the nervous system (WHO, 1986).

Basic cellular elements of the nervous system are neurons, glial cells associated with blood vessels, and other specialized epethelial and connective tissue cells (WHO, 1986). Neurons contain multiple short processes, called dendrites, which receive information from other nerve cells, and a single long axon that conducts electrical signals to other neurons and muscles, and to and from skin, muscles, and glands. The axon terminates at a synapse where chemically-encoded information is conveyed to neurons or muscles. Glial cells in the central nervous system comprise the supporting structure of nervous tissue.

Neurons are atypical cells because the dendrites and the axon are metabolically inactive and collectively are much larger than the cell body (somata), which alone is responsible for all the metabolic activity required for maintenance of the entire cell (WHO, 1986). The structure of neurons provides an enormous surface area for chemical exposure, and consequently, chemical injury. For example, a peripheral neuron located in the lumbar portion of the spinal cord and innervating a muscle in the foot is about a meter long and contains a long column of cytoplasm.

Some chemicals may interfere in the maintenance of this cytoplasm column by, for example, interrupting transportation of nerve impulses along the axon. In this way a chemical such as n-hexane, and n-methylbutyl ketone may affect the nervous system. Chemicals such as triethyl tin may induce changes in the metabolic system of the somata, which may then cause degenerative changes in the entire neuron. A chemical such as triethyl tin, hexachlorophene, or lead, may alter myelinating cells (myelin is a fatlike substance forming a sheath around certain nerve fibers), cytoplasmic processes, or the myelin sheath, thereby causing neurotoxic effects. Intracellular elements of intraneural blood vessels may be altered by chemicals such as lead and misonidazole. Secondary changes may then occur in other tissues, such as voluntary muscles (WHO, 1986).

Several means exist for chemicals to enter the nervous system. Although the nervous system is largely protected from chemicals entering into nerve cells through blood, the blood-brain barrier is not complete. Some chemicals, especially the lipid soluble type, may still cross the barrier. Another mode of entry of chemicals is by uptake into peripheral nerve terminals. The chemical is then transported to the cell bodies in the CNS through the axon. Parts of the nervous system such as neurons of the autonomic nervous system and the sensory ganglia, certain parts of the brain (*e.g.*, near the beginning of the spinal cord), and to a limited extent, the retina in the eye, are outside the blood-brain barrier and are likely to be more exposed to neurotoxic chemicals than are other parts (WHO, 1986).

Some other factors that may influence susceptibility to effects are the size and type of the nervous system cell, the level and type of the various neurotransmitters in different regions of the nervous system, the integrity of cellular membranes, the type of intracellular organelles, and the degree of vascularity (Baker, *et al.*, 1990). For example, a poorly vascularized (*i.e.*, has fewer vessels) nervous tissue, such as the globus pallidus, is likely to be more susceptible to hypoxia (abnormal condition resulting from decrease in oxygen supplied to or used by body tissue) than a more vascularized tissue of the nervous system, such as the cerebral cortex. However, in some cases where cells have a high requirement for oxygen, they may be more sensitive to hypoxia in spite of the high vascularization than less vascularized tissue having a low requirement for oxygen. For example, neurons of the grey matter of the cerebral cortex are more vascularized than the myelinated axons of the cerebral white matter. However, the neurons are more sensitive than the axons to hypoxia because they have a higher requirement for oxygen than the axons for metabolism.

c. *Manifestations of neurotoxicity.* Common manifestations of neurotoxicity may be categorized into four types: sensory effects, motor effects, autonomic effects, and pathophysiological effects (changes to the structure and function of nerve cells and tissue).

Common signs and symptoms of sensory effects include anxiety, irritability, apathy, lethargy, attention difficulty, illusion, delusion, hallucinations, dementia (mental deterioration), depression, euphoria, stupor (partial or nearly complete unconsciousness), and coma. Other signs and symptoms of sensory effects are abnormalities of (a) smell, vision, taste, hearing, skin senses (for example, numbness, pain); (b) proprioception (reception of information given by sensory nerve terminals concerning movements and position of the body; it occurs chiefly in the muscles, tendons, and the labyrinth).

Common signs and symptoms of cognitive effects include effects upon short-term memory, learning, verbal and non-verbal long-term memory, problem solving, attentional and arousal decrement and vigilance disturbances.

Common signs and symptoms of motor effects are muscle weakness, abnormal body posture or gait, paralysis, spasticity, rigidity, tremor, dystonia (abnormal muscle tone), incoordination, hyperactivity, myoclonus (alternate cycles of rigidity and spasm in rapid succession of a muscle or of a group of muscles), fasciculations (spontaneous contractions of a number of muscle fibers supplied by a single motor nerve filament), cramps, seizures, and convulsions.

Common signs and symptoms of autonomic effects are abnormalities in control of functions related to (a) temperature that may be manifested, for example, in sweating; (b) the gastrointestinal tract that may be shown in diarrhea, salivation, or a change in appetite; (c) the cardiovascular system, for example, a change in heart rate; and (d) changes in other functions, such as, urination, sexual functions, and lacrimation (tearing).

Common pathophysiological effects on the nervous system are as follows: (a) Neuronopathies (partial or complete loss of the neuronal cell body, its processes, collaterals, or terminations); (b) myelinopathies (segmental or focal demyelination which means destruction of myelin, a fatlike substance forming a sheath around certain nerve fibers); (c) axonopathies (axonal degeneration); (d) disruptions in synaptic transmission (synthesis, storage, degradation, transport, release, and binding to specific membrane receptors of neurotransmitter chemicals); (e) changes in levels and functions of ion channels (sodium and potassium ions responsible for depolarizing and repolarizing the membrane respectively) and changes in related enzymes such as neurotoxic esterases.

2. Evidence of Neurotoxicity: General Discussion

Evidence of neurotoxicity is derived from toxicological studies related to neurobehavior, neurochemistry, neuropathophysiology, and neurodevelopment in humans and in animals. Major objectives of a neurotoxicity study are to detect and

characterize toxicity endpoints, identify changes in the structure and function of the nervous system, characterize the changes associated with exposure, assess the existence of any dose-time-response association, and elucidate the mechanism of neurotoxicity (Hartman, 1988; WHO, 1986).

Neurobehavioral studies determine the effect of a chemical exposure based on observations of the behavioral functions of the subject. Some of the behavioral functions generally tested in these studies are motor speed and steadiness, attention/response speed, manual dexterity, visual perception/memory, auditory memory, verbal abilities, attention/vigilance, profiles of mood state, and respondent and operant behavior.

Neurochemical studies determine the effect of chemical exposure on changes in the level, activity, and pattern of neurotransmitter chemicals, such as acetylcholine, noradrenaline, dopamine, glycine, serotonin, and of enzymes like neurotoxic esterases.

Neuropathophysiolgical studies determine the effect of chemical exposure on the structure and function of the nerve tissues. Observed effects and types of studies include: (1) Degeneration, or demyelination of nerve tissues; (2) encephalography (electrical activity measurements of the brain); (3) evoked potential (electrical phenomena evoked in the brain by external activity such as auditory, visual, or somatosensory stimuli); (4) electromyography (recording electrical activity from a muscle); (5) electroneurography (measurement of both motor and sensory nerve conduction velocities); (6) temperature threshold; and (7) quantitative testing for cutaneous (skin) sensation.

Developmental neurotoxicity studies are concerned with adverse effects on the structure of the nervous system or on neurobehavioral functions related to physical growth and development (Wier, *et al.*, 1989).

Several major difficulties in determining neurotoxicity of chemicals exist. Problems may arise regarding the ability of the nervous system to conform with the immediate environment, due to the scientific community's incomplete understanding of the neurotoxic effects, due to interspecies differences in structure and complexity of functions, and due to a very wide range of normal neurological and physiological functions of the nervous system which can mask the ability to observe effects due to chemical exposure. Suitable methods are unavailable to detect changes with a reasonable degree of certainty in adaptive capacity of the nervous system, in homeostatic functioning, as well as in movement pattern, fatigue, and the ability to perform complex tasks. It is, therefore, clear that a single test may not suffice to detect neurotoxicity (WHO, 1986).

Evidence for neurotoxicity comes from two sources, namely, studies in humans and studies in animals. Results from these studies are evaluated in view of the available information on histopathology (changes in tissues), enzyme inhibition, metabolism, and other relevant toxicological data to determine if there is a causal association between exposure to a chemical and neurotoxicity.

3. Evidence of Neurotoxicity Derived From Studies in Humans

a. *Discussion.* Direct evidence of human neurotoxicity comes from observations of humans. A good quality human study should have a clear and detailed description of the studied population, disease, and exposure. A neurotoxicant can produce more than one neurotoxic effect including those related to sensory, motor, learning/memory, or mood activity. The history of occurrence of the effect should be relatively complete, and past events should be substantiated by medical records if possible. The design of the study should have dealt with bias and confounding factors that can influence the risk of disease by matching, or in the analysis by statistical adjustments. The study should describe the determination of statistical parameters, such as relative risk, odds ratio, absolute disease rate, confidence intervals, significance tests, and adjustments made for confounding factors. It should also describe the selection and characterization of exposed and control populations, size of the population groups, adequacy of duration, completeness, and quality of follow up. A causal association is strengthened by the observation of a dose-response relationship, consistency and reproducibility of results, strength and specificity of the association, and an established mechanism of action.

The evaluation of human neurotoxicity studies should consider many factors including: Age, sex, socioeconomic status, health, neurological disorders and other diseases, drug treatment history, recreational drug use, motivation of the test and reference groups, life style (alcohol, smoking, etc.), education level, individual levels of alertness, emotional state, and levels of sleep and fatigue. Tests should be blind and test sites free from distractions. Confounding factors to be considered in evaluation of these studies include allergic and idiosyncratic reactions. Other complex issues to be considered are: immediate versus delayed toxicity, reversible versus irreversible effects, local versus systemic effects, acute versus chronic effects, and tolerance development (Hartman, 1988; OTA, 1990; Anger, 1989; Jonson and Anger, 1983; Hooper, 1987).

Major difficulties encountered in studies in humans are the delayed neurotoxic effects, exposures to mixtures of chemicals, and the lack of information on the effects of acutely non-toxic low-dose levels of neurotoxicants over a long period of time.

b. *Evidence of neurotoxicity derived from studies in humans.* Since neurotoxic effects are very complex and often subtle in nature, scientific judgment is necessary in classifying the evidence. The confidence in evidence of neurotoxicity derived from human studies increases with the observation of a dose-response relationship, consistency and reproducibility of results, strength and specificity of the association, and conformance with an established mechanism of action.

i. Sufficient evidence of neurotoxicity. "Sufficient evidence" for a causal association between exposure to a chemical and neurotoxicity is considered to be present when the following four criteria are met. (1) A consistent pattern of neurological dysfunction is observed in multiple studies. (2) The adverse effects/lesions in the nervous system account for the neurobehavioral dysfunction with a reasonable degree of certainty. (3) All identifiable bias and confounding factors are discounted after consideration. (4) Based on statistical analysis, the association has been shown unlikely to be due to chance with reasonable certainty.

ii. Limited evidence of neurotoxicity. "Limited evidence" of neurotoxicity means that evidence is less than convincing, *i.e.*, one of the above "sufficient evidence" criteria for establishing a causal association is not met. Thus, uncertainties exist in establishing the association between exposure to a chemical and the neurotoxic effect.

iii. Inadequate evidence of neurotoxicity. "Inadequate evidence" of neurotoxicity means that evidence does not meet the criteria of the above two categories and that no interpretation of the data shows either the presence or absence of a chemical exposure-related neurotoxic effect.

4. Evidence of Neurotoxicity Derived From Studies in Animals

a. *General considerations.* In the absence of human data, the next best source of evidence of neurotoxicity is animal data which may be considered relevant to humans for the following reasons: (1) Anatomy, physiology, histology, and biochemistry of the nervous system in humans and mammals are essentially similar; (2) chemical agents first found to be neurotoxic in humans, such as methylmercury, carbon disulfide, n-hexane, methyl ethyl ketone, methyl butyl ketone, and dichloroacetaldehyde are also neurotoxic in animals; and (3) agents, like aluminum and pyridoxin phosphate (vitamin B6), first identified in animal studies as neurotoxic were later found to be neurotoxic in humans (WHO, 1986). In neurotoxicity studies, animals are dosed acutely, subchronically, or chronically. Neurotoxicity endpoints are studied using different test methodologies designed either to screen or investigate a mechanism of action of neurotoxicity, or to gather additional data.

Criteria for assessing quality and adequacy of animal studies have been discussed by various groups (WHO, 1986; EPA, 1985; Hartman, 1988; Tilson, 1987, 1989; OTA, 1990). The major factors indicative of a good quality animal study are the following. (1) Species, sex, age, health, housing conditions, and nutrition of the animals are suitable for the test. (2) The number of animals/group/sex are adequate. (3) Animals are randomly distributed in the groups. (4) Dose levels, duration, and frequency selected are adequate to detect the adverse neurotoxic effects. (5) Data collection and reporting are complete and clear. (6) Routes and exposure pattern are relevant to the human situation. (7) Test methods used for statistical analysis are appropriate, clearly stated, and are the generally accepted techniques for analyzing neurotoxicity studies (WHO, 1986; EPA, 1985; Hartman, 1988; Tilson, 1989; OTA, 1990).

A good quality animal study requires consideration of reliability, sensitivity, and validity of the results (Vorhees, 1987). Interpretation of neurotoxicity data should consider: (1) If the neurotoxic effects are caused by a single dose (such as cholinesterase inhibitors and pyrethrins); (2) if effects are reversible or irreversible (reversible effects may indicate compensation or adaptation rather than a simple acute effect); (3) if neurotoxicity is delayed; (4) if a threshold exists (effects may appear only after changes in the nervous system caused by repeated exposures have reached a threshold limit); and (5) if circadian rhythms may influence behavior, such as, feeding, drinking, sleeping, and mating (WHO, 1986).

b. *Categories of neurotoxicity studies.* Six common representative categories of neurotoxicity studies, with a few examples of test methods in each category, to determine various neurotoxicity endpoints are listed below.

i. Neurobehavioral studies are concerned with adverse effects of a chemical on the behavior of an organism. Behavior may be defined as movement of an organism or its parts within contexts pertaining to time and space. Behavioral responses typically have been divided into three types based on the functional relations that control their occurrence (WHO, 1986). These three types are respondent behavior, operant behavior, and mixed behavior.

Respondent behavior is controlled mainly or exclusively by the prior occurrence of an event (stimulus) in the environment. The events are referred to as eliciting stimuli. A classic example of unconditioned respondent behavior is a dog's salivation when food, an unconditioned stimulus, is placed in the dog's mouth.

Operant behavior is apparent exclusively from its consequences and is also referred to as emitted behavior. Operant behavior occurs with no known observable eliciting stimulus. For example, when an animal is exposed to a novel environment, it will show a characteristic pattern of exploratory activity initially, followed by a slowdown. The environment is not an eliciting stimulus. However, the motor activity is associated with the environment.

Some behavior, known as mixed behavior, is known to have both respondent and operant components. For example, bird pecks are controlled partly by eliciting stimuli and partly by response consequences.

Both respondent and operant behaviors may be modified by the conditioning (learning) process. For example, when food (a non-conditioning stimulus) is placed in a dog's mouth only after a special note is sounded (a conditioning stimulus) and the procedure is repeated for some time, the sound of the note alone starts inducing salivation, without placing food in the dog's mouth: a conditioned respondent behavior. A conditioned operant behavior occurs, for example, when a food-deprived rat is placed in a chamber with a food dispenser and a lever, and the depression of the lever results in presentation of food, then the consequence of the behavior (pressing the lever and presentation of food) comes to control the occurrence of the response.

Common neurobehavioral studies include detection and evaluation of changes in the following neurotoxicity endpoints: cognitive functions; eating and drinking behavior; social behavior involving two or more individuals; tremors, convulsions (threshold dose of convulsants is considered in view of other unrelated toxicity), ataxia (effects on muscular coordination), paralysis, lacrimation, and the presence and absence of certain reflexes; spontaneous motor activity; motor functions; and sensory processes.

ii. Neurophysiological studies basically measure various physiological functions; such as, (1) nerve conduction velocity, (2) peripheral nerve terminal function, (3) electromyographic activity, (4) spinal reflex excitability, (5) electrocardiographic activity (EKG), (6) blood pressure, (7) electroencephalographic activity (EEG), (8) general excitability, (9) convulsive activity, (10) stimulation of the cerebral motor cortex, (11) recovery functions, (12) cognitive functions, and (13) synaptic and membrane activity.

iii. Morphological studies assess structural changes in neural and non-neural cells of the nervous system. Such changes may include: (1) The accumulation, proliferation, or rearrangement of structural elements like intermediate filaments, microtubules, or organelles (*e.g.*, mitochondria, lysosomes); (2) the degeneration of neural cells in whole or in part; (3) gross changes in morphology of cells; (4) changes in brain weight; (5) discoloration of and hemorrhage in nerve tissue; and (6) changes in glial and fibrillary acidic protein (GFAP).

iv. Biochemical and endocrinological studies may include determination of changes in: (1) RNA, DNA, and protein synthesis in nerve cells; (2) enzyme levels; (3) lipids, glycolipids, and glycoproteins synthesis; (4) synthesis, uptake, release, reuptake, metabolism, stimulation and inhibition of acetyl choline, epinephrine, serotonin and other neurotransmitters; (5) ion channels and energy metabolism; (6) anterior pituitary hormones, *e.g.*, follicle stimulating hormone, thyrotropic hormone, hypothalamic control of pituitary secretions; and (7) peripheral metabolism of endocrine secretions.

v. Developmental neurotoxicity studies consist of a battery of tests to evaluate physical growth/

developmental and neurobehavioral functions. The tests given at the preweaning stage, for example, may include measuring brain weight and pup weight, and monitoring physical development at various intervals of time. Examples of the tests given at the postweaning stage are tests of sensory and neuromuscular functions, reactivity, problem solving, and neuroendocrine functions. (Wier, *et al* 1989). Neurotoxic agents may cause qualitatively different toxicity syndromes in developing animals than in adult animals.

vi. *In vitro* neurotoxicity studies may be used to support the animal studies. However, they are not considered adequate by themselves to classify neurotoxicants. These studies generally use primary cell cultures of various tissues, such as adult mouse sensory neurons, rodent fetal cells, and cerebellar cells. The studies may also use free-living soil nematodes, *e. g., caenorhabditis elegans*, and various microorganisms (Harvey, 1988; Reinhartz, *et al.*, 1987; Davenport *et al.*, 1989; Williams, *et al.*, 1987).

vii. Other studies may include studies dealing with pharmacokinetics, blood-brain barrier, bioavailability, and structure-activity relationships.

c. *Classification of neurotoxicity evidence derived from studies in animals.* Because of the complex and often subtle nature of the neurotoxic effects, scientific judgment is necessary in classifying neurotoxicity evidence. The confidence in evidence of neurotoxicity derived from animal studies increases (becomes convincing) with (1) an increase in the number of responding species, strains, dose-levels, experiments, severity and multiplicity of effects; (2) the observation of a dose-response relationship, consistency and reproducibility of results, and specificity and strength of the association; (3) supportive *in vitro* and other studies; and (4) an increase in statistical significance of neurotoxic effects over controls.

1. Sufficient evidence of neurotoxicity. "Sufficient evidence" for a causal association between exposure to a chemical and neurotoxicity means that (1) the substance has been tested in well-designed and -conducted studies (*e.g.*, NTP's neurobehavioral test battery, Tilson 1989; EPA's neurotoxicity test guidelines, EPA, 1985), and (2) the substance has been found to elicit a statistically significant ($p < 0.05$) increase in any neurotoxic effect in one or both sexes of multiple species, strains, or experiments using different routes of administration and dose-levels.

Evidence derived from animal studies that has been shown not to be relevant to humans is not included. Such evidence would result, for example, when there was an identified mechanism of action for a chemical that causes neurotoxicity in animals that has been shown not to apply to the human situation. For example, metabolic-pharmacokinetic properties concerning the need for activation of the agent to produce neurotoxicity may come into play. If humans do not have the same metabolic pathway found necessary in the test animal for the neurotoxic effect, then the study may not be relevant to humans.

ii. Limited evidence of neurotoxicity. "Limited evidence" of neurotoxicity means that the substance has been tested and (1) found to cause a statistically significant ($p < 0.05$) increase in a neurotoxic effect in one or both sexes of only one species, strain, and experiment and such evidence otherwise does not meet the criteria defined for "sufficient evidence" above; or (2) evidence derived from studies which can be interpreted to show positive neurotoxic effects, but have some qualitative or quantitative limitations with respect to particulars, *e.g.*, doses, exposure, follow-up, number of animals/group, and reporting of the data, which would prevent classification of the evidence as "sufficient" in the category above.

iii. Inadequate evidence of neurotoxicity. "Inadequate evidence" of neurotoxicity means that evidence does not meet the criteria of the above categories and that there can be no interpretation of the data as showing either the presence or absence of a chemical exposure-related neurotoxic effect. Data in this category would not establish a substance as toxic under the guidelines.

D. Reproductive and Developmental Toxicity

1. Introduction

a. *General discussion.* This section discusses the guidelines concerning reproductive and developmental toxicity. Section 2(g) of the FHSA defines toxic as applying "to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." 15 U.S.C. 1261(g).

The Commission is issuing these guidelines to specify criteria that will offer consistent guidance for identifying developmental or reproductive toxicants. This guidance reflects the Commission's assessment of the most current scientific knowledge and consensus in this field.

The intent of the guidelines is to incorporate those areas in which there is a substantial consensus as to the evidence needed to support a conclusion that a substance is a likely human developmental or reproductive toxicant. For substances where there is controversy about how the evidence should be evaluated, the Commission may proceed by rulemaking, as provided in section 3(a) of the FHSA, or by enforcement actions on a case-by-case basis to resolve the question of whether the substance presents sufficient evidence of an ability to produce developmental or reproductive toxicity in humans so that the substance should be considered toxic.

Evidence for developmental or reproductive toxicity largely comes from two sources: Human studies (epidemiology) and animal studies. Results from these studies are supplemented with available information from short-term tests, pharmacokinetics, and other relevant toxicological data. The guidelines issued by the Commission evaluate the toxicity of a substance on the basis of developmental or reproductive toxicity based on human and animal data. Under the guidelines, substances would be considered to be toxic if "sufficient evidence" or "limited evidence" exists to demonstrate developmental or reproductive toxicity from studies in humans. In addition, those substances for which there is "sufficient evidence" of developmental or reproductive toxicity in animals are considered toxic, except that evidence derived from animal studies that has been shown not to be relevant to humans is not included.

As noted above, it will be necessary to continue to rely on rulemaking under section 3(a) of the FHSA, or on enforcement actions, to resolve uncertainties that are not addressed by these guidelines. In this regard, the Commission notes that the criteria stated in the guidelines do not lend themselves to unambiguous application. A number of the criteria include statements that themselves can be interpreted only by the exercise of expert technical judgment. For example, one of the factors stated below for determining that an epidemiological study shows a causal relationship between exposure to an agent and developmental or reproductive toxicity is that confounding factors such as socioeconomic status, age, smoking, alcohol consumption, drug use, environmental or occupational exposure, and other diseases should be

adjusted for. Expert technical judgment is required to identify possible confounding factors and to evaluate whether the available data are adequate to eliminate such factors as causes of the observed association. In some instances, this will not be straightforward. The guidelines will not resolve such controversy, and it may be appropriate for the Commission to conduct rulemaking to resolve the controversy or bring enforcement actions in which the toxicity of the substance would be established on a case-by-case basis.

Although there are many difficult issues related to the interpretation of developmental or reproductive toxicity studies in animals and humans, criteria for defining developmental or reproductive toxicity have been established by several groups, such as the Food and Drug Administration (FDA), the EPA, and the European Economic Community (EEC). The Commission also believes that this approach for defining known or potential developmental or reproductive toxicants in consumer products is appropriate and feasible. The evidence of developmental or reproductive toxicity is determined by the quality and adequacy of the data and the consistency of responses induced by a suspect developmental or reproductive toxicant.

The following paragraphs describe definitions and terminology used in this section and suggest guidelines for identification and classification of reproductive and developmental toxicants. These guidelines may be used as a basis for labeling of consumer products under the FHSA.

b. *Definitions and terminology.* For these guidelines, the following definitions and terminology will be used. Some of these definitions were adapted from EPA (1988a), EPA (1988b), EPA (1989), and the Medical Dictionary by Saunders (1965).

Altered growth: An alteration in offspring organ or body weight or size.

Blastocyst: A structure resulting from the repeated divisions of the fertilized ovum.

Conceptus: The whole product of conception at any stage of development from fertilization of ovum to birth.

Developmental toxicity: Adverse effects on the developing organism that may result from its exposure during prenatal development, or postnatally to the time of sexual maturation. The adverse developmental effects may be detected at any point in the life span of the organism. The major manifestations of developmental toxicity include: (1) Death of the developing organism, (2) structural abnormalities, (3) altered growth (4) functional deficiencies, and (5) behavioral deficiencies.

Embryo: Developing young in the human uterus before eight weeks. The time period varies from one species to another in animals.

Embryotoxicity: Any toxic effect on the embryo as a result of prenatal exposure. These include malformations, altered growth and in utero death.

Epididymis: The elongated cordlike structure along the posterior border of the testis, containing ducts in which sperm are stored.

Estrogen: A female sex hormone secreted by the ovary.

Estrous cycle: The cycle of changes in the female genital tract of lower mammals, which are produced as a result of ovarian hormonal activity. It is equivalent to the menstrual cycle in humans and other primates.

Female reproductive toxicant: An agent which can adversely affect the ability of a sexually mature female to produce normal offspring.

Fertility: The capacity to conceive or induce conception.

Fertilization: The fusion of a sperm with an ovum resulting in the formation of a zygote.

Fetotoxicity: Any toxic effect on the fetus as a result of prenatal exposure. These include malformations, altered growth and in utero death.

Fetus: Developing young in the human uterus after eight weeks. The time period varies from species to species in animals.

Follicle Stimulating Hormone (FSH): A pituitary hormone responsible for the development of ova and production of estrogen in females, and the development of seminiferous tubules and production of sperms in males.

Gonad: An ovary or testis.

Implantation: Attachment of the blastocyst to the epithelial lining of the uterus.

Luteinizing Hormone (LH): A pituitary hormone responsible for ovulation, development of corpus luteum, and production of progesterone in the females, and production of testosterone in males.

Male reproductive toxicant: An agent which can adversely affect the ability of a sexually mature male to produce normal offspring.

Malformation: A permanent structural change that may adversely affect survival, development, or function.

Neonate: Newborn.

Ova: Plural of ovum.

Ovary: The female gonad.

Ovum: The female reproductive cell.

Pituitary gland: A gland which is located in the brain and secretes many hormones which control growth and functions of many organs of the body including the testis in males and the ovary in females.

Postnatal: After birth.

Prenatal: Before birth.

Progesterone: An ovarian hormone primarily responsible for the maintenance of pregnancy.

Prostate: An accessory male sex gland which secretes a part of semen.

Seminal plug: A wax like material found in the vagina of the female rodents approximately 12–24 hours after successful mating.

Seminal vesicle: An accessory male sex gland which secretes a part of semen.

Sperm: The male reproductive cell.

Teratogen: An agent or factor that causes the production of a structural defect in the developing embryo or fetus.

Testis: The male gonad.

Testosterone: The male sex hormone secreted by testis.

Variation: A structural deviation that may not adversely affect survival, development, or function.

2. Identification of Developmental and Reproductive Toxicity Hazards from Studies in Humans

a. *Discussion.* Good epidemiologic studies provide the most relevant information for assessing human risk. Epidemiologic data are obtained from occupational, environmental, therapeutic, or consumer exposure to a substance. A positive good quality epidemiologic study should meet the following criteria (EPA, 1988a; EPA, 1988b; EPA, 1989): (1) There should be no identifiable bias which can be introduced through a faulty design of the experiment. For example, if hospital records are used, embryonic or early fetal loss may be underestimated since women are not necessarily hospitalized for these outcomes. These parameters may be better ascertained by random interviews. (2) Confounding factors such as socioeconomic status, age, smoking, alcohol consumption, drug use, environmental or occupational exposure, and other diseases should be adjusted for. (3) The association between an endpoint and a causal factor should not be due to chance; there must be a statistically significant association.

b. *Categories of human evidence.* The following categories of evidence from human studies have been developed.

i. Sufficient evidence of developmental or reproductive toxicity in humans. The evidence for a substance causing an adverse reproductive or developmental effect(s) is considered sufficient when it is based on good

quality human epidemiology which meets all the requirements stated in the above discussion of human studies; the results are statistically significant and without identifiable bias or confounding factors.

ii. Limited evidence of developmental or reproductive toxicity in humans. The evidence for a substance causing an adverse reproductive or developmental effect(s) is considered limited when the human epidemiology meets the criteria for sufficient evidence except that it lacks one of the criteria described in the above discussion of human studies. Thus, evidence is limited when statistical significance is borderline as opposed to clear-cut, there is a source of bias, or there are confounding factors that have not been or cannot be corrected for.

iii. Inadequate evidence of developmental or reproductive toxicity in humans. The evidence is considered inadequate when more than one of the above criteria for establishing a causal association between exposure to the agent and reproductive or developmental effects are not met, leaving an alternative explanation to be equally likely.

3. Identification of Developmental and Reproductive Toxicity Hazards from Studies in Animals

Although human data are most relevant for predicting human hazard, in its absence animal information becomes a valuable tool for predicting effects in humans. Many chemicals which are reproductive and developmental toxicants in humans have been shown to produce similar effects in animals (Council on Environmental Quality (CEQ), 1981). Some examples are alcohol, busulfan, chlorobiphenyls, diethylstilbestrol, isotretinoins, organic mercury, thalidomide, valproic acid, aminopterin, lead, ethylenedibromide, kepone, and carbondisulfide (CEQ, 1981; EPA, 1989). In a review by FDA (1980) of 38 compounds known to be associated with birth defects in humans, 37 were found to produce similar effects in at least one species of animals (45 FR 69,823). In another review of the data of the teratologic potential of 203 chemicals by FDA (1980), FDA stated: "it is reasonable to conclude that positive animal teratology studies are at least suggestive of potential human response." (45 FR 69,824). In addition, Wilson (1977) has described the mechanism(s) and pathways which could be applicable to both humans and animals in the initiation and development of birth defects.

a. *Study protocols for studying developmental and reproductive toxicity in animals.* EPA has developed protocols for studying developmental, male reproductive, and female reproductive toxicities in laboratory animals. Each of these three study protocols is discussed briefly below.

A protocol for studying developmental toxicity has been described by EPA (1989). Developmental toxicity can be studied in animals by administering a test substance during pregnancy, and evaluating embryonal, fetal, and/or neonatal toxicity. The protocol may also include exposure of the organism during a specific period of development (*e.g.*, during organ development), evaluation of toxicity over several generations, evaluation of toxicity during the early postnatal period or even up to sexual maturity. Animals used for developmental toxicity studies are usually mice, rats, or rabbits The most important endpoints of developmental toxicity are embryonal mortality, fetal mortality, neonatal mortality, malformations (external, visceral, skeletal) at any stage of development, altered growth, as well as functional and behavioral abnormalities.

A protocol for studying male reproductive toxicity has been described by EPA (1988a). Male reproductive toxicity can be studied by exposing sexually mature male rats to a test substance for a certain period followed by cohabitation with untreated sexually mature female rats. The exposure of the males to the test material is continued during the mating period. The main endpoints for evaluating toxicity are mating ability, fertility, prenatal and postnatal developmental effects, and weight and histopathological evaluations of reproductive organs (testis, epididymus, prostrate, seminal vesicle and pituitary). Mating ability is ascertained by determining the number of animals with seminal plugs or the presence of sperm in a vaginal lavage, per number of pairs of rats cohabited. Fertility is ascertained by determining the number of animals pregnant per number of confirmed matings. The prenatal and postnatal developmental effects are ascertained by determining litter size, pre- and post-implantation loss, number of live and dead pups, sex ratios, malformation, birth and postnatal weight, and survival. Positive findings for supplemental endpoints such as sperm evaluation (count, morphology, and motility) and hormone evaluation (testosterone, FSH, and LH) increase the evidence for hazard identification.

EPA has also described a protocol for studying female reproductive toxicity (1988b). Female reproductive toxicity can be studied by exposing sexually mature female rats to a test material for a certain period followed by cohabitation with untreated sexually mature male rats. Exposure of females to the test material is continued during the mating period and throughout gestation and lactation. The main endpoints for evaluating toxicity are mating ability, fertility, prenatal and postnatal developmental effects, weight and histopathological evaluations of reproductive organs (ovary, uterus, and pituitary). Positive findings for supplemental endpoints such as estrous cycle abnormalities, and hormone evaluations (estrogen, progesterone, FSH, LH) increase the evidence for hazard identification.

Studies on reproductive toxicity are often performed where both males and females are treated, in a manner such as described above for the individual sexes. Such studies may not distinguish between "male" and "female" reproductive toxicity.

b. *Criteria for a good quality developmental or reproductive toxicity animal study.* Any reliable study of developmental or reproductive toxicity should be designed and carried out in accordance with certain recognized criteria. The following criteria should be met for a good quality developmental or reproductive toxicity animal study.

1. The study should include at least one dosed (treated) group and one concurrent control group. However, two or more differently dosed groups are preferred.

2. Maternal toxicity (*e.g.*, a reduction in maternal body weight or organ weight) should be evaluated and accounted for in the interpretation of a study. In an ideal situation, the toxic effect(s) observed in a positive study are significant at one or more doses in the absence of maternal toxicity. However, such toxicity is not automatically discounted as secondary when associated with maternal toxicity.

3. Test animals are selected based on consideration of species, strain, age, weight and health status, and should be randomized into dose groups in order to reduce bias and provide a basis for performing valid statistical tests.

4. Good historical data on developmental and reproductive toxicity should be available for the species/strain tested; ideally, such data should be obtained for animals from each supplier.

5. The number of animals per dose group should be adequate. Generally, 20 litters per group for rodents and 12 litters per group for rabbits are used (Sowinski, *et al.*, 1987).

6. Toxicity is evaluated using acceptable laboratory methods, and

data are analyzed using appropriate statistical methods.

Sufficient evidence derived from animal studies is used as a basis to predict probable developmental or reproductive toxicity of an agent in humans. The evidence for toxicity derived from animal studies is supported by observance of (1) dose-related effects over an increased number of doses, (2) an increased number of different endpoints, (3) the same route of exposure as the expected human exposure route, (4) multiple species/strains, or routes of administration exhibiting the response(s), and (5) pharmacokinetic data and information on the likely mechanism of action.

c. *Categories of evidence for developmental or reproductive toxicity derived from animal studies.* The following categories of animal evidence have been developed.

i. Sufficient evidence of developmental or reproductive toxicity in animals. The evidence for a substance is considered sufficient when obtained from a good quality animal study and there is a statistically significant ($p < 0.05$) treatment-related increase in multiple endpoints (as described in the toxicity study protocol section) in a single species/strain, or in the incidence of a single endpoint at multiple dose levels or with multiple routes of administration in a single species/strain, or increase in the incidence of a single endpoint in multiple species/strains/experiments. Evidence from animal studies which has been shown to be not relevant to humans is not used for this purpose.

ii. Limited evidence of developmental or reproductive toxicity in animals. The evidence for a substance is considered limited when (1) obtained from a good quality study and there is a statistically significant ($p < 0.05$) treatment-related increase in the incidence of a single endpoint in a single species/strain/experiment at a single dose level administered through only one route and such evidence otherwise does not meet the criteria defined for "sufficient evidence" above; or (2) the evidence is derived from studies which can be interpreted to show positive effects but have some qualitative or quantitative limitations with respect to experimental procedures (*e.g.*, doses, exposure, follow-up, number of animals/group, reporting of the data, etc.) which would prevent classification of the evidence in the category of "sufficient evidence" above.

iii. Inadequate evidence of developmental or reproductive toxicity in animals. "Inadequate evidence" means that evidence does not meet the criteria of the above categories and that there can be no interpretation of the data as showing either the presence or absence of a chemical exposure-related effect.

E. Sensitization

The Commission already has issued a supplemental definition concerning sensitization, which is at 16 CFR 1500.3(c)(5). While that discussion relates to the separate category of hazardous substance referred to in the FHSA as a "strong sensitizer," the principles contained in that section will serve also as a guide to determine when a substance is toxic due to the chronic hazard of allergic sensitization.

F. Evaluation of Risk From Exposure to Substances That May Present a Chronic Hazard

1. Guidelines for Assessing Exposure—a. *Introduction.* The FHSA defines as toxic "any substance which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface," 15 U.S.C. 1261(g). Under the FHSA, a toxic substance is "hazardous" if that substance "causes personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use," 15 U.S.C. 1261(f)(1)(A). In order for a substance to be considered a hazard by this definition, it must not only have the potential to be toxic, but it must be demonstrated that (a) persons are exposed to the substance, (b) the substance can enter the body, and (c) there is a significant risk of an adverse health effect(s) associated with the handling and use of the substance. These represent, in turn: exposure, bioavailability, and risk. This section discusses the subject of exposure, and is intended to be used in the determination of significant risk of chronic toxicity of art materials or other products subject to the FHSA.

A discussion by the Office of Science Technology Assessment and Policy (OSTP) concerning the level of evidence that a chemical or product poses a carcinogenic risk to humans and the level of exposure of the consumer when the product is used is presented in the **Federal Register** (50 FR 10372 (March 14, 1985)). Although advances have been made in the area of modeling and monitoring exposures during the five years since this publication, many of the variables concerning the use patterns, distribution of pollutants, sources, sinks, relationships between physical parameters and market penetration of products have not been defined to a level where predictive modeling can in any sense replace well-conducted field studies. Many of the strengths and weaknesses of the approaches discussed by the OSTP remain the same today as in 1985. These approaches are discussed in the following subsections.

Three routes of exposure—inhalation, dermal absorption, and oral ingestion—will be discussed in separate subsections in the following discussion. The largest current technical effort has been driven by the recent interest in indoor air quality. Thus, inhalation is the most thoroughly investigated exposure route. Oral ingestion has been largely addressed in dietary and food additive studies, while dermal contact is largely of interest to the cosmetics industry and hence also to FDA.

Protocols exist for both oral and dermal contact for foods, drugs, and cosmetics. They include procedures for considering the form of the material being studied, the site of application (for cosmetics), and amounts potentially consumed (for food). Similarly, the form of the product as used should be taken into consideration when designing exposure studies. Using pure chemicals to assess consumer exposure and subsequent health effects when the product under consideration is a mixture, is not likely to provide an accurate reflection of exposure. For example, in assessing exposure from di-2-ethylhexylphthalate (DEHP) rather than studying pure DEHP, the staff performed experiments with actual products in order to demonstrate release of DEHP from the products' plastic matrix and transfer to either skin or saliva. Exposure studies with paint removers demonstrated that studies using methylene chloride alone, rather than a formulated paint remover, would have resulted in erroneous exposure estimates.

There are a number of procedures for assessing exposure of individuals or populations to chemicals which may cause cancer or other adverse health effects. Reasonably accurate exposure data are important in the assessment of risk. The accuracy needed can not be categorically stated since such factors as potency, concentration, and strength of evidence for toxicity of the chemical of concern are all important in defining the resources required to obtain the data necessary to perform an exposure assessment. Further, when using population estimates, the broad range of use patterns, frequency of use, diversity of products, and the variations in the types of housing where the products are used, will lead to exposure limits that

are often several-fold multiples of the predicted average exposure. Information concerning use patterns, frequency of use, definition of housing stock, and definition and market penetration of the products of interest is often lacking.

b. *Background: the three routes of exposure.*—i. Inhalation. Active interest and advances in exposure assessment have been largely driven by the current concern about indoor air quality and past activities involving occupational exposure and ambient air quality criteria and monitoring. Although exposure estimation techniques are becoming more sophisticated, there is no universally accepted minimum set of specifications for either data collection or estimation of exposure from the collected data. Generally, exposure is assessed by direct monitoring of populations, predictions of exposure, or use of surrogate data. These three approaches are briefly discussed below.

(a) *Direct monitoring* involves monitoring the general population or select segments of the population for exposure to a chemical or chemicals. Past monitoring studies have provided concentrations averaged for various periods of time and concentration measured at discrete times. Such data were obtained for carbon monoxide and nitrogen dioxide, power plant plume dispersion/reaction and concentrations of various chemicals in such locations as work places, point sources, cities, and even regions. Similar data bases do not exist for equivalent populations for residential indoor air. Examples of recent studies addressing residential air quality are: The EPA TEAM study (Wallace, 1987), the Pierce Foundation New Haven study (Stolwijk, 1983), the Gas Research Institute Texas unvented gas space heater study (Koontz, 1988), the CPSC Atlanta unvented gas space heater study (TRC, 1987), and the Harvard Six Cities Study (Spengler, 1985).

These studies provide measurements of the concentration and duration of concentration for combustion products, volatile organics, particulates, and biological materials. In addition, they provide limited real time monitoring and information concerning selected health effects information. With field monitoring studies, due to the potential for exposure to pollutants other than those monitored, a health effect associated with one of the monitored pollutants may not be accurate.

(b) *Predictions of exposure (through modeling)* to a chemical(s) can be based on physical and chemical principles, mass balance principles and mathematical models. Examples of such studies are: (1) The exposure predictions presented in various CPSC staff reports on unvented kerosene and gas space heaters; (2) the CPSC–EPA and CPSC–LBL methylene chloride exposure studies from use of paint strippers; and (3) the CPSC–EPA exposure studies of perchloroethylene from dry cleaning and other uses.

Data necessary for use in predictive modeling are often obtained from studies on products in small chambers (50 to 100 liters), large chambers (20,000 to 30,000 liters), or in research houses. The studies are usually designed for specific products. In general, protocols, although having common features, are not directly applicable to other products which may be investigated.

Often such modeling studies are based on data obtained from representative products used in room-size chambers or research houses. The distinction between a modeling study and a field monitoring study is that often the modeling relates to a specific product while a field study may only attempt to identify the pollutants and their concentrations, not their sources.

(c) *Surrogate data* (data of exposure derived from chemicals of similar structure, reactivity and volatility as the chemical of interest) are used by some investigators when no data exist for the chemical of interest. Surrogate data have not been used extensively by the Commission but have been used in some instances by EPA in pesticide exposure estimates. Surrogate data should only be used for preliminary evaluations to establish the scope of additional studies that will be needed to define exposure more accurately.

ii. Ingestion. Ingestion studies have been performed for organics and inorganics in foods. The bioaccumulation of pesticides and chlorinated compounds has been studied in shellfish and edible fish. In its "total diet studies" the FDA has provided data on the concentrations of selected chemicals in approximately 200 foods purchased in grocery stores throughout the United States. These data, in conjunction with data obtained from tissue analyses for pesticides, provide estimates of the exposure, body burden and effectiveness of regulatory programs intended to limit exposure to certain pesticides.

These studies involve direct monitoring of sources of chemicals as well as fate of the chemicals in products such as foods. Laboratory simulations have been developed to estimate exposure to chemicals on a smaller scale. These latter studies do not usually involve a living species but are based on leaching or extraction of the chemical from a product with a simulated saliva or gastric fluid. Examples of such studies are studies performed by the FDA concerning lead released from decorated glassware (Soc. Glass Decorators, 1979), CPSC's studies concerning lead released from printed paper products, and CPSC's studies of nitrosamine and DEHP released from pacifiers.

The estimation of exposure from ingestion of chemicals present in foods or consumer products is then predicted based upon estimates of use of the product and its release from the product. In the case of oral ingestion of consumer products containing chemicals, data on chemical content of the products may be known. However, the exposure directly resulting from those products must be predicted on the basis of population studies of random households inquiring into the products used and their composition.

iii. Dermal exposure. Dermal exposure involves estimating the amount of substance contacting the skin. This may involve experiments measuring the amount of material leached from a product contacting a liquid layer which interfaces with the skin, or the amount of substance which migrates from a product (in solid or liquid form) which is in contact with the skin. Parameters which must be considered include surface area of the skin contacted, duration of contact, frequency of contact, and thickness of a liquid interfacial layer. Examples of how these types of experiments might be applied to exposure assessments can be found in the Commission's exposure assessments on dioxin and arsenic leached from children's playground equipment.

More recently, *in vitro* testing using animal or human skin held in specially designed cells has allowed the rate constants of penetration of various chemicals to be determined. This approach can be performed in the laboratory and, thus, is more controlled than experiments involving live animals or humans. Examples of studies using this approach are studies of the penetration of cosmetics and topical drugs performed by the FDA, and studies of the penetration of DEHP and formaldehyde performed by the CPSC.

c. Discussion of exposure estimates. Each of the three approaches for exposure assessment described above have certain strengths and weaknesses as discussed below.

i. Inhalation.—(a) *Direct monitoring.* Direct monitoring will provide the strongest data for demonstrating and quantifying exposure and should be used when available. The data obtained from such studies represent

measurements made in actual living conditions. The effects of weather, a residence's structural characteristics and contents, and human behavior are all reflected in the data obtained. With proper monitoring protocols, various human activities, weather conditions, source use (where the source of chemical is known), and other information directly of interest can be obtained. The resulting data base will reflect measurements of actual maximum and minimum concentrations and may provide adequate information to determine the effect of various parameters which affect the ultimate exposure. Such parameters include, but are not limited to, air exchange rate, ambient-indoor temperature differences, wind speed, type of heating system, and frequency of use of the source of interest. Direct monitoring studies can be of either randomly selected populations or selected specifically to represent a segment of the population expected to be at risk of exposure.

Data from such population studies are important not only because they provide direct measurement of human exposure, but also because, when well-designed and -conducted, they provide valuable information for the development of models to predict human exposure.

(b) *Modeling.* Mathematical modeling, another approach for assessing exposure, is based on the principles of conservation of mass; these models are often called mass balance models. The models may be one compartment where the whole house or building is treated as a single volume, or two or more compartments where rooms or portions of rooms are treated as individual exposure entities.

Model development with field validation has been largely performed using single story houses in investigations of unvented space heating appliances and gas ranges and ovens. In these cases the single compartment model has described the distribution of pollutants throughout the living space (Traynor 1983). A single compartment model in a house where there are multiple rooms appears to be adequate for predicting exposure to combustion products with heating appliances (Traynor 1987). This is a result of the heat produced by the appliances which rapidly disperses the pollutant throughout the house, leading to a uniform distribution of the pollutant. The case of multistory houses is less clear. In a study by the Gas Research Institute (Gas Research Institute in press) in a split entry research house, the distribution of pollutants from unvented gas space heaters or gas ranges/ovens was uniform at or above the levels where the heater was located. When the heater was in the lower "game room" area, pollutant distributions were uniform throughout the house. However when the heater or range/oven was operated on the second level which contained the kitchen, living room, and bedrooms, the pollutant concentrations were uniform on the second level and near background on the lower level.

During these studies the central heating system was not used. Thus, the effect of the furnace fan in distributing pollutants in the house is not known. The concent'rations of the reactive pollutant, nitrogen dioxide (NO_2), were nearly always higher in rooms distant from the heater than in the room where the heater was located. This effect was attributed to a combination of the reactive decay and convective transfer of pollutants within the house. Modeling pollutant concentrations in houses of three or more stories will be further complicated by the stack effect of the house itself and the more convoluted path required for the pollutant to move from room to room.

The following criteria are minimum inputs for use of mass balance models:

(1) Source strength of the pollutant-emitting product (obtained from literature and field or laboratory studies).

(2) Housing characteristics (obtained from literature or housing surveys specific to the pollutant source of interest), such as:

(a) Number and size of rooms,

(b) Level of insulation in floors, ceilings, and exterior and interior walls,

(c) Reactive decay rates if appropriate for certain pollutants,

(d) Air exchange rates for the sample being modeled,

(e) Construction characteristics of the housing sample,

(f) Occupant behavior involving the house,

(g) The number and usage of the pollutant source in the structure, and

(h) The type of central heating and air conditioning used in the house.

(3) Ambient conditions which are likely to be encountered for the population under study, such as:

(a) Ambient wind speed which can affect the infiltration rate (air exchange rate) and, thus, alter the concentration ranges predicted,

(b) Ambient temperature which is an important factor in air exchange and air distribution within a house, and

(c) Ambient surroundings that can affect the wind's and sun's effect on the house by providing shading or breaking the normal wind velocity.

All of these factors should be considered in modeling exposures.

The list of criteria needed for modeling is extensive and often the information is not available in the necessary detail to fill all cells of the model. It is often necessary to review the existing literature and use as inputs data representing the average and range of values reported. Although data from field studies of occupied housing should be used in exposure assessments, they are not always available. When field study data are available they should be used not only for the exposure assessment, but also for determining averages and distributions for the purpose of model development. Alternatively, where data are lacking, averages and ranges from laboratory chamber studies can be incorporated. Examples of such data are emission rates from unvented space heaters which have largely been determined in laboratory chambers the size of a small room. These data are often supplemented by small field studies of select populations using the appliance or product of interest. Such studies are used to confirm the laboratory-determined emission rates and to provide a limited validation of the predictive capability of the model. Examples of such studies are those performed by LBL (Traynor, 1983) and the Pierce Foundation (Stolwijk, 1983) with unvented gas and kerosene space heaters.

Exposure assessment models should be validated. The assumptions and limitations of the model, the validation process, and validation results should be described. Validation is generally done by comparing model predictions with the results of field or laboratory studies. Where possible, model validation should utilize input parameters independent of the field study house(s) being monitored for validation purposes. The model validation comparison should reflect the ability of the model to predict average, high, and low concentrations in a house.

Models have provided much of the exposure information for combustion products used by various federal agencies, both to determine the need for extensive field studies and to determine regulatory approaches. The modeling studies performed for combustion products predicted the concentrations measured in dwellings reasonably well, in large part, because the appliances under investigation produced a large amount of heat which drove the combustion products rapidly throughout

the dwellings. Thus, a relatively simple, one compartment model was suitable for assessing exposure. However, when there is no driving force to distribute the chemical of interest throughout the dwelling, *i.e.*, heat or a central ventilation system, the prediction of concentrations throughout a dwelling becomes less accurate. An example of the latter was the LBL study (Hodgson 1987) of paint removers tested in a room-size chamber and used inside dwellings to remove paint from standard panels or furniture. Until validation data from research house and field studies is obtained, models should only be relied on as preliminary estimates of exposure.

(c) *Surrogate data.* Surrogate data should be used only when data on a particular pollutant or source are sparse or unavailable. Care should be taken in interpreting surrogate data in order to minimize potential errors due to the following differences between the surrogate substance and the "real" substance of interest.

There may be differences in product composition. Linear extrapolation of pollutant concentrations based on differences in concentrations in the surrogate and "real" product are not appropriate. Matrix effects of the surrogate product may not be defined in sufficient detail to permit a valid extrapolation to another product.

Differences in the physical properties of the surrogate and the "real" substance may exist. Differences in such physical properties as vapor pressure, viscosity, and diffusion constants may be great enough to introduce substantial errors into the exposure assessment.

Finally, differences in reactivity/absorptivity may affect the ultimate emission rate and, thus, concentration measured or predicted.

In general, surrogate data should be used as a screening process to determine whether additional studies are necessary and what the parameters for those studies are.

ii. Oral ingestion. When chemicals are suspected to leach from a product, such as pacifiers or flame retardant treated sleepwear, studies designed to assess solubilization of the chemical using simulated saliva and chewing are required. If portions of the product may be swallowed, the product should be subjected to simulated gastric fluids to assess the chemical's release.

The diverse nature of consumer products precludes a standard protocol for exposure based on oral ingestion studies. Generally, each product will require specific procedures and techniques to assess exposure. However, once human factors data defining product use are available, the following criteria should be established to assess exposure:

(1) A stimulant or range of stimulants should be carefully selected to mimic the possible range of conditions which can occur in humans. Such conditions may represent full and empty stomachs, or various saliva compositions which differ during the course of the day.

(2) The mechanical action to which a product is submitted must be chosen to represent some range of realistic conditions to which a human may subject the product. This consideration should encompass the population using the product, such as infants, toddlers, young adults, and older adults.

(3) The simulation to be used to mimic the use of the product (*i.e.*, rubbing, abrasion, body area and areas in contact with the product) should be defined.

iii. Dermal exposure. Dermal exposure concerns the amount of a substance in contact with the skin over a period of time. In order to adequately define the amount of dermal exposure the following factors need to be considered: concentration of the substance in the product, migration of the substance from the product to the skin, site of application, skin surface contacted by the product (or substance), duration of exposure, and frequency of exposure. Examples of dermal exposure assessments previously performed by the Commission include those on dioxin in paper products (Babich, 1989), arsenic in wood playground equipment (Lee, 1990), and TRIS flame retardant in infant sleepwear (CPSC, 1977).

The diverse nature of consumer products and exposure scenarios precludes the development of a standard protocol for dermal exposure. The general protocols described below are given to illustrate the numerous factors which should be considered. One can envision that dermal exposure may occur by one of the following general pathways: (1) the substance is contained or bound in a solid matrix which is exposed to a liquid that contacts the skin (*e.g.*, dioxin in infant diapers, TRIS in infant sleepwear); (2) the substance is contained or bound in a solid matrix which contacts dry skin (*e.g.*, dioxin in communications paper, TRIS in infant sleepwear, arsenic in wood playground equipment); (3) the substance is dissolved in a liquid which contacts the skin (*e.g.*, dish detergent); and (4) the substance contacts the skin directly.

In pathways 1 and 2, the critical factor in assessing exposure is estimating the rate or extent of migration of the substance from the matrix to the skin. In pathway 1, migration is mediated by the liquid (*e.g.*, urine, perspiration), whereas migration in pathway 2 is unmediated. The distinction between pathways 1 and 2 may be contrived. Migration of dioxin from communications paper to the skin was modeled as unmediated migration by the Commission (Babich, 1989) and as liquid mediated migration with sebum as the liquid phase (A.D. Little, 1987). In pathway 1, migration may be described by a solid: liquid partition coefficient (K), defined by:

$$K = C(solid)/C(liquid)$$

where C(solid) is the concentration in the solid matrix and C(liquid) is the concentration in the liquid phase. Partition coefficients are generally measured in the laboratory. The conditions used in the laboratory should mimic the intended use. For example, for dioxin in infant diapers, fluff pulp with a known dioxin concentration was extracted with synthetic urine at 32 degrees for intervals up to twenty-four hours (NCASI, 1989).

The migration rate in pathway 2 may be determined by direct measurement (*e.g.*, Ulsamer, *et al.*, 1978).

d. *Conclusion.* Due to the multitude of consumer products and art materials, it is not possible to describe default scenarios for each product. Exposure scenarios should include customary or reasonably foreseeable use, including reasonably foreseeable accidental handling and use.

In most cases the best estimate of exposure (average exposure) is acceptable. Conservative estimates (i.e., those which may lead to overestimation of exposure, such as the upper confidence limit, "reasonable worst case," or "maximum exposed individual") are not required, but may be more appropriate in some cases. For example, conservative estimates should be used in cases where exposure data are lacking. Conservative estimates may also be useful to demonstrate that a certain exposure is not of concern. Exposure distributions are preferable to point estimates, provided that there are sufficient data for their development. In some cases, a range of exposures is appropriate, such as when the exposure distribution is bimodal.

It is important to note that exposure assessments for a single consumer product often represent only incremental additions to the total exposure that results from use of multiple products in the home. Thus, it may be useful to define what portion the incremental exposure is of the total environmental exposure. However, this determination may be difficult since data concerning other sources, and use

and duration of use patterns for a population or population segment, are often unavailable from the current base of human factors knowledge. While the focus of the guidelines is on individual products, exposures from other sources should be considered if they are known to the toxicologist.

In assessing exposure, all available data should be considered, including data from field studies, modeling studies, and studies of surrogate products. In general, field data are preferred over modeling studies, which are preferred over surrogate data. On a case by case basis, one must decide, for example, whether a good modeling study is better than a poor field study. Typically, the Commission uses both field data, when available, and model predictions. In most cases the Commission has utilized surrogate data only when there is reasonable assurance that they will accurately represent the chemical of interest.

2. Guidelines for Assessing Bioavailability

a. *Introduction.* The LHAMA directs the Commission to issue guidelines specifying criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. This section discusses the LHAMA's directive to specify criteria for assessing bioavailability of chronically hazardous substances contained in art materials. Since the content of the guidelines can also apply to sources other than art materials, these guidelines should be considered for other products subject to the FHSA.

As explained in the previous section, bioavailability, which is concerned with the ability of a substance to be absorbed into the body, is one part of the inquiry into whether a toxic substance is "hazardous" under the FHSA. Therefore, these bioavailability guidelines will serve as part of a larger effort to outline the principles to be used in evaluating the risk resulting from exposure to materials that may present a chronic hazard.

b. *Bioavailability.*—i. *Background.* Bioavailability is a term used to indicate the extent to which a substance is absorbed by the body. The bioavailable dose can differ from the dose available for exposure (such as the amount ingested, the amount available for respiration, the amount deposited on the skin, etc.) and can also vary widely depending on the chemical nature of the substance and the route of entry into the body. For example, the estimated fraction of dietary lead absorbed by adults is only about eight percent (Rabinowitz, 1973). On the other hand, a volatile solvent, such as chloroform, whose vapors have high blood solubility can be expected to be almost completely absorbed during inhalation (Klaassen, 1980).

For purposes of these guidelines, an assessment of bioavailability will include, when necessary, the rate as well as the extent of absorption. Depending on the exposure scenario, the bioavailable dose may be directly affected by the rate at which a substance enters the body, particularly in the case of short-term inhalation and dermal exposures of slowly absorbed compounds. The rate of absorption may also be important when toxicity is related to a concentration of the toxicant above a critical level rather than the cumulative body burden.

The bioavailable dose, as defined in these guidelines, should also be distinguished from the dose of toxic substance that is delivered to its site of action. In addition to absorption, this delivered dose takes into account distribution, metabolism, and excretion. Therefore, estimation of delivered dose and its application to risk assessment cannot be addressed by bioavailability considerations alone, but requires a more complete pharmacokinetic (absorption, distribution, metabolism and elimination of substances) analysis. Use of pharmacokinetic information in the assessment of risk is addressed in the set of guidelines on risk assessment procedures.

The need to consider bioavailability in estimating the risk from use of a product containing a toxic substance arises when a difference is anticipated between the absorption characteristics of a substance to which there is human exposure and those characteristics for the substance when it is tested in animal toxicity or human epidemiological studies used to define the dose-response relationship. Some situations in which this might occur are outlined below.

ii. Physical or chemical forms of a toxic substance. If the physical or chemical form of a toxic substance in a product differs from the form present in the dose-response studies used to assess risk, the comparative bioavailability of the forms of the substance must be evaluated. This is particularly true of toxic metals which can exist as water soluble salts, water insoluble salts, alkyl compounds, and in various states of polymeric aggregation. All of these forms differ in their ability to be absorbed across biological surfaces. The bioavailability of toxic substances inhaled as particulates and aerosols will also vary based on particle size.

iii. Route of exposure. Bioavailability should be evaluated when it is anticipated that the route of human exposure to a toxic substance will differ from that used in the dose-response study. This could be a relatively common situation since the test substance is often administered orally in animal toxicity studies yet human exposure to chemicals from use of consumer products is frequently through the skin or by inhalation.

iv. Presence of other constituents. When a product contains constituents that are not accounted for during the dose-response study and that are reasonably anticipated to interfere with or enhance the absorption of a toxic substance, bioavailability must be considered. For example, the extent of dermal absorption of a compound can be influenced by the type of solvent present. Toxicity studies by the dermal route often use a vehicle that maximizes dermal absorption of the test substance. However, the dermal bioavailability of the substance might be quite different in the environment present in a consumer product.

v. Dose. Bioavailability should be considered during the exposure/risk assessment of a toxic substance if there is reason to believe that the dosing conditions used in the dose-response study would introduce a non-linearity in absorption when extrapolating to conditions encountered during human exposure. Animal toxicity and human epidemiology studies on which risk assessment is based often involve chemical exposures that are higher than exposures resulting from use of consumer products. Risk assessments usually predict toxicity at those lower doses using mathematical models that do not fully apply the biological non-linearities that can sometimes exist. In certain instances, non-linearities in absorption can influence low dose extrapolation. Some toxicants are absorbed from the gastrointestinal tract by carrier mediated transport systems [2] that may be saturated at the dose utilized in dose-response studies. Saturable metabolism (level of metabolism which cannot be exceeded) of toxic substances can produce non-linearities in bioavailability. This is particularly true following gastrointestinal absorption since the major metabolic organ in the body, the liver, receives the absorbed materials

[2] Carrier mediated transport requires the existence of a macromolecular carrier responsible for binding the substrate on one side of a biological membrane and releasing it on the other side. This process can be saturated at high doses.

via the portal circulation before the materials are available to the systemic circulation. The fraction of the applied dose absorbed as measured during dermal penetration studies is frequently less at high doses than at lower doses. Therefore, extrapolation of absorption data at high dermally applied doses without further study at lower doses could underestimate bioavailability.

vi. Other conditions. Other aspects of a dose-response study may make it inappropriate to estimate human risk without making adjustments in bioavailability, particularly if the animal model or human population under investigation does not adequately approximate the absorption characteristics anticipated in the population of concern. For example, certain metals, notably lead and cadmium, are more efficiently absorbed in the gastrointestinal tract of younger animals (and humans) than adults (Hoffmann, 1982). Thus, it is necessary to correct for this absorption difference when estimating risk to children based on a toxicity study in adult animals. In addition to age, other factors that might affect adjustments in bioavailability are animal species, sex, and strain. It may also be necessary to adjust bioavailability to reflect differences in dosing regimen. Often animal studies are conducted under conditions of repeated dosing while human exposure from use of a product may be intermittent.

vii. Special cases where bioavailability has been accounted for in exposure and risk assessments. Sometimes certain aspects of bioavailability are inherently accounted for during the assessment of either risk or exposure. Risk assessments that rely on pharmacokinetic models to account for non-linearities in delivered dose will usually have made a correction for bioavailability. Exposure assessments based on biological monitoring data, such as urinary metabolites or adducts present in the blood, will often have accounted for bioavailability due to the nature of the measurement. In these cases, it may be unnecessary to assess bioavailability separately.

c. *Guidelines for the assessment of bioavailability*—i. General strategy for assessing bioavailability. Three routes of exposure are normally encountered during use of consumer products: inhalation, ingestion, and dermal contact. Once the exposure assessment has established the routes of concern and the amount of toxic substance available to the appropriate absorptive surface (*i.e.*, respiratory tract, gastrointestinal tract, and skin), bioavailability should be addressed if any of the conditions described above requires it. This should be done for each toxic substance and each route of exposure presented by the product.

Two general approaches may be used to account for bioavailability in the process of estimating risk: a default value can be assumed for the amount of substance absorbed or a bioavailability assessment can be performed. The default value should be used when there are no adequate data which would lead to an alternative approach. The goal of the bioavailability assessment is to provide a quantitative estimate for the amount of substance absorbed into the body. There may be several acceptable measurements from which bioavailability can be determined.

Although all available data should be considered, it is usually best to use *in vivo* absorption studies for the substance of interest. *In vitro* data can often be used to supplement *in vivo* data. (With *in vivo* studies, the substance of interest is introduced into a live animal. With *in vitro* studies, the substance's effect on tissue or cells isolated from the animal is studied.) Bioavailability assessments based on *in vitro* data are acceptable if *in vivo* studies are not available, if *in vitro* data are shown to be of superior quality, or if *in vitro* data more closely approximate the exposure conditions anticipated from use of the product in question. In the absence of substance-specific absorption data, it is acceptable to use a bioavailability estimate based on the default assumption or a surrogate measurement of a related compound that is known or anticipated to be no less than the actual extent of absorption. In instances where no other acceptable data exist, a bioavailability estimate of a related compound whose bioavailability is expected to be less than that of the substance of interest, but not beyond the magnitude of reasonable experimental error, can be used. However, if a related compound has been chosen based on a surrogate measurement, it must be justified that small differences in the surrogate data will not cause the extent of absorption to be underestimated beyond reasonable acceptability limits. The acceptability limits and the conditions on their use apply in subsequent discussions of surrogate bioavailability data. These approaches are also useful when the risk is anticipated to be negligible as might occur with products containing very low concentrations of a toxicant or products whose use leads to very low human exposure. A bioavailability estimate that is known or anticipated to underestimate the extent of absorption should not be used. A qualitative assessment can sometimes assist in choosing a method to estimate the bioavailability of a substance. In cases where bioavailability is considered, exposure estimates must be adjusted for the fraction of substance absorbed relative to the dose-response study.

(a) *Default approach.* The default value for bioavailability assumes that 100 percent of a substance to which a person is exposed will be absorbed. Although the default assumption may overestimate absorption, it usually has the advantage of allowing a relatively quick and easy determination of an upper bound on risk without the need for a more time-consuming quantitative bioavailability assessment. Because exposure estimates must be adjusted for relative bioavailability, risk assessments based on the default value may still require a quantitative evaluation of the fraction absorbed under conditions of the dose-response study (see discussion below).

(b) *Bioavailability assessment.—Qualitative approach.* A qualitative assessment may be useful in choosing the final quantitative approach necessary to account for bioavailability. If a qualitative assessment can demonstrate that the bioavailability from use of a product is anticipated to be no greater than the bioavailability that would result under the conditions of the dose-response study, it is acceptable to assess risk based on the assumption that a substance is absorbed to the same extent as occurred in the dose-response study. Like the default assumption, this approach may overestimate bioavailability but could, nevertheless, provide an acceptable value with minimal time and effort.

A qualitative assessment can also justify utilizing bioavailability data for a related compound when data are not available for the substance of interest, provided all critical factors related to absorption by the route under consideration are taken into account. In this case, there must be compelling evidence to indicate that the bioavailability of the surrogate compound is no less than the substance under consideration. Because these are not quantitative determinations, data other than direct bioavailability measurements are sufficient to complete the assessment. For example, a knowledge of the relative solubilities of two forms of a toxicant may be sufficient to allow data on gastrointestinal bioavailability of the more soluble form to be used to estimate

the risk from ingestion of the less soluble form of the same substance. The type of measurements sufficient to produce a qualitative determination are route-specific and will be discussed below.

Quantitative approach. If a bioavailability assessment is needed and the default assumption is not used, then quantitative estimates for the amount absorbed must be determined. The necessary data may be available to sufficiently quantify bioavailability or the appropriate experimental studies can be conducted to generate this information. Acceptable methods for determining bioavailability depend on the route of exposure. However, there are some general considerations common to most bioavailability measurements that will be discussed here.

Bioavailability measurements from in vivo exposure. The most definitive method of determining bioavailability is to measure it directly after *in vivo* administration by the exposure routes of interest. When systemic bioavailability (the fraction of the administered dose that enters the systemic circulation) is the appropriate measure, the relative availability between exposure conditions and those of the dose-response study can be determined by a comparison of the total areas under the substance concentration in plasma versus time curve (area under the curve or AUC). This procedure estimates the amount of a substance to which a specific part of the body is exposed over time. The ratio of the AUCs can be shown to be equal to the relative extent of absorption (Gibaldi and Perrier, 1982) and can be used directly to adjust exposure estimates for calculation of risk. In cases where the toxicity of interest occurs at the site of exposure, such as effects on the skin following dermal exposure or respiratory toxicity from inhalation, systemic bioavailability is not a relevant measure; extent of absorption must be determined from the concentration in the tissue of interest.

For example, if a substance was given orally in a dose-response study and the principal route of exposure from use of a product was by inhalation, relative bioavailability can be calculated as $AUC_{inhalation}/AUC_{oral}$, provided comparable doses of the substance were administered. Mathematical accommodations can be made if different doses are given. The AUC method requires that plasma concentration of the substance be determined at several time points after dosing until at least 2 to 3 half-lives of elimination have occurred. Relative systemic bioavailability can also be determined using cumulative excretion data. This necessitates that excreta be collected from the major routes of elimination (urine, feces, expired air, etc.) until virtually all the substance has been expelled from the body. Regardless of the measure used, it is important to account for both the parent compound and its major breakdown products.

Use of radiolabeled compounds is usually the most effective way of insuring a complete accounting of the parent and its metabolites. Bioavailability measurements for at least two doses that span 1 to 2 orders of magnitude may be necessary in order to address possible non-linearities. In all situations, the doses employed should be such that the processes of absorption and metabolism (when it affects bioavailability) are not compromised. In general, bioavailability testing should conform with the EPA Good Laboratory Practice Standards (EPA, 40 CFR part 792) and applicable test standards for pharmacokinetics (EPA, 40 CFR part 798.7485).

Other data that may be used to quantitate bioavailability. Types of data other than *in vivo* measurement may be used to estimate bioavailability. Under the proper circumstances, absorption can be determined from *in vitro* preparations utilizing isolated organs. When estimating bioavailability from any *in vitro* preparation, it is important to ensure that it is truly representative of *in vivo* processes. For example, an isolated segment of intestine should not be utilized to assess absorption of a substance that also enters the body through the stomach or another part of the gastrointestinal tract. In most situations, it must also be demonstrated that the preparation was viable during the period of measurement and that those factors critical to bioavailability of a particular substance, such as specialized transport or metabolism, approximate the *in vivo* condition. Uptake studies using isolated cell systems, or subcellular fractions where cellular organization has been disrupted, are usually not sufficiently representative of the *in vivo* situation.

In certain defined circumstances, use of surrogate data to estimate bioavailability is acceptable. For example, the amount of substance absorbed from ingestion of a solid material can sometimes be estimated by measuring its solubility in media designed to mimic the gastrointestinal environment. Blood:gas partitioning (the relative amount in blood versus the amount in air) can sometimes assist in determining systemic bioavailability following inhalation of gases and vapors. The respirable fraction of dust and aerosols is sometimes an adequate estimate of that portion available for absorption through the alveoli of the lung. In order to use surrogate data, the test method used must accurately reflect the absorption process it is substituting for, and any results must be reproducible. Data that overestimate the bioavailability are also acceptable, as noted previously.

Physiologically based models can also provide estimates of absorption. These models mathematically describe absorption in terms of physiological and biochemical parameters, such as, ventilation rate, blood flow, partition coefficients, and absorption rate constants. Physiological models have the advantage of being able to predict systemic or tissue bioavailability under different conditions, but they frequently require access to large amounts of input data. Model-dependent parameters should always be identified and the methods used to determine their values clearly stated. Like other methods used to generate surrogate data, models must be validated to ensure that they adequately estimate the particular measurement of interest.

(c) *Adjusting exposure estimates for bioavailability.* Route-specific exposure resulting from a particular product use can be expressed as the amount of substance to which one is exposed per body weight per day. This average daily dose can then be multiplied by a relative bioavailability ratio to give the amount of substance that contributes to the body burden for a particular situation. The relative bioavailability ratio determined by the bioavailability assessment is defined as the fraction of a substance absorbed from a specified exposure as a result of product use divided by the fraction absorbed during the dose-response study. Exposure estimates must be adjusted by the relative bioavailability ratio whenever exposure to a substance from product use leads to the conditions outlined in subsection b. above. This ratio takes a value of 1 when the bioavailability is assumed to be approximated by the dose-response study itself. If a use scenario involves multiple routes of exposure, the route-specific average daily doses may be summed to get the total average daily dose for a particular use scenario.

ii. Routes of exposure. The predominant routes of exposure encountered during use of consumer products are ingestion, inhalation, and dermal contact. The biological surfaces that function as bioavailability barriers

are different for each exposure route and, thus, the factors that control and the methodologies used to measure absorption can vary. This section will discuss the critical features that must be considered in determining absorption across the gastrointestinal tract (ingestion), respiratory tract (inhalation), and skin (dermal contact).

(a) Gastrointestinal tract.—Transport characteristics. The gastrointestinal tract is the site of potential absorption for ingested substances. Although, in principle, absorption can take place along the entire length of the gastrointestinal tract from mouth to rectum, most absorption takes place in the stomach and small intestine where larger surface areas, longer residence times, and higher perfusion rates are most conducive to transport across the mucosal barrier. The most common mechanism by which toxicants are absorbed across the gastrointestinal tract is by passive transport [3] through the absorptive cells. Absorption by this mechanism is greatest for small uncharged lipid soluble molecules with adequate aqueous diffusivity. In fact, for a series of non-electrolytes of similar molecular size, gastrointestinal absorption can be shown, in general, to be proportional to lipid solubility as measured by oil:water partition coefficients. Ionizable compounds such as organic acids and bases are not well absorbed in their ionized form, and the extent and rate of absorption will be governed by the pH at the absorption site and the pKa of the chemical. Thus, organic acids are likely to be better absorbed in the acidic environment of the stomach, while organic bases would be expected to be better absorbed in the more basic pH of the intestine. While lipid soluble compounds diffuse through the gastrointestinal cells, small water soluble compounds are capable of diffusing through aqueous pores located at the junctions of the intestinal epithelial cells. This is a major mechanism by which water and small electrolytes, such as potassium and sodium ions, penetrate the gastrointestinal tract. Other water soluble chemicals with a molecular weight below about 200 daltons have also been shown to be absorbed this way (Schanker, 1962).

Several more specialized transport systems exist in the gastrointestinal tract that can be responsible for absorption of selected substances. Some chemicals are transported by a carrier mediated mechanism. This type of transport is primarily responsible for absorption of some nutrients and endogenous substances, but sometimes non-essential chemicals, including metals, such as lead and aluminum, and several quaternary ammonium compounds, are capable of utilizing these systems. Intestinal absorption of large macromolecules (10,000–60,000 daltons) have been documented in man and experimental animals. This is believed to occur by pinocytosis.[4] Particles up to 5–6 micrometers (um) in diameter can be absorbed by phagocytosis [3] (Aungst and Shen, 1986). However, the extent of absorption by pinocytosis and phagocytosis is generally low. Gastrointestinal absorption of charged substances of high molecular weight is particularly poor.

Physiological and physicochemical factors. Aside from the transport characteristics, there are several physicochemical, biochemical, and physiological factors that can influence gastrointestinal absorption and systemic bioavailability. The nature of a substance can sometimes be substantially altered during the absorption process: degradation can occur in the acid environment of the stomach; a toxicant can be altered by the action of digestive enzymes or the bacterial flora present in the intestines; once absorbed, some chemicals can undergo extensive metabolism in the liver before reaching the systemic circulation.

Most substances must be solubilized before absorption can take place. The rate and extent of dissolution can often limit the rate of absorption of a chemical ingested as a solid material. A key determinant of dissolution of solid material, as well as absorption of complex mixtures, is aqueous solubility. Absorption of some substances can be changed by formation of insoluble salts or molecular complexes. Dissolution of a compound in a solid matrix is influenced by particle size: Smaller particles are more easily absorbed than large particles because of their greater surface area. Sometimes the way in which a substance is formulated can have profound effects on gastrointestinal absorption. Lipid soluble substances administered in oily vehicles are often absorbed directly into the blood through the lymphatics bypassing the liver. The result could be a significant increase in systemic bioavailability if the substance is known to undergo extensive hepatic metabolism. Highly viscous suspensions can affect absorption by slowing dissolution of a substance and delaying gastric emptying.

Physiological factors must be considered when assessing gastrointestinal bioavailability. Delayed gastric emptying caused by a test substance or its vehicle can affect absorption particularly in the case of acid-labile (*i.e.*, decomposes in the presence of acid) compounds or situations where acidity influences dissolution. Gastrointestinal motility can affect absorption by altering the time spent at the site of absorption. This is critical for compounds whose bioavailability is limited by the amount of time they reside in the intestine. The gastrointestinal absorption of some substances is known to be age dependent: the absorption of many metals such as cadmium, iron, mercury, lead, and zinc is highest in newborns and decreases with age (Hoffmann, 1982).

Physicochemical properties can sometimes indirectly aid in the determination of bioavailability estimates. When a chemical is ingested as a solid material, measurements of solubility in media that mimic the gastrointestinal environment may be used to estimate absorption, assuming certain conditions are met. Use of solubility measurements as an estimate of bioavailability implicitly assumes that absorption of the soluble material is known. Other assumptions about absorption are acceptable provided that the actual extent of absorption will not be underestimated. It must be shown that the test method under which solubility is measured will not lead to a lower solubility than is expected to occur following ingestion. This requires that the surrogate method be validated against the appropriate *in vivo* models for the substance of interest, the type of material for which it is present, and its dose range.

Relative solubilities, pKa's and oil:water partition coefficients can also be utilized to justify using gastrointestinal bioavailability data for a related compound. A chosen surrogate compound should never be expected to have a lower bioavailability than the compound of interest. Absorption of a more soluble form of a toxicant should never be estimated using data from a less soluble form of the same toxicant. Absorption of organic acids should never be estimated using data from a related acid with a lower pKa. On the other hand, bioavailability of organic bases should never be estimated from a

[3] Passive transport refers to simple diffusion of a substance from one compartment to another controlled by a diffusion coefficient and the concentration or electrochemical gradient across the membrane.

[4] Pinocytosis and phagocytosis refer to transport processes by which substances are engulfed by the cell membrane.

related base with a higher pKa. The oil:water partition coefficient of the surrogate substance should never be lower than the compound under consideration. In these cases, it is essential that other factors critical to bioavailability, such as transport mechanism, molecular weight, first pass metabolism, and physiological effects do not cause the bioavailability of the surrogate compound to be less than the substance of interest.

(b) Respiratory tract: Factors that affect absorption from the respiratory system. Chemicals that are absorbed through the respiratory tract are gases, such as, carbon dioxide or nitrogen dioxide; vapors of volatile liquids, such as, benzene or methylene chloride; and aerosols, such as, silica, asbestos, and other dusts, smokes, fogs or mists. Aerosol deposition and the efficiency of absorption is dependent on particle size and charge. The majority of aerosol particles with a mass median aerodynamic diameter ("MMAD") greater than 5 um are deposited in the nasopharyngeal region of the respiratory tract following nasal breathing. The particles are usually trapped in the thick mucus blanket of the nasal surface and are rapidly removed by either mucociliary clearance,[5] sneezing, or nose blowing. Much of this particulate matter is made available to the gastrointestinal tract after swallowing of the secreta. As nasal breathing becomes augmented by mouth breathing, which might occur during exercise or periods of nasal blockage, nasopharyngeal deposition is reduced while both the fraction and size of particles reaching the deeper regions of the respiratory tract are enhanced. Some sufficiently soluble aerosols can dissolve in the mucus and be absorbed through the epithelium of the nasopharyngeal region into the blood.

Particles with a MMAD in the range of 2 to 5 um are increasingly deposited in the tracheobronchial region of the respiratory tract following nasal breathing. These are also cleared by the upward movement of the mucus layer lining this portion of the respiratory tract. However, the mucus is generally thinner and the clearance times longer, particularly in the terminal bronchiolar regions of the lung, allowing for greater opportunity of being absorbed across the epithelial cells into the blood. Coughing and sneezing can result in more rapid movement of particulate matter from the larger airways to the glottis to be swallowed.

Particles with diameters around 5 um also begin to reach the alveolus of the lung during nasal breathing; this region becomes the major site of deposition for particles with diameters less than 2 um. Lipid soluble aerosols are very readily absorbed from this zone of the respiratory tract due to the large surface area, high blood flow, and thin diffusion barriers. Because of the relatively inefficient clearance mechanisms available in the alveoli, insoluble particles can remain for long periods until they are either removed by the bronchial mucociliary system, phagocytysed by alveolar macrophages, cleared by lymphatic drainage, or slowly undergo dissolution and vascular removal. The long residence times of particulates deposited in the inner regions of the respiratory tract, combined with the relative ease of diffusion across the alveolar membranes, make the lung a significant site of absorption for those substances that adsorb on the surface of small aerosols. Inhaled particles less than 1 um in diameter can be expected to reach the deepest regions of the lung easily. However, the total deposition/retention of these smaller particles in the respiratory system is generally less since they can be exhaled. Recent data using nasal casts of humans and experimental animals suggest that ultrafine aerosols less than 0.2 um in diameter become increasingly deposited in the nasopharyngeal region of the respiratory tract. Other particle characteristics such as density, shape, and hygroscopicity [6] may influence the site of deposition and absorption.

The uptake of gases and vapors can occur throughout the respiratory system. The predominant mechanism for most gases is passive diffusion driven by the higher concentration in the inspired air relative to the tissue and blood. Aqueous soluble gases tend to be taken up by the nasopharyngeal region and upper airways. A greater percentage of the less water soluble gases reach the lower airways and alveolar region of the lung where absorption into the systemic blood occurs much more readily. Once in the alveoli, the amount of a gaseous substance that enters the blood is controlled not only by its concentration in the inspired air, but also by its solubility in blood, pulmonary ventilation, and blood flow. As one continues to breathe a gas or vapor at a constant tension, a steady state concentration in the blood will eventually be achieved. The time needed for a gas to reach steady-state is primarily a function of its solubility in blood, which is characterized by a blood:gas partition coefficient defined as the ratio of the concentration of dissolved gas in the blood to that in the gas phase at equilibrium.

A highly soluble gas with a large partition coefficient will be almost completely transferred to the blood with each inspiration, but the time needed to reach steady-state may be several hours. On the other hand, only a small fraction of a gas with low blood solubility will be absorbed into the blood and saturation may be achieved more quickly. Other factors will influence the ability of a gas to be absorbed in the blood: Time to steady-state will be more prolonged for gases that are highly lipid-soluble and can be stored in body fat; insoluble gases that are rapidly cleared by metabolism will also be absorbed to a greater extent than a gas of similar solubility that is not metabolized; an increase in pulmonary ventilation will often increase the absorption of a highly soluble gas, while an increase in pulmonary blood flow can increase the absorption of an insoluble gas; some carrier mediated or other specialized transport systems are known to exist in the respiratory tract, but are uncommon.

Other considerations may affect absorption from the respiratory tract. Inhaled substances that alter mucociliary flow, cause bronchconstriction, or directly damage the respiratory epithelium can significantly influence the bioavailability from this route of exposure. Although the metabolic capability of the lung is generally more limited than that of the liver, certain selected substances may undergo extensive pulmonary metabolism that could result in reduced systemic bioavailability. A more detailed discussion of the factors that determine the bioavailable dose following inhalation can be found in the EPA Interim Guidelines for Development of Inhalation Reference Doses (EPA, 1989).

The determination of administered dose from inhalation studies is more complex than with other routes since it is dependent on duration of exposure, respiratory rate and tidal volume as well as concentration. It is best for *in vivo* respiratory measurents to be done by plethysmography, but in its absence, appropriate values for the particular species of experimental animal may be assumed based on literature values.

[5] Mucociliary clearance refers to a mechanism by which particulates and bacteria are entrapped in a layer of mucus lining the respiratory tract and swept upward out of the system by the movement of small hairs called cilia attached to the epithelial cells of the tracheobronchial and nasal regions.

[6] Hygroscopicity refers to the ability of particles to accumulate moisture.

Administered dose calculations from experimental animals must be defined in terms of an equivalent human dose. This means that the airborne concentration has to be adjusted to reflect differences in exposure duration and breathing rate between experimental conditions and humans. The default human breathing rate during typical product use is assumed to be 20 cubic meters per day. This produces a default alveolar ventilation rate of 13.4 cubic meters per day since only a fraction of the air breathed is available for gas exchange. Appropriate ventilation rates for a number of animal species have been documented (EPA, 1988). If the test material is an aerosol, particle size distribution needs to be determined as the mass median aerodynamic diameter (MMAD). For insoluble aerosols, the amount deposited in the various regions of the lung can be estimated from the aerosol size distribution, deposition efficiency, and lung surface area. Adjustments can be made to account for differences in aerosol deposition between animals and humans (Jurabek, *et al.*, 1989).

Absorption by the respiratory tract can also be predicted using physiologically based models. These can be developed to estimate blood concentration over time resulting from inhalation of a substance or doses reaching different sites of the respiratory tract. The accuracy of these models depends on precise values for a number of physiological (ventilation rate, blood flow, airway diameter, etc.), biochemical (metabolic rates), and physiochemical (blood:gas partition, diffusion coefficients, etc.) parameters. All models should be adequately validated before being used in assessing bioavailability.

Certain surrogate data may be used to assist in determining bioavailability estimates following inhalation. Aerosol/dust particulates with a MMAD less than 10 um can sometimes be used as an estimate of that fraction available for absorption across the alveolar region of the lung. Studies indicate that only a very small fraction (<10%) of aerosols greater than this size reach the respirable region even with ventilation rates that occur during moderate to heavy exercise (Miller, *et al.*, 1988). Although bioavailability from alveolar deposition of aerosols greater than 10 um may be eliminated from consideration, potential absorption of these particulates from other portions of the respiratory tract or from gastrointestinal exposure as a result of mucociliary clearance must be evaluated.

Blood:gas partition coefficients for gases and vapors can be utilized to justify the substitution of respiratory bioavailability data from a related compound, provided certain criteria are met. The blood:gas coefficient of the surrogate compound must not be less than the compound under consideration. In addition, it must be shown that other factors that control transport from the respiratory tract such as metabolism, clearance, tissue distribution, and uptake from other regions of the respiratory tract cannot be expected to cause absorption of the surrogate to be less than that of the substance of interest.

(c) Skin: permeability characteristics. The skin serves as a relatively impermeable barrier to many chemical agents. In contrast to the gastrointestinal tract and lung in which a chemical must only pass through two cells to reach the blood, the skin has multiple cell layers that must be crossed before systemic absorption takes place. The rate-limiting step in this process is usually diffusion across the stratum corneum, the outermost densely packed layer of keratinized epidermal cells. The stratum corneum of different regions of the body will vary in thickness and diffusivity, and will be reflected in different dermal permeabilities. For example, the palms and soles are much less permeable than other skin areas because of their very thick outer layer of skin. Chemicals diffuse much more readily across the inner epidermis and dermis than the stratum corneum. Some chemicals may be partially absorbed through the cells of the sweat glands and hair follicles. However, because the cross sectional area occupied by these structures in human skin is only 0.1 to 1 percent of that occupied by the epidermis, this route of absorption is unlikely to play a major role for most substances.

Absorption from the skin is believed to occur by passive diffusion. The overriding determinants for the rate of percutaneous absorption are, therefore, the concentration gradients from skin surface to blood and the permeability of the penetrant for the stratum corneum. In addition to skin thickness and membrane diffusivity, dermal permeability is controlled by molecular size and partitioning between the stratum corneum and the vehicle in which the penetrant is present. Except for some extremely nonpolar compounds, the permeability constants for many substances in aqueous solutions have been shown to correlate well with their lipid solubility as measured by the octanol:water partition coefficient, provided their diffusivity does not greatly vary. The correlation is not as strong for the highly nonpolar compounds because the transfer of chemical out of the stratum corneum into the inner epidermis can become rate-limiting. This could possibly lead to an overestimation of dermal permeability based on the octanol:water partition coefficient. The degree of polarity can influence the diffusivity of a substance in the stratum corneum. Very polar compounds appear capable of partially diffusing through the outer surface of protein filaments, while the less polar molecules must exclusively dissolve in, and diffuse through, the lipid matrix between the protein filaments. These differences in molecular mechanism can lead to quantitative differences in the diffusion coefficient among substances. Although small moderately lipid soluble molecules appear to be best absorbed from the skin, larger molecular weight and/or ionized substances will usually be absorbed to a lesser extent. More information on how physicochemical properties influence dermal absorption can be found in the EPA Guidance for Conducting Dermal Exposure Assessments (EPA, 1992).

The vehicle in which the substance of interest is applied to the skin can affect dermal absorption in several ways. A vehicle may improve skin absorption by increasing solubility, thus, providing a greater concentration gradient for diffusion. The vehicle can increase or decrease the partitioning of the penetrant in the stratum corneum, thereby altering absorption. Some vehicles such as dimethylsulfoxide, and certain lipid extraction solvents and detergents, can accelerate dermal penetration by altering the diffusivity of the dermal barrier. This can occur by chemically destroying the integrity of the stratum corneum, either by functioning as a swelling agent, removing lipid, or altering the conformational structure of the cell layer.

A number of other factors might affect dermal bioavailability. The rate of absorption is directly proportional to the amount of surface area contacted by the penetrant: a toxicant applied over a large area of skin will be absorbed faster than an equal amount over a smaller area. Diffusion across the skin increases exponentially with rising temperature. Skin hydration affects percutaneous absorption by altering the diffusivity and thickness of the stratum corneum; dehydration can decrease permeability by as much as tenfold (Klassen, 1980). Disease or damage to

the stratum corneum can cause an abrupt increase in percutaneous absorption. Like the respiratory tract, metabolism of certain chemicals by cells in the inner epidermis may significantly decrease the bioavailability from skin. Binding of penetrant within the different cell layers may also limit bioavailability. Volatility, chemical instability, and pH of the vehicle may alter the amount of toxicant in a form available for absorption. Finally, variability in skin permeability exists among species. Good models for human skin are dependent on the compound of interest; pig and monkey skin generally appear to share the greatest similarity to human skin in terms of percutaneous absorption, but skin from other animals may also be adequate. Human skin may also be available.

Percutaneous absorption can be estimated with physiologically based models. These use physiochemical, biochemical, and physiological data, such as, diffusion and partition coefficients, molecular weight, clearance, and blood flow to predict bioavailability. The parameters used as input to the model should be experimentally determined by legitimate methods and the values being estimated by the model should be appropriately validated.

Octanol: Vehicle partition coefficients can sometimes be utilized to justify using dermal bioavailability data from a related compound. The chosen surrogate must not have a partition coefficient lower than the substance of interest. Other factors that influence bioavailability, such as membrane diffusivity and skin metabolism, also should not be expected to cause the absorption of the surrogate to be less than the compound under consideration. Since dermal absorption data are often available as an experimentally determined or a mathematically derived (based on surrogate measurements) permeability constant when the skin contact is with a liquid, this measurement needs to be converted into the absorbed dose. This can be determined by multiplying the permeability constant (cm/min) by the concentration of the chemical in the medium contacting the skin, the exposed surface area (square centimeters) and the duration of exposure (min).

3. Risk Assessment Guidelines.—a. *Introduction.* The purpose of this section is to describe the procedures to be used when estimating risk for substances which are defined as toxic by nature of their carcinogenicity. Such risks are used in conjunction with exposure information to determine whether an acceptable daily intake (ADI) has been exceeded, as described in the section concerning that subject. As explained in that section, the process of quantitative risk assessment will not be applied to other chronic endpoints (reproductive/developmental effects and neurotoxicological effects) at this time. Thus, this section will only deal with carcinogenic risk assessment.

Although these guidelines will be fairly specific, further information on the rationale behind some of the assumptions, examples of how the guidelines are applied, and examples of the application of pharmacokinetics can be found in the Commission risk assessments on methylene chloride (dichloromethane) and formaldehyde (M.S. Cohn, Inhaled methylene chloride unit carcinogenic risk assessment, June, 1985; M.S. Cohn, Estimated carcinogenic risks due to exposure to formaldehyde released from pressed wood products, February, 1986; M.S. Cohn, Updated risk assessment for methylene chloride (dichloromethane), June 1987).

b. Guidelines for carcinogenic risk assessment.—i. Selection of data upon which risk is based. For a given carcinogenic substance, the data used will be obtained from those studies used to define the substance as "toxic" by virtue of its carcinogenicity. Among these, the study leading to the highest risk should normally be used. However, other factors may be considered in the choice of the study. For example, a study with three administered doses, showing a dose-response relationship, can be given more weight than a study in the same species/strain with a single administered dose. Similarly, a study with the same route of exposure as that anticipated for human use of the product under consideration can be given more weight than a study that uses the same species/strain, but uses a different route of exposure. If both sexes in the study respond significantly, they can be combined before risk analysis if the responses are similar (as done in the case of formaldehyde). Alternatively, the risks for each sex can be determined individually and then averaged for the final estimate (as done in the case of methylene chloride). If there is more than one significantly responding endpoint, the risks for each are determined individually and then added for the final estimate. See the risk assessments on methylene chloride referenced above for an example of this treatment.

ii. High-to-low dose extrapolation. The multistage model (Global83 or later version) is used in all cases unless a convincing argument can be made for an alternative model such as one addressing a distribution of thresholds. Linearity at low dose is always the default assumption, in light of the high probability that the action of any carcinogen will interact with background cancer processes and environmental agents, as opposed to acting independently. Upon request, a copy of Global83 that will run on a personal computer is available without charge from the Commission.

The risk will be based on the maximum likelihood estimate from the multistage model, unless the maximum likelihood estimate is not linear at low dose (which happens when the first-order coefficient, q_1, is zero). In such a case, the 95% upper confidence limit on risk (*i.e.*, the 95% lower confidence limit on dose) should be used. In the example risk assessments cited above, the maximum likelihood estimate was used in the case of methylene chloride and the upper confidence limit on risk was used in the case of formaldehyde.

Modification of doses put into the multistage model may be made if sufficient pharmacokinetic information is available. See the above referenced risk assessments on methylene chloride for an example of how such information can be used to account for nonlinearities in the dose-response curve due to pharmacokinetic influences.

iii. Species to species extrapolation. For systemic carcinogens, that is, those that exert an effect remote from the site of contact, a "surface area" correction will be used if estimates of human risk are made based on animal data. At present, this correction is a factor derived from dividing the assumed human weight (usually 70 kg) by the average animal weight during the study, and taking that to the ⅓ power. On a miligram per kilogram per day (mg/kg/day) basis, the human is assumed to be more sensitive than the animal by this factor. See the risk assessments on methylene chloride for an example of this approach. There is the possibility that this factor may be changed, using the ¼ power instead of the ⅓ power, as part of a unified Federal regulatory approach. If such an approach is adopted, it will apply here.

In cases where the concentration is expressed as parts per million (such as, in air or in diet) and the carcinogen acts at the site of contact (such as, nasal passages or the lung), species may be assumed to be of equivalent sensitivity on such a basis. In other words, humans and animals exposed to the same concentration (in parts per million) in air or diet for the same proportion of lifetime are assumed to be equally

sensitive. See the risk assessment on formaldehyde for an example of this approach.

At this time, pharmacokinetics should not be used to adjust for differences between species in sensitivity to a carcinogen; briefly, this is because information on sensitivity of various species to a "target" dose is not currently available. The rationale for this decision is explained in depth in the risk assessment for methylene chloride.

iv. Route to route extrapolation. If no experimental study having the same route of exposure as that anticipated for human use of a substance is available, a study by another route of exposure is used. In such cases, pharmacokinetic methods may be used if sufficient data are available, or methods described in the bioavailability section may be used. The less information available, however, the more one has to rely on default assumptions (as discussed in the bioavailability section).

v. Scenario extrapolation. Where exposure scenarios are different from those used in the underlying study upon which estimates of risk are based, proportionality should be applied. For example, if an experimental study is performed under conditions of exposure for six hours a day, five days a week for lifetime, then the risk for a single hour of exposure is the risk from the experimental study divided by a factor of: 6 (hours/day exposure) × 5 (days/week) × 52 (weeks/year) × 70 (assuming a 70-year lifetime). If pharmacokinetic methods are used to adjust for risks at high versus low exposure levels, one must be careful not to combine level-time measures (such as in calculating a lifetime average daily dose) without taking the non-linearity into account. Where such pharmacokinetic information is available, it may be used to adjust scenario extrapolations. For example, two uninterrupted days of exposure may lead to a different time versus concentration (area under the curve) estimate than two interrupted days of exposure, due to factors such as incomplete elimination of the substance after twenty-four hours, saturation of uptake processes, or saturation of metabolic processes.

4. Acceptable Risks to Children and Adults

a. *Introduction.* Under the LHAMA, the Commission is required to develop a number of criteria to be used in the determination of whether an art material is to be labeled. Two of these are addressed here, namely, (1) "criteria for determining when art materials may produce chronic adverse health effects in children and criteria for determining when art materials may produce such health effects in adults," with the added provision that "where appropriate, criteria used for assessing risks to children may be the same as those used for adults," and (2) "criteria for determining daily intake levels for chronically hazardous substances contained in art materials."

The first of these two criteria, effects in children and effects in adults, is addressed in this section. The second, criteria for acceptable daily intake, consists of two general parts: Guidelines for determination of the quantitative risk estimated to be incurred from use of an art material containing a toxic substance, and whether or not this risk is acceptable. The first general part is addressed in other sections regarding whether or not a substance is toxic, how exposure is assessed, and how risk is estimated. The second general part, what risk is acceptable, will be addressed here. This discussion is intended to address the issue of acceptable risk with regard to all products subject to the FHSA, not just art materials.

The reasons for the inclusion of these two particular elements (risks to children and adults, and whether such risks are acceptable) in this section become clear when one considers that hazard, as well as risk, cannot normally be distinguished relative to age of the person exposed. It would be extremely rare, if at all, that a case could be made that a specific chronic hazard would apply only to children and not to adults, or vice-versa. For cancer and chronic neurotoxicological effects, hazard identification is normally based on long-term studies in animals or humans, and unless there is some rare phenomenon indicating otherwise, both adults and children would be expected to be susceptible to substances causing such effects. Similarly, exposure of an adult or child to a reproductive toxicant could lead to effects in eventual offspring. A special case is that in which a substance has an effect only during pregnancy—a child exposed to such a substance would not be at risk, but exposure to a pregnant adult could affect the unborn child.

Although children may be more susceptible to the effects of chronic toxicants, current methodologies for carcinogenic or other chronic hazard risk assessment are usually unable to distinguish between risk to children and adults for most substances. This is because (1) data do not usually exist which relate ultimate risk to age at first exposure to a substance, and (2) in the absence of such data, the basic methodologies used for risk assessment have not developed to the point where such projections can be made. Such an endeavor may be further confounded by scenarios where exposure to a substance in childhood may lead to manifestation of a disease in adulthood. Of course, there are rare occasions when data have been available to allow distinction of risks relative to age of exposure, such as the methodology applied for the estimation of risk of mesothelioma due to exposure to asbestos. In this case, there are epidemiological data relating risks observed (after a lengthy period of followup) to the age at which members of the group were first exposed.

Since currently available hazard and risk assessment methods are unable to distinguish susceptibility of children and adults in most situations, the procedures for risk assessment and determination of acceptable daily intake will apply to both children and adults. Thus, the two subjects (children and adult hazard/risk, and acceptable risk) are discussed together in this section.

b. *Acceptable daily intake (ADI) based on acceptable risk.* As mentioned above, the concept of acceptable daily intake (ADI) for a substance depends upon the projected exposure to users of a product (and possibly others affected by the product) and the estimated risks at such exposures. Thus, for any specific product the ADI of a constituent hazardous substance is defined as that exposure which leads to or is below an "acceptable risk." The recommended value of such a risk is explored below.

1. ADI for carcinogens. Although no universal figure exists, several reviewers have observed that Federal agencies, when setting a value of acceptable risk to the public for carcinogens, have often used the figure of one in a million or less. A one in a million risk means that when exposure to an agent of concern occurs, the exposed individual has an estimated additional one chance in a million during his or her lifetime of developing the deleterious effect, such as cancer. The exposure scenario being evaluated can be one use, one year's use, "normal product utility," or anticipated use over a lifetime, depending on the nature of the situation being addressed. Thus, the choice of the exposure situation evaluated is important to the concept of what risk is "acceptable." The greater the exposure, the higher the risk. Risk can be expressed in terms of exposure. For example, risk can be expressed as a risk of one in a million of developing cancer from a certain level of radon measured in a house, if the person

exposed lives in the house for a lifetime. Alternatively, risk can be expressed as lifetime risk—eating an apple treated with a pesticide every day for an entire lifetimc results in a certain risk of cancer.

Federal agencies have wrestled with the notion of "acceptable risk" for many years. The FDA in 1977 (42 FR 54148), and in 1979 (44 FR 17075), concluded that a lifetime risk of below one in a million imposes no additional risk of cancer to the public. The latter **Federal Register** notice dealt with diethylstilbestrol (DES). Since the industry was unable to show that use of DES led to risks of less than one in a million, DES was banned (Marraro, 1982). EPA has considered risks in the area of one in a million to one in 100,000 as a value for "acceptable risk," although other values have certainly been considered (Lave, 1985). The range reflects the attitude that, although the line for a specific regulatory action on a substance might normally be drawn at one in a million, there is flexibility if the benefits of the particular substance drive the definition of "acceptable risk" to a higher value. Industry has also noted the one in a million value. Mieure (1984) of Monsanto Company has stated that risks less than one in a million "are not normally considered relevant for regulatory consideration; FDA, OSHA, and EPA have all stated that substances having risks below one in a million ought not be subjected to regulation."

The Commission has also acted to require labeling at estimated risks on the order of one in a million for a carcinogen. In the case of methylene chloride, some 30 products containing this compound were identified and evaluated in terms of estimated individual risks. By and large, those products having estimated risks of over one in a million were subject to a labeling requirement under an enforcement policy, and those under one in a million were exempt from this requirement. Additionally, the Commission took an action to minimize the amount of DEHP allowed in baby pacifiers when the maximum estimated risks were within the range of one to ten in a million.

The above discussion gives examples of past, present, and proposed definitions of "acceptable risk" used by Federal regulatory agencies that center around the figure of one in a million. While the discussion does not give examples of the many other figures that have also been considered or proposed, the use of one in a million has been most prominent and also has the most precedent in the case of actions taken by the Commission and other agencies for carcinogens. Other chronic endpoints (reproductive effects and neurotoxicity) should receive a similar level of concern. Therefore, for purposes of the LHAMA (and for other products subject to the FHSA), the maximum ADI under the guidelines is that exposure of a toxic (by virtue of its carcinogenicity) substance estimated to lead to a lifetime excess risk of one in a million. The term "exposure," as used in the guidelines, refers to the anticipated exposure from normal lifetime use of the product, including use by artists, art teachers, and art students. The assessment of exposure is covered in the section on exposure in these guidelines.

ii. ADI for neurotoxicological and developmental/reproductive agents. As mentioned in the section on risk assessment, no numerical risk assessment method for neurotoxicological or developmental/reproductive agents will be specified at this time. Although other Federal agencies such as EPA are developing and considering such methods for these types of chronic agents, the development is still ongoing, and they are not ready for implementation in guidelines such as these. When implementation is feasible, the Commission will specify appropriate amendments to these guidelines.

Therefore, as an alternative, a safety factor approach is specified for handling neurotoxicological or developmental/reproductive agents. Safety factors have been used extensively in the past for non-carcinogenic substances, and even for carcinogens as late as the early 1970's. Typically, a factor of ten is applied to account for potential differences in sensitivity between humans and animals, and another factor of ten is applied to account for differences in sensitivity among humans (Hutt, 1985).

Using the safety factor approach, the ADI under the guidelines is the following. If the hazard is ascertained from human data, such as that derived from epidemiological studies, a safety factor of ten will be applied to the lowest no observed effect level ("NOEL") seen among the relevant studies. For each study, the NOEL is considered to be the highest experimental exposure or dose level at and below which no significant response is observed (presumably, the next higher experimental point reflects a significant, positive response). The ADI is then tenfold less than the lowest (among the relevant studies) of these doses or exposures. If the hazard is ascertained from animal data, the ADI is one hundredfold less than the lowest NOEL.

The above concepts require some clarification. First, in the event that the only study or studies available have significantly positive responses at all levels tested (for example, only two single-point studies are available), a NOEL cannot be determined. Therefore, in such cases, the safety factor used to determine ADI will be applied to the lowest exposure or dose yielding positive results, known as the lowest observed effect level ("LOEL"). The safety factor will include an additional factor of ten (*i.e.*, ADI's of 100 and 1000 below the LOEL for situations based on human and animal data, respectively) to account for the probability that a response would occur at a lower dose or exposure.

Second, the NOEL (or LOEL) and ADI reflect daily dose levels, that is, the NOEL (or LOEL) is calculated in terms of amount per day experienced by the animals or humans under study, and the safety factor is applied to that number to determine ADI. When a specific art material (or other material subject to the FHSA) containing a toxic substance is used, if the daily exposure during use (with use, again, referring to anticipated use pattern(s)) exceeds the ADI, the product should be labeled according to provisions of the LHAMA and the FHSA.

Third, where only specific populations are susceptible, the product is still subject to the provisions of the LHAMA and the FHSA, although any labeling would identify such populations. For example, if a developmental toxicant acts only during pregnancy, this quality would be so noted on the labeling.

VII. The Supplemental Definition of Toxic

A. The Existing Statutory and Regulatory Scheme

Section 2(g) of the FHSA defines the term "toxic" very broadly as "any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." 15 U.S.C. 1261(g). This broad statutory definition covers both acute and chronic toxicity.

The Commission's regulatory definitions that interpret and supplement the statutory definitions provide specific tests that can be used to determine whether a product is acutely toxic by oral ingestion, inhalation, and skin contact. 16 CFR 1500.3(c)(2). However, there currently is no

corresponding regulatory definition to apply to products presenting a risk of chronic toxicity.

The Commission has long taken the position that the statutory definition of toxic includes both acute and chronic toxicity. Several regulations issued under the FHSA have addressed chronic hazards associated with a variety of products, such as lead (a neurotoxin), 16 U.S.C. 1500.17(a)(6), asbestos (a carcinogen), *id.* § 1500.17(a)(7), and vinyl chloride (a carcinogen), *id.* § 1500.17(a)(10). Another example of the Commission's action regarding chronic hazards is its Statement of Interpretation and Enforcement Policy on methylene chloride which notified the public that, due to risk of cancer, the Commission considered household products containing methylene chloride to be hazardous substances subject to FHSA labeling requirements. 52 FR 34698 (1987).

Congress and the courts have also recognized the Commission's authority to regulate chronic hazards under the FHSA. In *Gulf South Insulation* v. *CPSC*, 701 F.2d 1137, 1148–50 (5th Cir. 1983), the Fifth Circuit ruled that the FHSA would be the proper statute under which the Commission could ban urea-formaldehyde foam insulation if the Commission could establish a proper evidentiary basis for concluding that the product presented a cancer risk (a chronic hazard). Also, Congress indicated its expectation that the Commission would address chronic hazards through the FHSA. 15 U.S.C. 2080(b)(1)(C) and (2)(A)(iii) (CHAP to review data before Commission can ban a product that contains a carcinogen, teratogen, or mutagen).

B. The Supplemental Definition

The supplemental regulatory definition finalized today amends the regulatory definition of "toxic" to provide a definition that will include chronic toxicity, not just acute. The Commission hopes that this will clarify the definition and fill the gap in the Commission's current regulatory definition of "toxic."

The Commission is issuing the supplemental definition under the authority of section 10 of the FHSA which authorizes the Commission to issue regulations "for the efficient enforcement of this Act." Having this definition will improve the Commission's enforcement capabilities since the staff would not have to prove the meaning of chronic toxicity in each enforcement action. The Commission also believes that the definition will be helpful to manufacturers since it will clarify that chronically toxic substances are "toxic" (and must be labeled appropriately) under the FHSA. The supplemental definition discusses the particular chronic hazards of cancer, neurotoxicity, and developmental or reproductive toxicity. However, the definition is not limited to these hazards, but includes other chronic hazards.

The Commission has simplified the proposed definition. Some commenters felt that the proposed definition would eliminate the flexibility necessary to properly consider all factors affecting risk. They objected to an automatic risk level and automatic safety factors.

The Commission's intention in issuing the proposed guidelines and definition was to provide a balance of flexibility and certainty. The Commission did not intend to impose an automatic system that leaves no room for expert judgment. The general principle that determination of chronic hazards is a complex matter requiring the assessment of many factors is stated throughout the proposed and final guidelines.

After reviewing the comments and considering how the proposed definition would be implemented, the Commission decided to issue a broad definition rather than the more rigid one proposed. The final definition will clearly inform the public that chronic hazards are covered under the FHSA. It will also allow the flexibility intended by the Commission. This does not mean, however, that manufacturers will lack direction on when to label products that may present chronic hazards. The guidelines present exhaustive discussions of the chronic hazards of cancer, neurotoxicity, and reproductive and developmental toxicity, as well as the principles of exposure and risk assessment. The guidelines clearly recommend a risk level of 1×10^{-6} for carcinogens and certain safety factors for neurotoxins and reproductive and developmental toxicants. The guidelines provide that these levels should generally be followed in making labeling decisions, but they recognize that sound scientific data may warrant deviation from these levels.

Rather than requiring set risk levels, the final supplemental definition defines "toxic" as including such chronic toxicants as carcinogens, neurotoxins and reproductive and developmental toxicants.

VIII. Significant Comments and Responses

A. Comments Concerning the Codification

Comment. Several commenters expressed concern that art materials intended for adults and for use outside of the household are not covered by the Commission's interpretation of LHAMA.

Response. As explained more fully in section III.D of the preamble, the Commission construes this exclusion to be very narrow. LHAMA mandated ASTM D–4236 as a Commission rule under section 3(b) of the FHSA. Section 3(b) applies to substances intended or packaged in a form suitable for use in a household or by children. Thus, a substance that is not so packaged or intended is not covered by a section 3(b) rule. However, the Commission believes that it will be a very rare art material whose use is not anticipated in the household or by children.

This is particularly true since many artists do not separate their households from the area where they use art materials.

Comment. Some commenters stated that the final rule should clearly require a conformance statement on all art material products.

Response. As explained in section III.B. of the preamble, the Commission understands ASTM D–4236 to require that art material products that do not require chronic hazard labeling provide a conformance statement indicating that they conform to the requirements of ASTM D–4236.

Comment. A few commenters observed that the Commission needs to be able to amend ASTM D–4236 if ASTM changes any provisions of the standard.

Response. LHAMA provided for the Commission to amend the standard once it has provided an opportunity for written comments. If the change is not one initiated by ASTM, oral comments must also be permitted. The procedure for amending the standard is discussed in section III.F. of the preamble.

Comment. Several commenters noted the difficulty in defining "reasonably foreseeable or customary use" of an art material. This problem was also noted for other materials.

Response. The Commission agrees that this concept is difficult to define and may be particularly so with art materials. As the discussion in section IV.C. of the preamble indicates, the Commission has generally given a broad interpretation to the term.

Comment. Several commenters questioned the need for boardcertified toxicologists to review the formulations of art materials, and some recommended deleting this requirement from ASTM D–4236.

Response. As explained in section III.E. of the preamble, ASTM D–4236 defines the term "toxicologist" for

purposes of that standard as a board certified toxicologist or physician. The Commission can only change this requirement by the rulemaking process that LHAMA provided to amend the standard. The process for amending the standard is discussed in section III.F. of the preamble.

However, the staff does not believe that, in most instances, whether a toxicologist is board certified or not will be crucial to the analysis performed. Rather, the Commission is primarily concerned that the review is conducted by a person who has sufficient knowledge based on education, training, and experience and that the review is based on appropriate criteria. Section III.E. of the preamble explains that as a matter of enforcement policy, the Commission will not require that all art material reviews be conducted by a board certified toxicologist.

Comment. One commenter stated that no scientific and epidemiological data exist to suggest that consumers are being harmed by current use of art materials.

Response. The Commission is not asserting that any particular art material does or does not present a hazard. The guidelines set up a process to determine whether a product presents a chronic hazard. Congress has made the judgment that there is a need for a standard relating to the chronic health risk of art materials and that the Commission should develop guidelines.

Comment. Some individuals and organizations have sought clarification of the term "art material," and they have asked for some guidance on how the Commission will interpret the term as defined in LHAMA.

Response. Congress provided a broad definition of the term "art material." With the exception of certain products regulated under other statutes, the term is defined as "any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium." 15 U.S.C. 1277(b)(1). The Commission has not developed any supplemental definition that would further define this term. However, some guidance on the Commission's interpretation of this term is provided in the discussion earlier in the preamble in section III.D.

B. General Comments Concerning Guidelines

Comment. One commenter suggested that the Commission should issue chemical-by-chemical "guidelines" somewhat like the lists that are developed by the state of California under Proposition 65. Similar comments suggested that the Commission develop substance-specific lists of carcinogens, sensitizers, neurotoxins, and developmental/reproductive toxins.

Response. The Commissions's action fulfills the Congressional intent behind LHAMA and is consistent with the FHSA. The Commission believes that its approach strikes a balance between the desire for certainty and the need to allow expert judgment. As explained in the preamble and the guidelines, many factors must be considered and assessments made to come to the determination that a substance is a "hazardous substance" under the FHSA. A simple list of substances would not reflect the complexities involved in this determination.

Comment. Commenters expressed views on both sides of the issue of the scope of the guidelines, that is, whether they should apply to products other than art materials. Chemical Manufacturers Association ("CMA"), for one, suggested that the Commission address non-art materials in a separate proceeding.

Response. As stated elsewhere in the preamble, the guidelines are intended to help manufacturers and others in determining whether their product presents a chronic hazard and, therefore, must be labeled under the FHSA. These same considerations are equally appropriate for art materials and for other products subject to the FHSA. The guidelines are not mandatory. Thus, to say that they only "apply" to art materials makes no sense since their use will be equally helpful to the manufacturers of art materials and of other products subject to the FHSA.

Comment. Several commenters suggested that the Commission convene a Chronic Hazard Advisory Panel ("CHAP"). CMA, for example, envisions the CHAP as a "screening mechanism" to identify particular consumer products "that deserve a full evaluation for potential chronic health risks." The CHAP would conduct hazard determinations on materials nominated by CPSC. There would be an opportunity for public comment. If warranted, the CHAP would assess potential exposure and, if there was significant exposure potential, conduct a risk assessment. The CHAP would then make recommendations to CPSC regarding labeling. CSMA recognized that the Commission is not required to consult a CHAP before issuing the guidelines, but suggested this "as a matter of sound administrative practice." Another commenter suggested that the Commission should establish a CHAP to review the need to expand the chronic hazard guidelines to product categories other than art materials

Response. As explained more fully in section V.B. of the preamble, the Commission must establish a CHAP in certain specified situations. The only action under the FHSA that requires the Commission to consult a CHAP is rulemaking to ban a particular substance.

In issuing these guidelines, however, the Commission is not promulgating a binding rule, is not seeking to ban a substance, and is not taking action with respect to any particular substance. The CHAP's purpose is to review particular products and substances. CHAP review is not appropriate in this case. The chronic hazard guidelines do not relate to any particular products or substances, but they provide guidance for determining, in general, whether a product can present a chronic health hazard.

Comment. In a somewhat similar vein, some commenters suggested that the Commission should regulate chronic hazards under the CPSA rather than the FHSA. They thought that the Commission should address specific consumer products and consult CHAPs in the process of doing this.

Response. As discussed in the preamble, the FHSA provides authority for the Commission to regulate chronic hazards. Although the Commission may have the authority to proceed under the CPSA, the FHSA is the more appropriate statute. The FHSA specifically requires the labeling of hazardous substances. The Commission has acted in the past to provide for chronic hazard labeling under the authority of the FHSA (e.g., methylene chloride). In fact, if the Commission were to issue chronic hazard guidelines under the CPSA, it may have to first issue a rule under section 30(d) of the CPSA finding that it is in the public interest to proceed under the CPSA rather than the FHSA.

Comment. CMA commented that the Commission has not given adequate notice to extend the chronic hazard guidelines from art materials to other products covered by the FHSA. CMA stated that the proposed guidelines did not adequately explain the Commission's authority and did not address the economic effects of the extension.

Response. The Commission believes that adequate notice was provided. The proposed guidelines clearly stated that because the scientific principles behind the guidelines are not affected by the types of products under consideration, manufacturers could use the proposed guidelines to aid their determination of whether a product covered by the FHSA presents a chronic hazard. The

commission received 47 written comments, including several on the very issue of the scope of the guidelines, and 15 people presented testimony at the public hearing in October.

Moreover, as explained in the preamble, the chronic hazard guidelines are not mandatory and are not being issued as substantive, binding rules. Rather, they are intended as guidance for manufacturers and others who must determine if their product requires labeling under the FHSA.

The Commission believes that it has adequately addressed the economic effects of the chronic hazard guidelines. The guidelines impose no new requirements on manufacturers. It is the FHSA that requires proper labeling of hazardous substances. The guidelines represent the CPSC's interpretation of the current scientific concensus regarding chronic health hazard assessment. Furthermore, the guidelines do not require any review of non-art materials by a toxicologist. This is a requirement of LHAMA and is directed exclusively at art materials.

Some commenters, including CMA may incorrectly believe that toxicological review would be required of all products subject to the FHSA. The requirements associated with the codification of the ASTM D–4236 apply only to art materials.

Comment. Several commenters stated that the Commission should clarify that chronic hazards covered by the FHSA are those that have the potential for "substantial" injury or illness.

Response. The FHSA definition of "hazardous substance" at issue in these guidelines does concern substances that may cause "substantial personal injury or substantial illness." 15 U.S.C. 1261(f)(1). The Commission's regulatory definitions provide guidance in interpreting this term. The applicable regulation states: "Substantial, personal injury or illness' means any injury or illness of a significant nature. It need not be severe or serious. What is excluded by the word 'substantial' is wholly insignificant or negligible injury or illness." 16 CFR 1500.3(c)(7)(ii).

C. Comments On Scientific Issues of the Guidelines and Definition

I. General

Comment. Commenters noted that it is important to keep the guidelines flexible and that rigid adherence to default factors (i.e., numerical factors to be used in the absence of data for the particular substance or circumstances) should not be required.

Response. The guidelines are intended to be flexible. This is stated very clearly in the guidelines as proposed and finalized. Default assumptions such as those used in exposure and risk assessment are, by definition, to be used in the absence of appropriate data. The guidelines permit the replacement of default assumptions with data-based alternatives. Alternative approaches should be scientifically defensible and supported by appropriate data.

Comment. Some commenters suggested that the guidelines should clarify that lack of significant bioavailability (or exposure) of a substance that would otherwise be a chronic toxicant will result in that substance being exempt from consideration as a "hazardous substance" under the FHSA.

Response. The proposed guidelines explained that for a substance to be a "hazardous substance" under the FHSA it must have the potential to be toxic and present a significant risk of adverse health effect through customary or reasonably foreseeable handling or use. The proposed guidelines also explained that this second factor reflects the person's exposure to the toxic component or the component's bioavailability. 56 FR 15674. The final guidelines reiterate this point.

Comment. Several commenters suggested that CPSC should specify using a species extrapolation method based on body weight since the use of the proposed "surface area correction" is not supported by the science.

Response. The science does not more strongly support one specific choice for a species extrapolation factor over another. Such a factor is commonly used to predict human cancer risks on the basis of results in animals. It is generally agreed that the best choice for such a factor lies within the range of the body weight method cited by the commenters, and the "surface area" method proposed in the guidelines. The FDA has used the body weight method in the past, and CPSC and the EPA have used the "surface area" method.

However, CPSC staff has been working closely with EPA, FDA, OSHA, and other Federal agencies to adopt a unified approach for species extrapolation (a factor related to weight ratio of humans and animals to the three-fourths power, which is in the middle of the range previously described). The guidelines state that this approach should be used when the unified Federal effort is adopted. There is extensive scientific justification and much peer review associated with this process. The Commission does not believe any change to this discussion in the proposed guidelines is warranted.

Comment. A few commenters stated that CPSC proposes to select data which produces the highest risk estimate. They suggested that the CPSC should encourage users to evaluate all appropriate data sets, and that the most scientifically relevant data, preferably human epidemiology, should be regarded as the key data to use for dose-response modeling.

Response. The proposed and final guidelines do not specify using data that produce the highest risk estimate. In choosing which data sets will serve as the basis for risk estimates, toxicologists should review all the data. The guidelines state that expert judgment is to be used in this, as well as in the many other choices which are part of the risk characterization process. For example, a method is presented which combines the results from different sexes, as opposed to only calculating risk from the highest responding sex. Furthermore, statements are made within the guidelines indicating that human epidemiology, when adequate, is the preferred source of data for human risk characterization.

Comment. Several commenters objected that the proposed definition of "toxic" would remove flexibility and require automatic application of a specified risk level for carcinogens and safety factors for other chronic toxicants.

Response. After considering these comments and how the proposed definition would work in practice, the Commission decided to revise the definition so that it defines "toxic" with respect to chronic toxicity but does not specify particular trigger levels. The definition is discussed in section VII of the preamble.

2. Cancer

Comment. Several commenters suggested that the guidelines' consideration of benign tumors as evidence of carcinogenicity should be similar to the approach of the Environmental Protection Agency and the International Agency for Research on Cancer (IARC), which consider such tumors as "limited evidence," and not "sufficient evidence." The grouping of benign and malignant lesions, they assert, is controversial and is only appropriate when certain criteria, like histogenic cell type, are met.

Response. The basis for considering benign tumors as part of "sufficient evidence" under certain conditions, and combining benign tumors with malignant tumors was discussed in the proposed guidelines. The CPSC believes that a benign tumor, if it has the potential to progress to malignancy, or is

life-threatening, should be considered to have the same potential health risk as if it is a malignant tumor. Current information supports combining benign and malignant tumors when scientifically defensible (e.g., same cell type in an organ or tissue). This is one of the principles of the consensus document proposed by Federal government agencies under the aegis of the Office of Space and Technology Policy. As it is rarely found that chemicals cause only benign tumors (in a review of 300 National Toxicology Program bioassays by Huff in 1988), the CPSC staff believes since a benign tumor may be life-threatening itself, or may be transitioning to malignancy, it should be treated as a malignant tumor unless there is adequate evidence showing that these possibilities are unlikely to occur.

Comment. Several commenters observed that increased tumor incidence at independent multiple sites are not necessarily independent observations and should not be treated as such in the guidelines. Tumors resulting from metastasis are not considered as separate tumors. Significance of multiple site tumors should be considered in the same way as that by EPA.

Response. The issue of tumors produced at multiple sites was discussed in the proposed guidelines. The phrase "sites of independent origin" means independent cancers which originate at unique sites and not that the same cancer metastasizes to a different site where cancer is reestablished. Thus, metastasis of a primary tumor to different sites will not be counted as different primary tumors because they would not have independently originated. The staff believes that the ability of a chemical to independently produce tumors at multiple sites indicates that the chemical has a wider range of carcinogenic potential similar to such an indication from responses in multiple strains, species, or experiments. No information was found in the comments to warrant any change in this position.

Comment. Several commenters stated that according to the Commission's proposals, a single study in humans which shows only limited evidence, or a study in animals which shows "sufficient evidence," is all that is required to determine that a substance is toxic under the FHSA due to chronic toxicity. They observed that in general, consistent findings from multiple human studies or multiple species are necessary to ensure valid hazard identification for this type of toxicity.

Response. Evidence from a study or studies taken together must be evaluated by the toxicologist. If a single extremely well conducted, non-biased study shows a powerfully significant effect, it by itself can serve as a basis for "sufficient evidence" of a toxic effect.

Epidemiological studies are very complex, and generally have inherent problems, such as exposure to multiple chemicals and problems ascertaining exposure. Much of this complexity leads to the evidence falling into the "limited evidence" category. CPSC staff believes that an epidemiological study or studies, which provides convincing evidence of a causal relationship between the incidence of cancer (or other chronic effects) and exposure to a chemical, but in which chance, bias, or other confounding factors could not be absolutely ruled out (limited evidence), may warrant the characterization of a chemical as toxic (probable human carcinogenic substance) under the FHSA. The criteria in these guidelines are not intended to be mechanically applied, but rather should be interpreted with the exercise of expert technical judgment. A single animal study with a response at only one dose will not normally lead to a conclusion that the substance is "toxic" under the guidelines.

Comment. Several commenters suggested that a "weight of the evidence" approach used by EPA should be followed in place of a "strength of the evidence" approach used by IARC in categorizing the evidence. CPSC, they observed, seems to have adopted the "strength of the evidence" approach. The commenters suggested that the guidelines should emphatically direct the consideration of all available information, including tests that show negative responses, as part of any evaluation.

Response. Both approaches include evaluation of all the available data regardless of the positive or negative results. CPSC's approach, which is not designated by any name, is similar to that of EPA and IARC; it also includes evaluation of all the available data. CPSC's approach does require a certain amount and quality of positive data before a finding of "toxic" can be made, but CPSC's guidelines also state that certain data and evidence can negate the impact of the positive data. The Commission believes that the approach adopted in the guidelines to evaluate carcinogens is a sound one, because it allows consideration of all the available data and not just the positive data.

3. Neurotoxicity

Comment. Numerous commenters noted that since LHAMA is concerned with only chronic effects, acute neurotoxic effects should not be considered. Discussion in the proposed guidelines on neurotoxicity, they stated, is too broad and would cover everything including water. Consideration should be limited to the agents which primarily affect the nervous system; only direct neurotoxic effects should be included in the definition. Effects due to overdosing, or alterations from baseline should not be considered as an indication of neurotoxicity unless statistical significance can be demonstrated.

Response. The guidelines do address only chronic effects. The nervous system is integrally connected to the functioning of all the other systems in an organism, which complicates the interpretation of neurotoxic effects. Effects can be chronic under several circumstances. These include long-term exposure followed by the effect, short-term exposure followed by an effect occurring at some time in the future, and an immediate effect due to short-term exposure which then lasts for a prolonged period of time. "Acute" in this case would refer to only those immediate effects, from short-term exposure, which are rapidly and completely reversible. The terms "short," "prolonged," and "immediate" are general guides to the interpreting toxicologist, who must decide from the nature of the studies if the effect is acute or chronic.

Comment. Several commenters stated that defining "sufficient evidence" by statistics is not appropriate since some results may be statistically significant due to random variability. They suggested that results must be statistically significant and biologically plausible, that "limited evidence" should also require biological plausiblity, and that the "possible neurotoxic substances" class should be deleted. Neurotoxicity criteria, they commented, are impractical to determine an appropriate hazard warning.

Response. Although it is possible that some neurotoxicity findings may be the result of false positives, this is accounted for by the guidelines. For human studies, the studies must be of high quality, and bias (which could lead to a false positive) must be considered. For animal studies, the effects must be statistically significant in more than one good quality study. Expert technical evaluation includes examination of reliability, sensitivity, and validity along with the requirement that a study should be well designed and conducted. Biological plausibility is a factor that increases confidence in a result, but by no means is it a prerequisite for using

the study as a basis for a finding of toxicity. In addition, it is clearly stated that evidence derived from animal studies that has been shown not to be relevant to humans is not included in the consideration of the neurotoxicity of a substance. The "possible neurotoxic substances" class is important to retain because it could indicate that more work is necessary on a particular chemical, and it gives the basis why the current evidence is not sufficient to conclude that a substance is toxic.

4. Reproductive and Developmental Toxicity

Comment. Some commenters stated that it is inappropriate to list a chemical in the "sufficient" category if it has been found to be active in only one species, regardless of the number of endpoints. A single statistically significant endpoint is not "sufficient" evidence to classify a material as a reproductive or developmental toxicant.

Response. The staff believes a good quality study with significant changes in multiple endpoints using multiple doses, routes of administration, or strains, constitutes a degree of toxicity in animals that is predictive of probable harm to humans and thereby warrants further assessment of exposure, risk, and bioavailability. If an effect occurs more than once (at two dose levels or two sites, for example), or if there are multiple effects, the possibility that the observed reproductive or developmental toxicity is an anomoly is greatly reduced.

Comment. Some commenters stated that maternal toxicity and its relationship to developmental toxicity should be evaluated and integrated into the interpretation of a study. Developmental toxicity, they stated, should not be automatically discounted as secondary when it is associated with maternal toxicity.

Response. The Commission agrees with this comment. The proposed guidelines stated "maternal toxicity * * * must be evaluated and accounted for in the interpretation of a study. The toxic effect(s) observed in a positive study *should* be significant at one or more doses in the absence of maternal toxicity." 56 FR 15684 (emphasis added). The final guidelines have been revised to clarify this point and state that toxicity is not automatically discounted as secondary when associated with maternal toxicity.

5. Bioavailability.

Comment. One commenter observed that CPSC proposes to set the dermal penetration rate for chemicals present in mixtures at 100 percent. CPSC should require skin penetration rates based on the physical-chemical characteristics of an art material, the commenter stated. While direct measurement of the skin penetration is desirable, in numerous instances it is impractical. Alternatively, other indirect approaches must be relied upon to estimate systemic doses from skin contact; and any default value, particularly one as severe and overly simplistic as 100 percent, must be left to rare and extreme circumstances.

Response. The proposed CPSC bioavailability guidelines did not set the dermal penetration rate for chemicals at 100 percent. In fact, the guidelines as proposed and finalized specify the use of indirect approaches, including use of physicochemical data, to estimate dermal bioavailability where appropriate. The proposed guidelines, at section III.F.2.c.i (56 FR 15590) clearly indicated that either a default value may be assumed or a bioavailability assessment may be performed. That paragraph also states that "the default value should be used when there are no adequate data which would lead to an alternative approach." The following paragraph of the proposed guidelines generally describes the alternative approaches and the conditions under which they can be used to estimate bioavailability.

The type of data which may be used in a quantitative bioavailability assessment are discussed in subsection (b) of VI.F.2.c.i. A number of acceptable methods of measuring dermal penetration are also specifically identified in the technical support document for the bioavailability guidelines available through the CPSC's Office of the Secretary. They include *in vivo* bioavailability studies, isolated perfused skin studies, *in vitro* studies using excised skin, physiologically based dermal absorption models, surrogate data such as octanol:vehicle partition coefficients and bioavailability data from surrogate compounds. It is stressed throughout the guidelines that all factors expected to affect dermal penetration must be considered in the assessment. This is especially important when bioavailability is based on *in vitro*, surrogate compound, or physicochemical data.

Comment. One commenter states that in the proposed guidelines, CPSC fails to acknowledge the range of information that may be relied upon to make estimates of systemic doses from skin contact with chemicals reliably in the absence of direct empirical measurements. The information lacking from CPSC's proposed guidelines, the commenter states, includes viscosity of a chemical mixture, the molecular weight of each substance, the polarity of each substance in a mixture, and the lipophilicity of each compound.

Response. This comment is incorrect. Section III.F.2.c.ii(c) of the proposed guidelines (56 FR 15694) acknowledged a large number of factors that impact dermal bioavailability including three of the four examples cited in this comment. Lipophilicity, molecular size, and degree of polarity are all discussed in the second paragraph of the section as important chemical-specific determinations of dermal absorption.

This section of the guidelines describes several vehicle-specific determinants of dermal absorption but does not include viscosity. The commenter claims that "high viscosity acts as a barrier to absorption through the skin" based on "many incidental observations" related to pen and marker inks. The staff is unaware of scientific data that show viscosity retards skin penetration, although it is generally recognized that viscosity will affect dermal migration (migration of a substance from a product to the skin surface). Dermal migration is discussed in the guidelines for assessing exposure (VI.F.1.c.iii). Finally, the fourth paragraph of the skin permeability section describes the major physiological and other factors expected to influence dermal absorption. Hydration of the stratum corneum and volatility of the mixture, also mentioned elsewhere by the commenter, are discussed in that section.

Comment. One commenter asked how a hazard can be established and estimated when the exposure is infinitesimally smaller than doses known to produce any effects in animals. The commenter stated that hazards are estimated by direct exposure to a substance regardless of the route of exposure, and, more often than not in art materials, the particular ingredients of concern are not readily bioavailable.

Response. This comment is interpreted to question the basis on which CPSC can ever consider ingredients contained in art materials as hazardous when: (a) Users are exposed to much smaller amounts of these substances than cause adverse effects in experimental animals, and (b) the routes of human exposure to art materials are often such that the ingredients would not be readily bioavailable.

The first part of the question was addressed in section III.F.4.b of the proposed guidelines on acceptable daily intake. The ADI is the maximum daily dose of a chronically toxic substance (as determined by other sections of the

guidelines) to which a person can be exposed without presenting an unacceptable risk of injury and illness. The ADI will usually be considerably less than the dose observed to cause an adverse health effect in animals as discussed in subsection (i) and (ii) of this discussion in the guidelines. This is because the observed adverse effect levels in animals, in most instances, have to be adjusted (1) to assure that the toxicity observed at the high levels is acceptably reduced or eliminated at the human exposure levels, (2) to protect for the possibility that humans may be more sensitive to the toxic effect at equivalent administered doses, and (3) to account for the larger expected variation within the human population. Unfortunately, scientific data on which to determine the magnitude of these adjustments are rarely available, necessitating the use of assumptions based on longstanding policies within the regulatory community. However, the guidelines indicate that these assumptions should be replaced with biologically-based approaches when there is valid and convincing scientific evidence that an alternative is clearly superior.

The second part of the comment is addressed within the guidelines for assessing bioavailability. That section of the guidelines describes the situations in which there is a need to assess bioavailability, including when it is anticipated that the routes of human exposure to a toxic substance will differ from those used in an animal toxicity study.

If it is true that exposure to ingredients within art materials are "infinitely smaller" than the doses that produce chronic toxicity in animals and that the ingredients of concern are not bioavailable, then of course there is no hazard. However, this needs to be established through the hazard assessment process.

6. Exposure Assessment.

Comment. One commenter suggested that exposure assessment should be done in accordance with handling instructions on the product package, such as, "use with adequate ventilation."

Response. ASTM D–4236 states that reasonably foreseeable misuse should be considered in assessing risk. Use with inadequate ventilation, for example, is likely to be reasonably foreseeable. Commission regulations also state that under the FHSA "reasonably foreseeable handling or use" includes foreseeable accidental handling or use. 16 CFR 1500.3(c)(7)(iv). Thus, in the context of LHAMA and the FHSA, exposure assessment should not be limited to the manufacturer's instructions.

Comment. Two commenters suggested that CPSC eliminate consideration of incremental exposures when judging the need to label an art material, as suggested in the guidelines for assessing exposure. This provision, they stated, is impractical and unnecessary, and CPSC fails to provide adequate guidance for its implementation. They stated that it will create confusion among users if a product is labeled due to incremental exposures from other sources.

Response. It is often impractical to consider exposures from other sources, although it is sometimes desirable to do so. One example is products containing lead since there is an existing background level near the point where an effect can occur. However, in the context of LHAMA and the FHSA, the focus is clearly on individual products. The proposed guidelines stated in the discussion only that "it may be useful" to define what portion the product-specific exposure is of the total environmental exposure, but the discussion acknowledged the difficulties. The final guidelines clarify that assessment of exposures from other sources is not required, but should generally be noted. Whether other sources should be considered must be determined on a case-by-case basis.

7. Risk Assessment.

Comment. Several commenters objected to CPSC's proposal in the chronic hazard guidelines that an additional ten-fold safety factor be applied to products intended for use by children for all chronic endpoints when calculating the acceptable daily intake, to account for the possibility that children may be more sensitive than adults. Several stated that this was not supported by the scientific data. Some commenters stated that this additional ten-fold factor would have an adverse economic impact on the art materials industry, especially on manufacturers of unleaded glazes used for ceramics. As a result of this safety factor, they stated, 92 product lines which currently do not require warning labels under the Art and Craft Materials Institute's review program will be required to carry warning labels.

Response. As discussed in section IV.E. of the preamble, the Commission has decided not to include additional safety factors for children's products in the final guidelines and definition.

Although children may be more susceptible to many substances than adults, it may be difficult to differentiate between products for children and those for adults, particularly in the area of art materials. This could result in a more widespread use of the ten-fold safety factor than the Commission had intended.

Even if CPSC's proposed ten-fold safety factor were implemented, however, it is questionable whether the extra safety factor for children would actually affect the labeling status of unleaded glazes. According to Dr. Stopford (ACMI's consulting toxicologist), ACMI applies safety factors of its own to risk assessments involving children. In many cases, the ACMI safety factors, which are not required in the proposed guidelines, may be equivalent to or greater than CPSC's proposed ten-fold safety factor. In effect, ACMI's toxicologist has applied redundant safety factors and, as a result, has overestimated risk.

Multiple overestimations of exposure, in total greater than a factor of ten, have been incorporated by ACMI's analysis; these would not be used if CPSC staff were to do the analysis. Of course, ACMI's overestimation of exposure is intentional. It is its means of providing an additional safety factor for children.

In addition, for assessing cancer risk, according to Dr. Stopford, ACMI assumes that children are exposed for 70 years. In comparison, the Directorate for Health Sciences would assume that a child is exposed to a children's product only during childhood. If childhood is considered to last for ten years, then ACMI in effect is applying a seven-fold safety factor of its own which is not directed by CPSC's guidelines. Taken together, ACMI's self-imposed seven-fold safety factor and the 1×10^{-7} acceptable risk directed by the CPSC guidelines, are equivalent to a 70-fold safety factor, while the proposed guidelines required only a ten-fold factor.

Comment. Several commenters stated that the Commission's guidelines and rules should be consistent with those of other agencies, such as OSHA, EPA, and FDA.

Response. Congress mandated the voluntary standard as a Commission standard. The Commission cannot change these provisions without going through the amendment procedures specified in LHAMA. The CPSC's chronic hazard assessment guidelines are almost entirely consistent with the guidelines and methodologies of other agencies, including those mentioned by the commenters. Some of the differences relate to what is required by Congress; for example, LHAMA requires CPSC to address the determination of acceptable daily intake for chronic hazards.

The few technical differences between CPSC and other agencies have been carefully considered by CPSC. For example, two major differences between CPSC's guidelines and EPA's guidelines are the use of benign tumors and the treatment of tumor responses at multiple sites. EPA, which is in the process of revising its cancer guidelines, is reconsidering its position on these two points. It is quite possible that EPA's revised guidelines will be in agreement with CPSC's on these points.

CPSC is working with other agencies to harmonize risk assessment methodologies. For example, CPSC staff has been working with EPA, FDA, and OSHA to adopt a uniform approach for species-to-species extrapolation. CPSC's proposed guidelines state clearly that the uniform approach (body weight ratio to the three-fourths power) will be used when the proposal is finally adopted.

Under the Hazard Communication Act, OSHA may require manufacturers to warn workers if there is a single, well designed study showing a statistically significant effect for a health hazard such as cancer. The toxic potency and exposure are not necessarily considered, as they are under LHAMA and the FHSA. Therefore, it is possible that a product could require a warning in the workplace, but not require a label when sold as a consumer product. Occupational exposures are typically greater than consumer exposures from similar materials.

Regarding labels themselves, the Commission is not requiring any labeling beyond what is required by LHAMA and FHSA. The staff is revising its 1979 labeling guide so that it will provide guidance on developing chronic hazard labeling.

D. Comments Concerning Labeling

Comment. CMA suggests that the Commission adopt the ANSI standard for Hazardous Industrial Chemicals (Z129.1–1988) for precautionary labeling of chronic hazards.

Response. The Commission is not prescribing particular labeling requirements. Some requirements for art materials are mandated by LHAMA. Other materials must adhere to the requirements of section 2(p) (1) of the FHSA and regulations previously issued under that authority (e.g. for prominence, placement, and conspicuousness at 16 CFR 1500.121). The staff will, in the future, develop some general guidance about the design and content of labels warning of chronic hazards.

Comment. Several commenters noted that while the proposed guidelines and supplemental definition of toxic would apply to all products subject to the FHSA, not just art materials, the Commission did not include additional labeling requirements for what the chronic hazard labels should say except in the case of art materials.

Response. Neither the guidelines nor the definition specify labeling requirements beyond those already in force under the FHSA. ASTM D–4236, now codified as a Commission standard for art materials, does provide some examples of labels that may be appropriate to warn of chronic hazards. These warnings may also be appropriate for other products subject to the FHSA that present a chronic hazard. However, the suggested labeling may not be sufficient to satisfy all the requirements of section 2(p)(1) of the FHSA for art materials or other household products, especially mixtures containing various chemicals. It is the manufacturer's responsibility to determine the product's characteristics and to design appropriate labeling. The staff is in the process of revising its 1979 labeling guide for products that present an acute hazard. The updated version will provide guidance on developing warning statements for products that pose a chronic hazard.

Comment. One commenter suggested that since it is not known how various components of art materials interact, the most informative labeling might be to state "Contains (name of toxic substance). Use this product with caution and as intended or instructed."

Response. Art material mixtures may be more or less hazardous than the components themselves because of synergistic or antagonistic reactions. For this reason, labeling may not reflect the true effect of the mixture if it is based on the extent to which one component is a carcinogen, neurotoxicant, or reproductive or developmental toxicant. Moreover, as explained in the guidelines, bioavailability and exposure must be considered. Labeling of art materials should be accurate and as specific as possible in terms of precautionary statements and consequences of ignoring the warning. Specificity increases the likelihood that users would take precautionary measures and reduces the likelihood that the product will be used in a manner perceived as safe, but which may not include the appropriate safety measures. Thus, mixtures should be evaluated based on existing scientific data so that the label can reflect the true nature of the hazard.

E. Comments Concerning Economic Impact

Comment. Some commenters expressed concern about the burden that would be placed on each manufacturer having products assessed by toxicologists and submitting to the Commission assessments of the potential chronic hazard of each product. Additionally, if a product were mistakenly required to have chronic hazard labeling under the guidelines, this would be tantamount to banning the product, since no consumer would buy the product. Thus, the guidelines should be carefully thought through. CMA suggested that the Commission issue a separate notice of proposed rulemaking to address such economic concerns.

Response. The preamble attempts to clarify that the requirement that a manufacturer provide a toxicologist with formulations of the manufacturer's products and that the manufacturer submit to the Commission the criteria used to determine chronic toxicity only applies to art materials. As discussed in the preamble, with products other than art materials, it is the manufacturer's responsibility to see that products are properly labeled, but the means used to reach this goal are left to the manufacturer. The guidelines impose no labeling requirements beyond those already in existence in the FHSA.

Even with art materials, however, LHAMA and ASTM D–4236 do not require a risk assessment of each product be submitted to the Commission. Rather, the producer or repackager of an art material must provide the Commission with a summary of the criteria a reviewing toxicologist uses to determine chronic toxicity and a list of those specific products that require chronic hazard labeling.

Manufacturers who have credible reasons to believe that their products are safe or else are applying the appropriate warning labels, would not need to reevaluate their products against the guidelines. The guidelines and supplemental definition, in and of themselves, do not increase the regulatory burden on manufacturers. The labeling of hazardous substances is mandated by the FHSA, not by the guidelines. The choice of means used for evaluating the hazardousness of a product is left to the manufacturer. However, because failure to properly label a hazardous substance is a violation of the FHSA, and because unnecessary labeling of non-hazardous products may put the firm at a competitive disadvantage, it is in the

firm's interest to have a "carefully thought through" method for evaluating its products. The guidelines and definition should aid the manufacturer in the determination that a product must be labeled under the FHSA. As the preamble and other responses to comments explain, the Commission has given a great deal of thought to the guidelines and definition. The Commission believes that it has adequately addressed the economic concerns expressed and that a separate rulemaking is unnecessary.

Comment. Two commenters requested that the Commission extend the effective date of the final guidelines and definition to six months or one year rather than the 90 days proposed. They stated that additional time is necessary for manufacturers to ensure labeling compliance without excessive hardship.

Response. Neither of the commenters requesting an extension of the effective date are producers of art materials. Thus, only the guidelines and supplemental definition of toxic would apply to these commenters. The guidelines and definition do not impose new requirements on manufacturers of consumer products subject to the FHSA. Therefore, manufacturers of consumer products will not incur additional costs solely because of the adoption of the final guidelines and definition. It is possible that in reviewing the guidelines and definition, a firm may realize that its interpretation of the FHSA requirements has been in error and will incur costs correcting its mistake. However, these costs would be incurred whenever and for whatever reason a firm discovered that it was not in compliance with the FHSA. Furthermore, one of the above commenters stated that it has already "conducted extensive testing to ensure the safety of [its] products and has not discovered any chronic hazard concerns." If responsible evaluation has occurred, the firm is likely to be in compliance with the FHSA. The Commission does not believe that there is any economic justification to extend the effective date.

F. Comments Concerning all Actions

Comment. Several comments raised the issue of preemption. Some commenters stated that the proposed rules might lend strength to an argument that they would preempt state laws dealing with toxic chemicals, and these commenters requested the Commission to state that the rulemaking would not preempt state law. Other comments requested the Commission to indicate that its actions would preempt state law.

Response. The issue of preemption is quite complex and cannot be resolved simply by stating that all contrary state laws are or are not preempted. As the preamble explains more fully, under section 18 of the FHSA, a cautionary labeling requirement under section 2(p) or 3(b) of the FHSA designed to protect against a risk of injury or illness associated with a hazardous substance would preempt non-identical state or local cautionary labeling requirements applicable to that hazardous substance and designed to protect against the same risk of injury or illness. LHAMA mandated ASTM D–4236 as a Commission rule under section 3(b) of the FHSA. As a labeling requirement under section 3(b) of the FHSA, it has preemptive effect in the circumstances stated in section 18(b)(1)(A).

The final chronic hazard guidelines, however, are not mandatory and do not themselves impose any cautionary labeling — requirements. The requirement to place hazard labeling on a substance that is a "hazardous substance" comes from sections 2(p) and 3(b) of the FHSA. The guidelines, in contrast, are an aid to manufacturers and producers in determining whether a product is a hazardous substance. Thus, the guidelines themselves would not directly preempt any non-identical state guidelines.

The supplemental regulatory definition of "toxic" is not itself a cautionary labeling requirement. However, it does work with the labeling requirements under section 2(p) and 3(b). The regulatory definition in itself does not have direct preemptive effect, but the labeling requirements under sections 2(p) and 3(b) would preempt state and local labeling requirements that applied to hazardous substances (as defined in the FHSA and its regulations) covered by section 2(p) or 3(b) and designed to protect against the same risk.

Comment. An ancillary comment was made that the labeling requirements under the FHSA are too weak and vague to preempt state laws.

Response. The requirements of the FHSA are not vague. The FHSA defines the term "misbranded hazardous substance" at section 2(p)(1)(E) as a hazardous substance that "fails to bear a label (I) which states *conspicuously* * * * an affirmative statement of the principal hazard or hazards, * * * or similar wording *descriptive* of the hazard" (emphasis added). This means the labeling must communicate to the consumer an understanding of the potential principal hazard or hazards presented by the product in order to avoid being misbranded and subject to legal action.

In some cases simply restating the defined hazard, such as "FLAMMABLE" will provide a meaningful statement of hazard. In other cases, more descriptive language is necessary, such as for corrosive hazards, statements like "CAUSES BURNS" or "CAUSES SEVERE BURNS" are required to satisfy the FHSA.

The cautionary labeling required under the FHSA must present a balanced perspective of the potential hazards of the product. Many products which may cause chronic health effects may also be acutely toxic and present physical hazards, such as flammability. The suggested labeling for methylene chloride paint strippers had to take into consideration the product's acute inhalation toxicity in addition to the carcinogencity hazard. Therefore, the suggested front panel label statement is "VAPOR HARMFUL" with the instruction "Read Other Cautions and HEALTH HAZARD INFORMATION on back panel" and the back panel statement is "Contains methylene chloride, which has been shown to cause cancer in certain laboratory animals." For products where the only hazard is carcinogenicity and the evidence of increased risk of cancer to humans is clear, the labeling would be more straight forward. In its policy statement regarding the labeling of asbestos containing consumer products, 51 FR 33911, September 24, 1986, the following signal word and statement of hazard were suggested as adequate for asbestos cement sheet products, "WARNING: BREATHING FIBERS MAY CAUSE CANCER" with the hazardous component declared as "Contains asbestos which is known to cause cancer in humans."

Comment. The Chemical Manufacturers Association ("CMA") commented that the Commission should provide explicit protection for trade secrets.

Response. Again, there is confusion over requirements of ASTM D–4236 for art materials and requirements for other products. The requirement to submit formulation data to a toxicologist and the determining criteria to the Commission applies only to art materials. Thus, the protection of trade secret information is not as wide-spread a problem as some may have believed. A provision of ASTM D–4236, now codified at 16 CFR 1500.14 (b)(8)(i)((C)(2), states that only the reviewing toxicologist shall have access to the product formulation submitted for review. There is an exception if written

permission is given or if the data are provided on a confidential basis to a physician for purposes of diagnosis or treatment.

Section 2(p)(1) of the FHSA requires that the name of the hazardous substance be listed on the label. This is a statutory requirement and is not something the Commission can change. Listing the generic name is acceptable. There is no requirement to spell out the product formulation or the amount of the hazardous substance.

As for submission of data to the Commission, in general, the Commission does provide for protection of trade secret or proprietary information submitted to it if the material is so marked (16 CFR 1015.18). These provisions would apply to the information submitted by art material producers or repackagers under LHAMA, as well as others subject to the FHSA.

IX. Effective Dates

In order to allow sufficient time for manufacturers and packagers to evaluate the guidelines and supplemental definition, the guidelines and definition will take effect 90 days after publication. The final guidelines and definition will apply to products initially introduced into commerce on or after the effective date. The codification of ASTM D-4236 (§ 1500.14(b)(8)) will be effective upon publication.

X. Environmental Considerations

These actions are unlikely to have any effect on the quantity or physical characteristics of, or other changes in, product, materials, or packaging that could impact the environment beyond normal formulation, packaging, or promotional changes currently common among these producers of art materials and other products subject to the FHSA. Therefore, the Commission concludes that the guidelines, definition, and codification will have little or no potential for affecting the human environment and that neither an environmental assessment nor an environmental impact statement is required. See 16 CFR part 1021.

XI. Regulatory Flexibility Act Certification

The Commission is finalizing guidelines which will provide guidance for determining when a product presents a chronic hazard based on animal or human data. The supplemental definition of "toxic" reflects these guidelines and clarifies the meaning of chronic toxicity. The Commission is also codifying the provisions of ASTM D-4236 which Congress mandated as a Commission standard.

The Commission certifies that the guidelines, definition, and codification will not have a significant economic effect on a substantial number of small entities, and therefore no regulatory flexibility analysis need be prepared

List of Subjects in 16 CFR Part 1500

Arts and crafts, Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

For the reasons discussed above, the Commission amends 16 CFR part 1500 as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 is revised to read as follows

Authority: 15 USC 1261–1277

2. A new § 1500.135 is added to read as follows:

§ 1500.135 Summary of guidelines for determining chronic toxicity.

A substance may be toxic due to a risk of a chronic hazard. (A regulatory definition of "toxic" that pertains to chronic toxicity may be found at 16 CFR 1500.3(c) (2).) The following discussions are intended to help clarify the complex issues involved in assessing risk from substances that may potentially cause chronic hazards and, where possible, to describe conditions under which substances should be considered toxic due to a risk of the specified chronic hazards. The guidelines are not intended to be a static classification system, but should be considered along with available data and with expert judgment. They are not mandatory. Rather, the guidelines are intended as an aid to manufacturers in determining whether a product subject to the FHSA presents a chronic hazard. All default assumptions contained in the guidelines on hazard and risk determination are subject to replacement when alternatives which are supported by appropriate data become available. The following are brief summaries of more extensive discussions contained in the guidelines. Thus, the guidelines should be consulted in conjunction with these summaries. Copies of the guidelines may be obtained from the Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207. (In addition to the chronic hazards discussed below, issues relating to the chronic hazard of sensitization are discussed in 16 CFR 1500.3(c) (5).)

(a) *Carcinogenicity.* Substances are toxic by reason of their potential carcinogenicity in humans when they are known or probable human carcinogenic substances as defined below. Substances that are possible human carcinogenic substances or for which there is no evidence of carcinogenic effect under the following categories lack sufficient evidence to be considered toxic by virtue of their potential carcinogenicity.

(1) *Known Human carcinogenic Substances ("sufficient evidence" in humans).* Substances are toxic by reason of their carcinogenicity when they meet the "sufficient evidence" criteria of carcinogenicity from studies in humans, which require that a causal relationship between exposure to an agent and cancer be established. This category is similar to the Environmental Protection Agency's (EPA) Group A, the International Agency for Research on Cancer's (IARC) Group 1, or the American National Standards Institute's (ANSI) Category 1. A causal relationship is established if one or more epidemiological investigations that meet the following criteria show an association between cancer and exposure to the agent.

(i) No identified bias that can account for the observed association has been found on evaluation of the evidence.

(ii) All possible confounding factors which could account for the observed association can be ruled out with reasonable confidence.

(iii) Based on statistical analysis, the association has been shown unlikely to be due to chance.

(2) *Probable Human Carcinogenic Substances.* Substances are also toxic by reason of their probable carcinogenicity when they meet the "limited evidence" criteria of carcinogenicity in humans or the "sufficient evidence" criteria of carcinogenicity in animals described below. This category is similar to EPA's Group B, IARC's Group 2, or ANSI's Categories 2 and 3. Evidence derived from animal studies that has been shown not to be relevant to humans is not included. For example, such evidence would result when there was an identified mechanism of action for a chemical that causes cancer in animals that has been shown not to apply to the human situation. It is reasonable, for practical purposes, to regard an agent for which there is "sufficient" evidence of carcinogenicity in animals as if it presented a carcinogenic risk to humans.

(i) *"Limited evidence" of carcinogenicity in humans.* The evidence is considered limited for establishing a causal relationship between exposure to the agent and cancer when a causal interpretation is

credible, but chance, bias, or other confounding factors could not be ruled out with reasonable confidence.

(ii) *"Sufficient evidence" of carcinogenicity in animals.* Sufficient evidence of carcinogenicity requires that the substance has been tested in well-designed and -conducted studies (*e.g.*, as conducted by National Toxicology Program (NTP), or consistent with the Office of Science Technology Assessment and Policy (OSTP) guidelines) and has been found to elicit a statistically significant ($p < 0.05$) exposure-related increase in the incidence of malignant tumors, combined malignant and benign tumors, or benign tumors if there is an indication of the ability of such benign tumors to progress to malignancy:

(A) in one or both sexes of multiple species, strains, or sites of independent origin; or experiments using different routes of administration or dose levels; or

(B) to an unusual degree in a single experiment (one species/strain/sex) with regard to unusual tumor type, unusual tumor site, or early age at onset of the tumor.

The presence of positive effects in short-term tests, dose-response effects data, or structure-activity relationship are considered additional evidence.

(3) *Possible Human Carcinogenic Substance ("limited evidence" animal carcinogen).* In the absence of "sufficient" or "limited" human data, agents with "limited" evidence of carcinogenicity from animal studies fall into this category. Such substances, and those that do not fall into any other group, are not considered "toxic." This does not imply that the substances are or are not carcinogens, only that the evidence is too uncertain to provide for a determination. This category is similar to EPA's Group C, IARC's Group 3, or ANSI's category 4.

(b) *Neurotoxicity.* Substances are toxic by reason of their potential neurotoxicity in humans when they meet the "sufficient evidence" or "limited evidence" criteria of neurotoxicity in humans, or when they meet the "sufficient evidence" criteria of neurotoxicity in animals.

(1) *Known Neurotoxic Substances ("sufficient evidence in humans").* Substances are toxic by reason of their neurotoxicity and are considered "known neurotoxic substances" when they meet the "sufficient evidence" criteria of neurotoxicity derived from studies in humans which require that a causal association between exposure to an agent and neurotoxicity be established with a reasonable degree of certainty. Substances in this category meet the definition of "neurotoxic" as stated above. "Sufficient evidence," derived from human studies, for a causal association between exposure to a chemical and neurotoxicity is considered to exist if the studies meet the following criteria.

(i) A consistent pattern of neurological dysfunction is observed.

(ii) The adverse effects/lesions account for the neurobehavioral dysfunction with reasonable certainty.

(iii) All identifiable bias and confounding factors are reasonably discounted after consideration.

(iv) The association has been shown unlikely to be due to chance, based on statistical analysis.

(2) *Probable Neurotoxic Substances.* Substances are also toxic by reason of their probable neurotoxicity when they meet the "limited evidence" criteria of neurotoxicity in humans, or the "sufficient evidence" criteria derived from animal studies. Evidence derived from animal studies that has been shown not to be relevant to humans is not included. Such evidence would result, for example, when there was an identified mechanism of action for a chemical that causes neurotoxicity in animals that has been shown not to apply to the human situation.

(i) *"Limited evidence" of neurotoxicity in humans.* The evidence derived from human studies is considered limited for neurotoxicity when the evidence is less than convincing, *i.e.*, one of the criteria of "sufficient evidence" of neurotoxicity for establishing a causal association between exposure to the agent and neurotoxicity is not met, leaving some uncertainties in establishing a causal association.

(ii) *"Sufficient evidence" of neurotoxicity in animals.* Sufficient evidence of neurotoxicity derived from animal studies for a causal association between exposure to a chemical and neurotoxicity requires that:

(A) The substance has been tested in well-designed and -conducted studies (*e.g.*, NTP's neurobehavioral battery, or conforming to EPA's neurotoxicity test guidelines); and

(B) The substance has been found to elicit a statistically significant ($p < 0.05$) increase in any neurotoxic effect in one or both sexes of multiple species, strains, or experiments using different routes of administration and dose-levels.

(3) *Possible Neurotoxic Substances.* "Possible neurotoxic substances" are the substances which meet the "limited evidence" criteria of neurotoxicity evidence derived from animal studies in the absence of human data, or in the presence of inadequate human data, or data which do not fall into any other group. Substances in this category are not considered "toxic."

(c) *Developmental and Reproductive Toxicity.—(1) Definitions of "Sufficient" and "Limited" Evidence.* The following definitions apply to all categories stated below.

(i) "Sufficient evidence" from human studies for a causal association between human exposure and the subsequent occurrence of developmental or reproductive toxicity is considered to exist if the studies meet the following criteria:

(A) No identified bias that can account for the observed association has been found on evaluation of the evidence.

(B) All possible confounding factors which could account for the observed association can be ruled out with reasonable confidence.

(C) Based on statistical analysis, the association has been shown unlikely to be due to chance.

(ii) "Limited evidence" from human studies exists when the human epidemiology meets all but one of the criteria for "sufficient evidence"; *i.e.*, the statistical evidence is borderline as opposed to clear-cut, there is a source of bias, or there are confounding factors that have not been and cannot be accounted for.

(iii) "Sufficient evidence" from animal studies exists when

(A) Obtained from a good quality animal study; and

(B) The substance has been found to elicit a statistically significant ($p < 0.05$) treatment-related increase in multiple endpoints in a single species/strain, or in the incidence of a single endpoint at multiple dose levels or with multiple routes of administration in a single species/strain, or increase in the incidence of a single endpoint in multiple species/strains/ experiments.

(iv) "Limited evidence" from animal studies exists when:

(A) Obtained from a good quality study and there is a statistically significant ($p < 0.05$) treatment-related increase in the incidence of a single endpoint in a single species/strain/ experiment at a single dose level administered through only one route and such evidence otherwise does not meet the criteria for "sufficient evidence"; or

(B) The evidence is derived from studies which can be interpreted to show positive effects but have some qualitative or quantitative limitations with respect to experimental procedures (*e.g.*, doses, exposure, follow-up, number of animals/group, reporting of the data,

etc.) which would prevent classification of the evidence in the group of "sufficient evidence."

(2) *Developmental Toxicants.* Substances are toxic by reason of their potential developmental or reproductive toxicity when they meet the "sufficient evidence" or "limited evidence" criteria of developmental or reproductive toxicity in humans, or when they meet the "sufficient evidence" criteria of developmental or reproductive toxicity in animals. The Food and Drug Administration (FDA) and the European Economic Community (EEC) have developed categories for teratogens but not other developmental toxicants. The teratogen guidelines limit the information only to structural birth defects and do not include other hazards of developmental toxicity such as embryonal death, fetal death, or functional deficiencies which are also important in assessing the overall toxicity of a substance when administered during pregnancy. Recently, EPA has proposed a system for classifying developmental toxicity. The Occupational Safety and Health Administration (OSHA) has not yet developed any classification for developmental toxicity. The commission has established the following categories for determination of developmental toxicity according to the available evidence.

(i) *Known Human Developmental Toxicant ("sufficient evidence in humans").* A substance is considered a "known human developmental toxicant" if there is "sufficient" human evidence to establish a causal association between human exposure and the subsequent occurrence of developmental toxicity manifested by death of the conceptus (embryo or fetus), or structural or functional birth defects. This category (Human Developmental Toxicant) is comparable to category 1 of the EEC and categories D and X of FDA, except that these guidelines are limited to teratogens. This category is also comparable to the category "definitive evidence for human developmental toxicity" proposed by EPA.

(ii) *Probable Human Developmental Toxicant.* A substance is considered a "probable human developmental toxicant" if there is "limited" human evidence or "sufficient" animal evidence to establish a causal association between human exposure and subsequent occurrence of developmental toxicity. This group (Probable Human Developmental Toxicant) is comparable to the category "adequate evidence for human developmental toxicity" proposed by EPA. This category is also comparable to category 2 of the EEC and category A1 of FDA, except that these guidelines are limited to teratogens.

(iii) *Possible Human Developmental Toxicant.* A substance is considered a "possible human developmental toxicant" if there is "limited" animal evidence, in the absence of human data, or in the presence of inadequate human data, or which does not fall into any other group, to establish a causal association between human exposure and subsequent occurrence of developmental toxicity. EEC, FDA, and EPA have not developed a category comparable to this group. The Commission believes that data from well planned animal studies are important to consider even though they may provide only limited evidence of developmental toxicity.

(3) *Male Reproductive Toxicants.* Male reproductive toxicants can be grouped into the following different categories based on evidence obtained from human or animal studies.

(i) *Known Human Male Reproductive Toxicant.* A substance is considered a "known human male reproductive toxicant" if there is "sufficient" human evidence to establish a causal association between human exposure and the adverse effects on male reproductive main endpoints which are mating ability, fertility, and prenatal and postnatal development of the conceptus. This category is comparable to the one termed "Known Positive" in the EPA guidelines on male reproductive risk assessment.

(ii) *Probable Human Male Reproductive Toxicant.* A substance is considered a "probable human male reproductive toxicant" if there is "limited" human evidence or "sufficient" animal evidence to establish a causal association between human exposure and the adverse effects on male reproductive main endpoints. This category is comparable to the one termed "Probable Positive" in the EPA guidelines on male reproductive risk assessment. However, the EPA category is based only on sufficient animal evidence. CPSC believes that limited human evidence is also sufficient for a chemical to be placed in this category.

(iii) *Possible Human Male Reproductive Toxicant.* A substance is considered a "possible human male reproductive toxicant" if there is limited animal evidence, in the absence of human data, or in the presence of inadequate human data, or which does not fall into any other group, to establish a causal association between human exposure and adverse effects on male reproductive main endpoints. This category is comparable to the one termed "Possible Positive A" in the EPA guidelines on male reproductive risk assessment. EPA proposes to use either limited human or limited animal evidence data to classify a toxicant as a "Possible Positive A" toxicant. As described above, CPSC would elevate limited human evidence to the category "Probable Human Male Reproductive Toxicant."

(4) *Female Reproductive Toxicants.* Female reproductive toxicants can be grouped into the following different categories based on evidence obtained from human or animal studies. EPA has proposed guidelines for assessing female reproductive risk but has not yet proposed a specific system for categorization of female reproductive toxicants.

(i) *Known Human Female Reproductive Toxicant.* A substance is considered a "known human female reproductive toxicant" if there is "sufficient" human evidence to establish a causal association between human exposure and adverse effects on female reproductive function such as mating ability, fertility, and prenatal and postnatal development of the conceptus.

(ii) *Probable Human Female Reproductive Toxicant.* A substance is considered a "probable human female reproductive toxicant" if there is "limited" human evidence or "sufficient" animal evidence to establish a causal association between human exposure and adverse effects on female reproductive function.

(iii) *Possible Human Female Reproductive Toxicant.* A substance is considered a "possible human female reproductive toxicant" if there is "limited" animal evidence, in the absence of human data, or in the presence of inadequate human data, or which does not fall into any other group, to establish a causal association between human exposure and adverse effects on female reproductive function.

(d) *Other Subjects Related to the Determination that a Substance is Toxic.* Under the FHSA, for a toxic substance to be considered hazardous, it must not only have the potential to be hazardous but there must also be the potential that persons are exposed to the substance, that the substance can enter the body, and that there is a significant risk of an adverse health effect associated with the customary handling and use of the substance. Under these guidelines, existence of an adverse health effect means that such exposure is above the "acceptable daily

intake" ("ADI"). The ADI is based on the risks posed by the substance, and whether they are acceptable under the FHSA. This section addresses those issues by providing guidelines concerning assessment of exposure, assessment of bioavailability, determination of acceptable risks and the ADI to children and adults, and assessment of risk.

(1) *Assessment of Exposure.* An exposure assessment may comprise a single exposure scenario or a distribution of exposures. Reasonably foreseeable use, as well as accidental exposure, should be taken into consideration when designing exposure studies. The following guidelines should be used in the assessment of exposure.

(i) *Inhalation.* Inhalation studies to assess exposure should be reliable studies using direct monitoring of populations, predictions of exposure through modeling, or surrogate data.

(A) *Direct Monitoring.* Populations to be monitored should be selected randomly to be representative of the general population, unless the exposure of a particular subset population is the desired goal of the assessment. The monitoring technique should be appropriate for the health effect of interest.

(B) *Modeling.* Predictions of exposure to a chemical using mathematical models can be based on physical and chemical principles, such as mass balance principles. Mass balance models should consider the source strength of the product of interest, housing characteristics, and ambient conditions likely to be encountered by the studied population.

(C) *Surrogate Data.* Surrogate data should only be used when data concerning the chemical of interest are sparse or unavailable and when there is a reasonable assurance that the surrogate data will accurately represent the chemical of interest.

(ii) *Oral Ingestion.* Oral ingestion studies may involve direct monitoring of sources of chemicals as well as laboratory simulations. The estimation of exposure from ingestion of chemicals present in consumer products is predicted based upon estimates of use of the product and absorption of the chemical from the gastrointestinal tract. The following criteria should be established for laboratory simulations to estimate exposure:

(A) A simulant or range of simulants should be carefully selected to mimic the possible range of conditions which occur in humans, such as full and empty stomachs, or various saliva compositions at different times of the day.

(B) The mechanical action to which a product is submitted must be chosen to represent some range of realistic conditions to which a human may subject the product.

(iii) *Dermal Exposure.* (A) Dermal exposure involves estimating the amount of substance contacting the skin. This may involve experiments measuring the amount of material leached from a product contacting a liquid layer which interfaces with the skin, or the amount of substance which migrates from a product (in solid or liquid form) which is in contact with the skin.

(B) Parameters to be considered include: Surface area of the skin contacted, duration of contact, frequency of contact, and thickness of a liquid interfacial layer.

(2) *Assessment of Bioavailability.* (i) The need to consider bioavailability in estimating the risk from use of a product containing a toxic substance only arises when it is anticipated that the absorption characteristics of a substance to which there is human exposure will differ from those characteristics for the substance tested in the studies used to define the dose-response relationship.

(ii) In determining the need to assess bioavailability, the factors to be examined include:

(A) The physical or chemical form of the substance,

(B) The route of exposure (inhalation, ingestion, or through the skin),

(C) The presence of other constituents in the product which interfere with or alter absorption of the toxic substance, and

(D) Dose.

(3) *Assessment of Risk.* This section on quantitative risk assessment applies to estimates of risk for substances that are toxic by reason of their carcinogenicity.

(i) Generally, the study leading to the highest risk should be used in the risk assessment; however, other factors may influence the choice of study.

(ii) Risk should be based on the maximum likelihood estimate from a multistage model (such as Global83 or later version) unless the maximum likelihood estimate is not linear at low dose, in which case the 95% upper confidence limit on risk should be used.

(iii) For systemic carcinogens, if estimates of human risk are made based on animal data, a factor derived from dividing the assumed human weight (70 kg) by the average animal weight during the study and taking that to the ⅓ power should be used. There is the possibility that this factor may be changed, using the ¼ power instead of the ⅓ power, as part of a unified Federal regulatory approach. If such an approach is adopted, it will apply here.

(iv) When dose is expressed as parts per million, and the carcinogen acts at the site of contact, humans and animals exposed to the same amount for the same proportion of lifetime should be assumed to be equally sensitive.

(v) If no experimental study having the same route of exposure as that anticipated for human use of a substance is available, a study by another route of exposure may be used. Pharmacokinetic methods may be used if sufficient data are available.

(vi) When exposure scenarios are different from those used in the underlying study upon which estimates of risk are based, proportionality should be applied. If pharmacokinetic methods are used to adjust for risks at high versus low exposure levels, level-time measures should not be combined without taking the non-linearity into account.

(4) *Acceptable Risks.*—(i) *ADI for Carcinogens.* The maximum acceptable daily intake ("ADI") is that exposure of a toxic (by virtue of its carcinogenicity) substance that is estimated to lead to a lifetime excess risk of one in a million. Exposure refers to the anticipated exposure from normal lifetime use of the product, including use as a child as well as use as an adult.

(ii) *ADI for Neurotoxicological and Developmental/Reproductive Agents.* Due to the difficulties in using a numerical risk assessment method to determine risk for neurotoxicological or developmental/reproductive toxicants, the Commission is using a safety factor approach, as explained below.

(A) *Human Data.* If the hazard is ascertained from human data, a safety factor of ten will be applied to the lowest No Observed Effect Level ("NOEL") seen among the relevant studies. If no NOEL can be determined, a safety factor of 100 will be applied to the Lowest Observed Effect Level ("LOEL"). Both the NOEL and LOEL are defined in terms of daily dose level.

(B) *Animal Data.* If the hazard is ascertained from animal data, a safety factor of one hundred will be applied to the lowest NOEL. If no NOEL can be determined, a safety factor of one thousand will be applied to the lowest LOEL. Both the NOEL and LOEL are defined in terms of daily dose level.

3. Section 1500.3(c)(2) is amended by revising paragraph (c)(2) introductory text, redesignating paragraphs (c)(2) (i) through (iii) as paragraphs (c)(2)(i) (A) through (C) and adding new paragraphs

(c)(2)(i) introductory text and (c)(2)(ii) to read as follows:

§ 1500.3 Definitions.

* * * * *

(c) * * *

(2) To give specificity to the definition of "toxic" in section 2(g) of the act (and restated in paragraph (b)(5) of this section), the following supplements that definition. The following categories are not intended to be inclusive.

(i) *Acute toxicity.* "Toxic" means any substance that produces death within 14 days in half or more than half of a group of:

(ii) *Chronic toxicity.* A substance is toxic because it presents a chronic hazard if it falls into one of the following categories. (For additional information see the chronic toxicity guidelines at 16 CFR 1500.135.)

(A) *For Carcinogens.* A substance is toxic if it is or contains a known or probable human carcinogen.

(B) *For Neurotoxicological Toxicants.* A substance is toxic if it is or contains a known or probable human neurotoxin.

(C) *For Developmental or Reproductive Toxicants.* A substance is toxic if it is or contains a known or probable human developmental or reproductive toxicant.

4. Section 1500.14 is amended by adding a new paragraph (b)(8) to read as follows:

§ 1500.14 Products requiring special labeling under section 3(b) of the Act.

(b) * * * * *

(8) *Art materials.*

Note: The Labeling of Hazardous Art Materials Act ("LHAMA"), 15 U.S.C. 1277 (Pub. L. 100-695, enacted November 18, 1988) provides that, as of November 18, 1990, "the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials ["ASTM"] designated D-4236 that is in effect on [November 18, 1988] * * * shall be deemed to be a regulation issued by the Commission under section 3(b)" of the Federal Hazardous Substances Act, 15 U.S.C. 1262(b). For the convenience of interested persons, the Commission is including the requirements of ASTM D-4236 in paragraph (b)(8)(i) of this section, along with other requirements (stated in paragraph (b)(8)(ii) of this section) made applicable to art materials by the LHAMA. The substance of the requirements specified in LHAMA became effective on November 18, 1990, as mandated by Congress.

(i) *ASTM D-4236.*—(A) *Scope.*—(*1*) This section describes a procedure for developing precautionary labels for art materials and provides hazard and precautionary statements based upon knowledge that exists in the scientific and medical communities. This section concerns those chronic health hazards known to be associated with a product or product component(s), when the component(s) is present in a physical form, volume, or concentration that in the opinion of a toxicologist (see paragraph (b)(8)(i)(B)(*11*) of this section) has the potential to produce a chronic adverse health effect(s).

(*2*) This section applies exclusively to art materials packaged in sizes intended for individual users of any age or those participating in a small group.

(*3*) Labeling determinations shall consider reasonably foreseeable use or misuse.

(*4*) Manufacturers or repackagers may wish to have compliance certified by a certifying organization. Guidelines for a certifying organization are given in paragraph (b)(8)(i)(H) of this section.

(B) Descriptions of Terms Specific to This Standard.—(*1*) Art material or art material product—any raw or processed material, or manufactured product, marketed or represented by the producer or repackager as intended for and suitable for users as defined herein.

(*2*) Users—artists or crafts people of any age who create, or recreate in a limited number, largely by hand, works which may or may not have a practical use, but in which aesthetic considerations are paramount.

(*3*) Chronic adverse health effect(s)—a persistent toxic effect(s) that develops over time from a single, prolonged, or repeated exposure to a substance. This effect may result from exposure(s) to a substance that can, in humans, cause sterility, birth defects, harm to a developing fetus or to a nursing infant, cancer, allergenic sensitization, damage to the nervous system, or a persistent adverse effect to any other organ system.

(*4*) chronic health hazard(s) (hereafter referred to as "chronic hazard")—a health risk to humans, resultant from exposure to a substance that may cause a chronic adverse health effect.

(*5*) Analytical laboratory—a laboratory having personnel and apparatus capable of performing quantitative or qualitative analyses of art materials, which may yield information that is used by a toxicologist for evaluation of potentially hazardous materials.

(*6*) Label—a display of written, printed, or graphic matter upon the immediate container of any art material product. When the product is unpackaged, or is not packaged in an immediate container intended or suitable for delivery to users, the label can be a display of such matter directly upon the article involved or upon a tag or other suitable labeling device attached to the art material.

(*7*) Producer—the person or entity who manufactures, processes, or imports an art material.

(*8*) Repackager—the person or entity who obtains materials from producers and without making changes in such materials puts them in containers intended for sale as art materials to users.

(*9*) Sensitizer—a substance known to cause, through an allergic process, a chronic adverse health effect which becomes evident in a significant number of people on re-exposure to the same substance.

(*10*) Toxic—applies to any substance that is likely to produce personal injury or illness to humans through ingestion, inhalation, or skin contact.

(*11*) Toxicologist—an individual who through education, training, and experience has expertise in the field of toxicology, as it relates to human exposure, and is either a toxicologist or physician certified by a nationally recognized certification board.

(*12*) Bioavailability—the extent that a substance can be absorbed in a biologically active form.

(C) Requirements.—(*1*) The producer or repackager of art materials shall submit art material product formulation(s) or reformulation(s) to a toxicologist for review, such review to be in accordance with paragraph (b)(8)(i)(D) of this section. The toxicologist shall be required to keep product formulation(s) confidential.

(*2*) Unless otherwise agreed in writing by the producer or repackager, no one other than the toxicologists shall have access to the formulation(s); except that the toxicologists shall furnish a patient's physician, on a confidential basis, the information necessary to diagnose or treat cases of exposure or accidental ingestion.

(*3*) The producer or repackager, upon advice given by a toxicologist in accordance with paragraph (b)(8)(i)(D) of this section and based upon generally accepted, well-established evidence that a component substance(s) is known to cause chronic adverse health effects adopt precautionary labeling in accordance with paragraph (b)(8)(i)(E) of this section.

(*4*) Labeling shall conform to any labeling practices prescribed by federal and state statutes or regulations and shall not diminish the effect of required acute toxicity warnings.

(*5*) The producer or repackager shall supply a poison exposure management information source the generic formulation information required for dissemination to poison control centers or shall provide a 24-hour cost-free

telephone number to poison control centers.

(6) The producer or repackager shall have a toxicologist review as necessary, but at least every 5 years, art material product formulation(s) and associated label(s) based upon the then-current, generally accepted, well-established scientific knowledge.

(7) Statement of Conformance—"Conforms to ASTM Practice D–4236," or "Conforms to ASTM D–4236," or "Conforms to the health requirements of ASTM D–4236." This statement may be combined with other conformance statements. The conformance statement should appear whenever practical on the product; however, it shall also be acceptable to place the statement on one or more of the following:

(*i*) The individual product package,

(*ii*) a display or sign at the point of purchase,

(*iii*) separate explanatory literature available on requirements at the point of purchase,

(*iv*) a response to a formal request for bid or proposal.

(D) Determination of Labeling.—(*1*) An art material is considered to have the potential for producing chronic adverse health effects if any customary or reasonably foreseeable use can result in a chronic hazard.

(*2*) In making the determination, a toxicologist(s) shall take into account the following:

(*i*) Current chemical composition of the art material, supplied by an analytical laboratory or by an industrial chemist on behalf of a manufacturer or repackager.

(*ii*) Current generally accepted, well-established scientific knowledge of the chronic toxic potential of each component and the total formulation.

(*iii*) Specific physical and chemical form of the art material product, bioavailability, concentration, and the amount of each potentially chronic toxic component found in the formulation.

(*iv*) Reasonably foreseeable uses of the art material product as determined by consultation with users and other individuals who are experienced in use of the material(s), such as teachers, or by market studies, unless such use information has previously been determined with respect to the specific art material(s) under review.

(*v*) Potential for known synergism and antagonism of the various components of the formulation.

(*vi*) Potentially chronic adverse health effects of decomposition or combustion products, if known, from any reasonably foreseeable use of the hazardous art material product.

(*vii*) Opinions of various regulatory agencies and scientific bodies, including the International Agency for Research on Cancer and the National Cancer Institute, on the potential for chronic adverse health effects of the various components of the formulation.

(*3*) Based upon the conclusion reached in conformance with review determinations set forth herein, the toxicologist(s) shall recommend precautionary labeling consistent with paragraph (b)(8)(i)(E) of this section.

(E) Labeling Practices.—(*1*) Signal Word.—(*i*) When a signal word for an acute hazard(s) is mandated and a chronic hazard(s) exists, the signal word shall be that for the acute hazard.

(*ii*) When only a chronic hazard(s) exists, the signal word WARNING shall be used.

(*iii*) The signal word shall be prominently visible and set in bold capitals in a size equal to or greater than the statement of potential chronic hazards.

(*2*) List of Potentially Chronic Hazards—Potentially chronic hazards, as determined under the procedures of paragraph (b)(8)(i)(D) of this section, shall be stated substantially in accordance with the statements listed in paragraph (b)(8)(i)(F) of this section. Potentially chronic hazards noted shall be those that are clinically significant and that might be expected with any reasonably foreseeable use of the art material. The hazards should be grouped in the order of relative descending severity.

(*3*) Name of Chronically Hazardous Component(s)—All components and known decomposition products of the formulation with a potential for chronic hazards, as determined under the procedures of paragraph (b)(8)(i)(D) of this section, shall be listed prominently. Generically equivalent names may be used.

(*4*) Safe Handling Instructions—Appropriate precautionary statements as to work practices, personal protection, and ventilation requirements shall be used substantially conforming with those listed in paragraph (b)(8)(i)(G) of this section.

(*5*) List of Sensitizing Components—To protect users from known sensitizers found within art materials, each label shall contain a list of those sensitizers present in sufficient amounts to contribute significantly to a known skin or respiratory sensitization.

(*6*) Combined Statement—If an art material contains more than one component capable of causing a chronic adverse health effect, or if a single chemical can cause several different chronic adverse health effects, the potential effects may be combined into one statement.

(*7*) Information Sources—The precautionary label shall contain a statement identifying a source for additional health information substantially in conformance with one of the phrases listed below:

(*i*) For more health information—(24 hour cost-free U.S. telephone number).

(*ii*) Contact a physician for more health information, or

(*iii*) Call your local poison control center for more health information.

(*8*) Labeling Content, Product Size—Any art material product in a container larger in size than one fluid ounce (30 ml) (if the product is sold by volume) or one ounce net weight (28 g) (if the product is sold by weight) shall have full precautionary labeling, as described in paragraph (b)(8)(i) (E) of this section. Any art material product in a container equal to or smaller than one fluid ounce or one ounce net weight shall have a label that includes a signal word in conformance with paragraph (b)(8)(i)(E)(*1*) of this section and a list of potentially harmful or sensitizing components in conformance with paragraphs (b)(8)(i)(E) (*3*) and (*5*) of this section.

(*9*) The information described in paragraph (b)(8)(i)(E) of this section must appear on:

(*i*) The outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper and

(*ii*) All accompanying literature where there are directions for use, written or otherwise. Where a product that requires warning labels under paragraphs (b)(8)(i) (D) and (E) of this section is packed within a point-of-sale package that obscures the warning statement(s), the point-of-sale package shall carry the signal word conforming to paragraph (b)(8)(i)(E)(*1*) and the following wording: "Contains: (list hazardous product(s)) that may be harmful if misused. Read cautions on individual containers carefully. Keep out of the reach of children."

(*10*) Statements required under paragraphs (b)(8)(i) (D) and (E) of this section must be in the English language and located prominently in conspicuous and legible type in contrast by topography, layout, or color with other printed matter on the label.

(*11*) Supplemental Information—Where appropriate, more detailed information that relates to chronic hazard(s), such as physical properties, decomposition products, detailed safety instructions, or disposal recommendations, shall be included in supplemental documents, such as

Material Safety Data Sheets, technical brochures, technical data sheets etc.

(F) chronic Hazard Statements

MAY CAUSE STERILITY.
CONTACT MAY CAUSE PERMANENT EYE DAMAGE.
MAY BE HARMFUL BY BREATHING VAPORS/DUSTS.
MAY BE HARMFUL IF SWALLOWED.
MAY BE HARMFUL BY SKIN CONTACT.
MAY PRODUCE BIRTH DEFECTS IN THE DEVELOPING FETUS.
MAY BE EXCRETED IN HUMAN MILK.
MAY CAUSE HARM TO THE NURSING INFANT.
CANCER AGENT! EXPOSURE MAY PRODUCE CANCER.
CANCER AGENT BASED ON TESTS WITH LABORATORY ANIMALS.
POSSIBLE CANCER AGENT BASED ON TESTS WITH LABORATORY ANIMALS.
MAY PRODUCE ALLERGIC REACTION BY INGESTION/INHALATION/SKIN CONTACT.
MAY PRODUCE NUMBNESS OR WEAKNESS IN THE EXTREMITIES.
EXPOSURE MAY CAUSE (SPECIFY THE ORGAN(S)) DAMAGE.
HEATING/COMBUSTION MAY CAUSE HAZARDOUS DECOMPOSITION PRODUCTS.

(G) Precautionary Statements

Keep out of reach of children.
When using do not eat, drink, or smoke.
Wash hands immediately after use.
Avoid inhalation/ingestion/skin contact.
Avoid fumes from combustion.
Keep container tightly closed when not in use.
Store in well-ventilated area.
Wear protective clothing (specify type).
Wear protective goggles/face shield.
Wear NIOSH-certified mask for dusts/mists/fumes.
Wear NIOSH-certified respirator with an appropriate cartridge for (specify).
Wear NIOSH-certified supplied-air respirator.
Use window exhaust fan to remove vapors and ensure adequate cross ventilation. (Specify explosion-proof if necessary.)
Do not heat above (specify temperature) without adequate ventilation.
Use (specify type) local exhausting hood.
Do not use/mix with (specify material).

(ii) The following shall apply with respect to the standard for art materials set forth in § 1500.14(b)(8)(i).

(A) The term *art material or art material product* shall mean any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act or drugs, devices, or cosmetics subject to the Federal Food, Drug, and Cosmetics Act.

(B) The standard referred to in paragraph (b)(8)(i) of this section applies to art materials intended for users of any age.

(C) Each producer or repackager of art materials shall describe in writing the criteria used to determine whether an art material has the potential for producing chronic adverse health effects. Each producer or repackager shall submit, to the Commission's Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207, the written description of the criteria described above and a list of art materials that require hazard warning labels under this section. Upon request of the Commission, a producer or repackager shall submit to the Commission product formulations.

(D) All art materials that require chronic hazard labeling pursuant to this section must include on the label the name and United States address of the producer or repackager of the art materials, an appropriate United States telephone number that can be contacted for more information on the hazards requiring warning labels under this section, and a statement that such art materials are inappropriate for use by children.

(E) If an art material producer or repackager becomes newly aware of any significant information regarding the hazards of an art material or ways to protect against the hazard, this new information must be incorporated into the labels of such art materials that are manufactured after 12 months from the date of discovery. If a producer or repackager reformulates an art material, the new formulation must be evaluated and labeled in accordance with the standard set forth § 1500.14(b)(8)(i).

(F) In determining whether an art material has the potential for producing chronic adverse health effects, including carcinogenicity and potential carcinogenicity, the toxicologist to whom the substance is referred under the standard described above shall take into account opinions of various regulatory agencies and scientific bodies, including the U.S. Consumer Product Safety Commission (CPSC), the U.S. Environmental Protection Agency (EPA), and the International Agency for Research on Cancer (IARC).

(iii) Pursuant to the LHAMA, the Commission has issued guidelines which, where possible, specify criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. These guidelines include criteria for determining when art materials may produce chronic adverse effects in children and adults, criteria for determining which substances contained in art materials have the potential for producing chronic adverse effects and what those effects are, criteria for determining the bioavailability of chronically hazardous substances contained in art materials when the products are used in a customary or reasonably foreseeable manner, and criteria for determining acceptable daily intake levels for chronically hazardous substances contained in art materials. Because these guidelines apply to hazardous substances in general as well as to hazardous substances in art materials, the guidelines are set forth in § 1500.135 and a definition of "chronic toxicity" is provided in § 1500.3(c)(2)(ii) as part of supplementation of the term "toxic" in section 2(q) of the FHSA.

Appendix A to § 1500.14(b)(8)—Guidelines for a Certifying Organization (Not Mandatory)

(a) The term "certifying organization," as used in this paragraph, refers to an organization or an institute that, after assuring that all provisions are met, certifies that an art material does conform to the labeling requirements of this practice.

(b) The certifying body may be funded by member manufacturers, but should include users or their representatives, as well as manufacturers' chemists, on its technical and certifying committees.

(c) Representative samples of art materials, labeled as conforming to this section and bought at retail, should be analyzed at random and from time to time by an analytical laboratory to ensure they are the same as the formulation used by the toxicologist(s) for determining labeling requirements.

(d) The methods used by the toxicologist(s) in review and determination of the need and content of precautionary labeling for potentially chronic adverse health effects should be periodically reviewed by an advisory board composed of not less than three or more than five toxicologists, at least one of whom is certified in toxicology by a nationally recognized certification board.

(e) In cases where there is disagreement by participating producers or participating users, with the determination of the toxicologist(s), there should be a method whereby the toxicologist's decision can be presented to the advisory board of toxicologists for arbitration.

Dated: September 22, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of References

The following documents contain information relevant to this rulemaking proceeding and form the basis for the proposed guidelines and definition. They are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, room 428, 5401 Westbard Avenue, Bethesda, Maryland:

1. Memorandum from Lakshmi C. Mishra, Senior Toxicologist, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled Criteria for Determining if a Substance is Toxic on the Basis of Carcinogenicity.

2. Memorandum from Lakshmi C. Mishra, Senior Toxicologist, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled Criteria for Determining if a Substance is Toxic on the Basis of Neurotoxicity.

3. Memorandum from Vishnudutt D. Purohit, HSHE, to Sandra Eberle, Program Manager, EXPB, dated November 15, 1990, entitled Guidelines for Identification and Classification of Developmental and Reproductive Toxicants in Consumer Products.

4. Memorandum from Warren K. Porter, Jr., Director, HSHL, to Sandra Eberle, Program Manager, EXPB, dated November 15, 1990, entitled Exposure Assessment Guidelines.

5. Memorandum from Valentine H. Schaeffer, HSHE, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled Guidelines for Assessing Bioavailability of Chronically Hazardous Substances Found in Consumer Products.

6. Memorandum from Murray S. Cohn, Director, HSHE, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled FHSA Risk Assessment Guidelines.

7. Memorandum from Murray S. Cohn, Director, HSHE, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled Acceptable Risks to Children and Adults.

8. Memorandum from Michael A. Babich, Project Manager, dated March 24, 1992, entitled Responses to Public Comments and Draft Final Rule on the Labeling of Art Materials and Other Products.

The following documents are referenced in the Memoranda listed above and may have been referred to in the preamble of this rulemaking. They are listed here for the convenience of the reader.

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BILLING CODE 6355–01–M

federal register

Friday
October 9, 1992

Part III

United States Information Agency

22 CFR Part 514

Exchange Visitor Program; Final Rules and Proposed Rule

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Statement of Policy Regarding Exchange Visitor Au Pair Programs

AGENCY: United States Information Agency.

ACTION: Statement of policy regarding exchange visitor au pair programs.

SUMMARY: In September 1988, Congress enacted legislation extending Agency-designated au pair pilot programs for two years, upon the same terms and conditions previously authorized (Foreign Operations, Export Financing, and Related Programs Appropriation Act of 1989). In October 1990, Congress enacted legislation requiring the Agency to continue to implement the au pair programs designated by the Agency as of July 10, 1990, until such au pair program are authorized and implemented by another agency of the United States Government (Eisenhower Exchange Fellowship Act of 1990). Guidelines for the conduct of au pair programs were distributed to all designated au pair program sponsors in 1988–1989. Those Guidelines have not been materially changed or amended since. All designated au pair program sponsors will continue to adhere to the Guidelines and to the general regulations which apply to all Exchange Visitor Program sponsors until such time as au pair programs are authorized and implemented by another U.S. Government agency.

DATES: The Statement of Policy is effective October 9, 1992.

ADDRESSES: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: The Agency's Exchange Visitor Program designated its first au pair program in 1986. In that year, the American Institute For Foreign Study (AIFS) and Experiment In International Living (EIL) were designated to conduct a two-year au pair pilot program in which foreign youths between the ages of 18 and 25 were to come to the U.S. for one year to learn about American culture, provide a cross-cultural exchange, improve their English, and assist their host family with child care.

The programs were to be evaluated every six months by an interagency review panel composed of representatives of the Department of State, the Immigration and Naturalization Service, the Department of Labor, and USIA. The panel found that au pairs were working up to forty-five hours per week and concluded that the program in reality was a full-time home child care work program and not a valid educational and cultural exchange. The panel recommended that the program could be continued only if the hours of work were substantially reduced, and it further recommended that the Agency draft guidelines to ensure that the program became a valid educational and cultural exchange. Concurrently, the Agency's legal research concluded that the Agency had no legal authority to designate the au pair program as then designed, an opinion shared by the General Accounting Office (GAO). The Agency sought to terminate the au pair program in December 1987.

In September 1988 Congress enacted legislation extending the AIFS and EIL pilot programs for two years. Public Law 100–461. By December 1989, the Agency had designated six more au pair programs, bringing the total to eight. Each program was authorized to bring up to 2,840 participants a year into the U.S. In October 1990, Congress passed additional legislation bearing on the au pair program. Public Law 101–454 directed the Agency to continue to implement the au pair programs previously designated under the same terms and conditions previously authorized until such programs were authorized and implemented by another U.S. Government agency.

The same section of Public Law 100–461 which extended the AIFS and EIL au pair programs for fiscal years 1989 and 1990 also required the GAO to conduct an assessment of J-visa activities, including the au pair program. In February 1990 the GAO issued its report "Inappropriate Uses of Educational and Cultural Exchange Visas," which, *inter alia*, concluded that "the currently structured au pair programs are not compatible with the original intent of the 1961 [Mutual Educational and Cultural Exchange Act of 1961—the Fulbright-Hays] Act. We hold this view because current au pair programs are essentially child care work programs that do not correlate with the qualifying categories mentioned in the J-visa statute. As currently structured, au pair programs would normally be subject to Department of Labor administrative review and certification." (GAO Report, at p. 20) (material in brackets added.)

There are presently pending in Congress two bills (S. 1914 and H.R. 3962) which, if enacted, would transfer the au pair program to the Department of Justice. In light of Public Law 101–454, which requires the Agency to continue to implement the au pair programs previously designated until such programs are authorized and implemented by another U.S. Government agency, USIA-designated au pair programs shall continue to follow the previously issued "Guidelines Governing the Administration of Au Pair Programs." In addition, currently designated au pair program sponsors are required to comply with all Exchange Visitor Program regulations which appear at 22 CFR part 514.

Pending the transfer of the au pair program to the Department of Justice or some other U.S. Government agency, no additional au pair programs will be designated. Currently designated programs are not permitted to expand their programs, i.e., they are limited to bringing in au pairs only from the countries of Western Europe, and each designated program is authorized to bring only 2,840 participants a year into the U.S.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: September 30, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92–24213 Filed 10–8–92; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Sponsors of Exchange Visitor Summer Student Travel/Work Programs

AGENCY: United States Information Agency.

ACTION: Notice to sponsors of exchange visitor summer student travel/work programs; statement of policy.

SUMMARY: The General Accounting Office (GAO) issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 16, 1990. The report questioned the legality of summer student travel/work programs under the J-visa. On August 13, 1990 the Agency published a Statement of Policy in the Federal Register, 55 FR 32906, which served as an interim response to the GAO report.

This notice sets forth the Agency's final response.

DATES: The Statement of Policy is effective October 9, 1992.

ADDRESSES: Questions regarding this notice should be addressed to Stanely S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: The GAO issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 16, 1992. That report questions the legality of the Summer Student Travel/Work Programs under the J-visa.

The Agency has been designating Summer Student Travel/Work programs for a number of years. Regulations covering such programs presently appear to 22 CFR 514.13(d). Those programs are designed to achieve the educational objectives of international exchange by involving foreign students during their summer vacations directly in the daily life of the host country through temporary employment opportunities. Selection of participants is limited to *bona fide* foreign university students who are between 18 and 23 years of age. A participant must have a prearranged job before he or she comes to the U.S., or have firm appointments with prospective employers, or have sufficient personal funds so as to be financially independent if not employed.

Because of the potential adverse impact on labor opportunities for U.S. youth, the Agency requires program sponsors to check in advance with the Department of Labor to obtain information regarding areas which have a high unemployment rate and sponsors are directed to advise program participants to avoid such areas in seeking employment. Potential adverse labor impact is avoided further by an Agency requirement that sponsors administer their programs on a reciprocal basis, i.e., they cannot bring more students to the U.S. than they send abroad each calendar year on similar travel/work programs.

The statutory basis under which the United States Information Agency can designate programs for a J-visa is found in section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(15)(J). That section defines nonimmigrants of the J category as an alien having a residence in a foreign country which he has no intention of abandoning who is a *bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill,* or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the *purpose of teaching, instructing or lecturing, or studying, observing, conducting research, consulting, demonstrating special skills, or receiving training* and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him. [emphasis added.]

The GAO pointed out that summer student travel/work programs, which provide foreign university students with employment opportunities in the United States during their summer vacations, do not require participants to engage in activities cited in the legislation. Some sponsors told us that the participants work at fast food restaurants, summer resorts, amusement parks, or other places where they can find work. Participants may be placed in jobs before they arrive or find work after they arrive. These are not jobs requiring special skills or distinguished merit and ability. One of the program sponsors we interviewed brings about 8,000 to 11,000 summer students a year to the United States.

In response to the GAO report, the Agency established a Task Force on Regulatory Reform of the Exchange Visitor Program. In addition to preparing an overall revision to the Exchange Visitor Program regulations, the Task Force examined the Summer Student Travel/Work program as part of the regulatory reform. The Task Force has examined the Summer Student Travel/Work Program from the perspective of overall U.S. foreign policy interests and from the perspective of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright Hays Act) and its legislative history. While the Agency believes that, from a foreign policy perspective, it is desirable to continue the program, it nevertheless has concluded that additional legislation will be required in order to bolster the Agency's authority to conduct such a program.

The Agency agrees with the GAO that participants in the Summer Student Travel/Work Program do not engage in the activities delineated in the Fulbright-Hays Act. In other words, they do not come to the U.S. for the purpose of teaching, instructing or lecturing, or studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. For the most part, they come to work in the U.S. and take jobs requiring no special skills or distinguished merit or ability. Typical jobs accepted by participants in the program include work at fast food restaurants, summer resorts and camps, or amusement parks.

Nevertheless, while such programs do not fall squarely within the language of the Fulbright-Hays Act, the Agency believes that they accommodate certain foreign policy needs in that they promote mutual understanding between the people of the United States and the people of the other countries.

While Congress intended that the Fulbright-Hays Act be given a broad interpretation, the legislative history of the Act also strongly suggests, however, that although exchanges were not to be limited to the exchange of students and teachers, they were not to serve as vehicles for staffing regular industrial or commercial positions. The Agency believes that Congress recognized that there would be instances where the very nature of the exchange, e.g., a training program, would have a "work" or staffing component, but such programs would be permitted only where the "work" component was incidental to the training. The Agency believes that the principal activity of participants in existing summer student travel/work programs, for the most part, is working full-time for pay in a job which has no formal educational or cultural component, except perhaps as a product of chance, i.e., the educational/cultural component is merely incidental to the "work" component. This is the reverse of what Congress envisioned.

For this reason, the Agency has determined that it will propose a change in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended (the Fulbright-Hays Act) which will accommodate these programs. In the interim, the sponsors of summer student travel/work programs will continue under their present designations and will continue to abide by those regulations currently published at 22 CFR 514.13(d). Pending a legislative resolution of this issue, no new programs will be designated.

Simultaneously with the publication of this Statement of Policy the Agency is publishing, as a proposed rulemaking, an entire overhaul of the Exchange Visitor Program regulations (22 CFR part

514). When the proposed regulations become final, current § 514.13(d), which governs the Summer Student Travel/Work Program, will be renumbered as 22 CFR 514.31.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: September 30, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-24214 Filed 10-8-92; 8:45 am]

BILLING CODE 8230-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 100]

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this notice the Agency is proposing replacement regulations governing its administration of the Exchange Visitor Program. The Agency has undertaken a thorough review of the Program, its enabling legislation, and past history. This review has, in turn, directed the Agency upon a course of regulatory and management practice reform. The complete revision to 22 CFR part 514 set forth in detail below are proposed in an effort to define more clearly the obligations, duties and relationships of the Agency, sponsors, and exchange participants.

DATES: Comments on the proposed rule will be accepted until December 8, 1992. All written communications received by the Agency on or before the closing date will be considered by the Agency before action on a final rule is undertaken.

ADDRESSES: Please submit five copies of written comments to: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, (202) 619–6829.

SUPPLEMENTARY INFORMATION: The Director of the United States Information Agency ("Agency") is authorized to facilitate and direct educational and cultural exchange activities in order to develop and promote mutual understanding between the people of the United States and other countries of the world. Now governed by the provisions of the Mutual Educational and Cultural Exchange Act of 1961 ("Fulbright-Hays Act"), educational and cultural exchange is the cornerstone of United States public diplomacy efforts.

First begun pursuant to the provisions of the United States Information and Educational Exchange Act of 1948 ("Smith-Mundt"), and subsequently incorporated into and broadened under the Fulbright-Hays Act, educational and cultural exchange activities have, over the past forty years, exposed millions of foreign nationals to the United States, its culture, philosophy, business techniques, and educational institutions. The Fulbright-Hays Act mandates reciprocal exchange and Americans traveling abroad have, in similar fashion, developed an enhanced awareness of foreign people, their cultures and societies. Originally performed by the Department of State, oversight of exchange activities, occurring under the umbrella of the Exchange Visitor Program, has been the responsibility of the Agency since 1978.

The Fulbright-Hays Act prescribed categories of eligible exchange participants. The Act provides for the exchange of students, scholars, trainees, teachers, professors, researchers, specialists, leaders in a specialized field of knowledge or skill, or other person of similar description. In addition, the Act requires that exchanges participate in bona fide teaching, study, instruction, lecturing, observation, consultation, research, training or demonstration of special skill activities. Further, the Act authorizes non-immigrant aliens falling within the statutory parameters of the Act to enter the United States under the aegis of a J visa for the purpose of participation in an exchange visitor program. Necessarily, Agency determination of the appropriate usage of the J visa is an integral element of this rulemaking.

The Exchange Visitor Program is facilitated—indeed, largely conducted—by Agency-designated program sponsors who are responsible for the recruitment, placement, and supervision of exchange participants. Congress clearly intended that the private sector was to have a major role in educational and cultural exchange activities. Indeed, when Congress assigned the Agency its mission in 1978, it reemphasized, amongst other things, that the Agency was to "encourage private institutions in the United States to develop their own exchange activities, and provide assistance for those exchange activities which are in the broadest national interest." 22 U.S.C. 1461–1 (1988). Pursuant to this Congressional mandate, utilization of private sector expertise and resources has resulted in the designation of over 5,000 exchange visitor programs during the past forty years. Currently, in excess of twelve hundred program sponsors are conducting exchange activities. In 1990, these Agency-designated sponsors facilitated the entry into the United States of more than 180,000 Exchange Visitor Program participants.

Though widely hailed as an innovative and successful foreign policy initiative, the Exchange Visitor Program is not without flaw. Debate concerning the parameters of program participation and activity has arisen in recent years. In response to this debate, the Agency has undertaken a thorough review of the Program, its enabling legislation, and past history. This review has, in turn, directed the Agency upon a course of regulatory and management practice reform. The amendments to 22 CFR part 514 set forth in detail below are proposed in an effort to define more clearly the obligations, duties, and relationships of the Agency, sponsors, and exchange participants.

Acting in response to Congressional request, the General Accounting Office ("GAO") investigated Agency oversight and administration of the Exchange Visitor Program and its attendant utilization of the J visa. In its report to Congress, dated February 5, 1990 and entitled "Inappropriate Uses of Educational and Cultural Exchange Visas," the GAO determined that certain Exchange Visitor Program activities appeared to be inconsistent with the statutory grant of authority and its underlying legislative intent. GAO summarized its findings, stating:

> Most J-visa activities appear to conform to the intent of the 1961 act. However, GAO believes that certain activities and programs in the trainee and the international visitor categories, including the summer student/travel work, international camp counselor, and au pair (child care) programs, are inconsistent with legislative intent. GAO identified instances of participants working as waiters, cooks, child care providers, amusement and leisure park workers, and summer camp counselors. Authorizing J visas for participants and activities that are not clearly for educational and cultural purposes as specified in the act dilute the integrity of the J visa and obscures the distinction between the J visa and other visas granted for work purposes.
>
> Report, p. 3.

In turn, Agency response to this criticism began with a thorough review of enabling legislation authorizing the Exchange Visitor Program and admission into the United States of foreign nationals on a J visa.

Subpart A: General Provisions

Exchange Participants and Activities

The Agency has determined that it may best prevent future confusion regarding participant eligibility by establishing eligibility criteria. To this end, the Agency proposes such criteria at § 514.4. New categories of participation, those of "short-term scholar" and "government visitor" are introduced and participation as a "student" is more clearly defined. The category of "specialist" has been expanded and that of "international visitor" restricted to Agency use.

Further, the Agency has determined that camp counselor programs do in fact fall within the Agency's statutory authority to promote exchange. All of these matters are discussed below.

The Agency has determined that the academic exchange community could readily increase the velocity of academic related exchanges through the development of "short-terms scholar" exchanges. A new category of participation, such exchanges will be limited to four months duration. In similar fashion, the Agency believes exchanges within the business community could be substantially increased through the use of the "specialist" category of participant. This category allows for experts in a field of specialized knowledge or skill to engage in observation, consultation, or demonstration of special skill activities for a period of time not to exceed one year.

To correct confusion which periodically arises from the sponsorship of student participants, the Agency proposes criteria governing student status. Given the *bona findes* requirement set forth in 8 U.S.C. 1101(a)(15)(J), the Agency believes that a student participant must pursue a full course of study. In determination of what constitutes *bona fide* study, the Agency has surveyed the catalogues of various educational institutions regarding their criteria for full-time student status. The results of this survey indicate that current practice in the field of higher education generally requires an enrolled full-time student to pursue a minimum of twelve semester hours of undergraduate or nine semester hours of graduate academic credits each semester. This minimum course load is considered satisfactory evidence of appropriate advancement toward degree completion and is commonly used as the measure for payment of full-time tuition.

The Agency has also examined Immigration and Naturalization Service regulations set forth at 8 CFR 214.2(f)(6). This regulation, first promulgated by publication at 40 FR 32312 (1975), requires an undergraduate student to complete a minimum of twelve semester hours of academic credit (or equivalent) per semester of attendance and a graduate student to complete the minimum number of credits per semester which an appropriate school official certifies as a full course of study.

Based upon the above, the Agency concludes that pursuit of *bona fide* study is best evidenced by a student's successful completion of a minimum number of academic credits per semester. Pursuant to the *bona fide* requirements of 8 U.S.C. 1101(a)(15)(J), the Agency has determined that an exchange visitor entering the United States as a "student" under the J visa must be actively engaged in the pursuit of a "full course of study." In lieu of setting forth a minimum number of semester hours of academic credit (or its equivalency) per academic term, the Agency proposes that the standard for full course of study be set by the academic institution at which the exchange student is pursuing his or her studies.

In response to a perceived need in the academic community, the Agency proposes to expand student status to also encompass participation in a specialized program of instruction of less than two year's duration. Such program shall be conducted under the aegis of an accredited educational institution and must be comprised of a structured course of study devoted to a particular academic endeavor. No requirement that the participant pursue a degree is imposed. An example of such a program would include an interdisciplinary course of study in arts management comprised of courses offered by the fine arts, business, public administration and law schools of a given academic institution.

Also set forth in § 514.4 as subparts of the "other persons of similar description" participant category are "International Visitor" and "Government Visitor." Originally intended only for Agency use, the International Visitor category has devolved to "catch-all" usage over the years. As proposed, reservation of this category only for Agency use will allow definitive and statistical illustration of the nature and scope of exchanges occurring under direct Agency sponsorship. Similar in nature to International Visitor, the proposed Government Visitor category will be utilized for exchanges directly sponsored by local, state, or federal government agencies.

The GAO report discussed *supra*, concluded that camp counselor programs are inconsistent with the legislative intent of the Fulbright-Hays Act. The Agency, having reviewed this matter in great detail, is now of the opinion that camp counselor programs may be continued. This conclusion is based upon policy and legislative analysis and will require certain programmatic reforms.

International camp counselor is not a statutorily enumerated category of exchange participation. If, however, camp counselor exchange participants are students, teachers, *bona fide* youth workers, and persons with specialized skills in their home country they will fall squarely within the statutorily authorized category of "other person of similar description." As regards activities while in the United States, camp counselors are actively engaged in teaching, observation, and instruction activities, all of which are activities specifically authorized by the statute.

Given the directive of broad interpretation found in the legislative history of the Fulbright-Hays Act, Agency designation of these programs is clearly consistent with the statutorily enumerated purpose and objective of the legislation. To avoid confusion as to the categorization of camp counselor program participants, a new category, set forth at § 514.4 as a subpart of "other persons of similar description," is proposed.

Program Designations

Agency examination of its administration of the Exchange Visitor Program has resulted in a determination that certain internal program controls should be bolstered. In part, the Agency has determined that sponsor application and designation procedures should be strengthened and more clearly delineated. To this end, the Agency proposes, pursuant to provisions set forth at § 514.5 and § 514.6, modification of existing application and designation procedures and the addition of a new requirement dictating periodic redesignation.

Confusion concerning the actual number of Agency-designated Exchange Visitor Program sponsors was an initial area of GAO investigation and proved a fertile source of criticism. Actual determination of this number proved problematic given both the Department of State's and Agency's failure to cancel sponsor designations due to program inactivity or abandonment. This failure is best illustrated by the fact that over 5,400 programs designated in the last forty years, less than a third are operating today. Through utilization of its Exchange Visitor Information System the Agency has determined that slightly more than 1,200 exchange visitor programs are currently in operation. The Agency contemplates the continued utilization of existing Form IAP-37, "Application for Program Designation" for both initial purposes. Modifications to such form will be made to reflect designation and re-designation proposed changes.

The Agency proposes to prevent this confusion concerning the number of valid exchange programs through a proposed utilization of periodic designations. This action is prompted by the Agency's recognition that many

exchange programs exhibit a life cycle of establishment, maturation, and demise. The Agency proposes to designate program sponsors for five years and require sponsors desiring to continue program operations to advise the Agency affirmatively of such intent pursuant to request for redesignation as set forth in § 514.7, *infra*. Such periodic designations will allow the Agency to track program life cycles, efficiently cancel inactive programs, and monitor the activity within and direction of designated exchange programs. Programs for which designation is not sought will be canceled through administrative action. The Agency contemplates a two-year phase-in of this requirement during which all existing designations will be reviewed and extended, if appropriate.

Program Administration

In addition to delineating sponsor and participant eligibility criteria, the Agency proposes that all exchange programs designated by the Agency meet certain eligibility requirements. As set forth at § 514.8, the Agency has determined, as in the past, that all programs should have not less than five exchange participants annually. Further, with the exception of programs for the new defined "scholar" and "government visitor" participants, all programs must provide for cross-cultural activities and afford all participants an exchange program in the United States of not less than three weeks. These requirements are currently set forth in existing regulations, but have, along with a requirement for reciprocity, been reordered and will henceforth be prerequisites to program designation.

The Agency will require sponsors to be both United States citizens as such term is defined in this Part and to affirmatively demonstrate an ability to comply, and remain in continual compliance, with all regulatory provisions. As regards exchange visitors, the Agency has defined the statutorily enumerated categories of eligible participation in terms of the activity inherent to each categorical status. Thus, by way of illustration, the Agency has determined that an eligible "student" exchange participant is one entering the United States for the purpose of pursuing a full course of study at an accredited educational institution. This approach will ensure that exchanges occurring under the aegis of the Exchange Visitor Program fall squarely within the established statutory parameters of status and activity. As participation in the Exchange Visitor Program is thus limited, strict adherence and compliance with Agency promulgated definitions of status will be expected.

A statement addressing the Agency's long-standing reciprocal exchange policy is set forth in § 514.8. Such policy contemplates that exchange sponsors will make a good faith effort to facilitate reciprocal exchange of persons to the fullest possible extent. Statutorily mandated, reciprocity is inherent in the concept of mutual exchange of persons. Confusion over the nature and scope of reciprocity has been problematic for some time. As a policy consideration, the Agency seeks to promote and foster innovative and expansive responses to this critical program requirement. Although one-for-one exchange is the ultimate objective of the foreign policy underlying passage of the Act, the Agency recognizes that circumstances may permit no, or only limited, reciprocal exchange opportunities.

Related to reciprocity is the requirement that exchange visitors be exposed to various activities designed to promote cross-cultural awareness. Sponsors will be required to offer a reasonable amount of cross-cultural activities, including sports, cultural, and social activities for the purpose of enhancing the participant's knowledge and understanding of American mores, customs, and ways of life.

Agency scrutiny of existing regulations governing the Exchange Visitor Program has revealed a lack of specificity and clarity regarding sponsor obligations and program administration. Although the Agency is secure in its belief that sponsors act in the best interests of sponsored exchange participants, the existing regulations do little to ensure uniform program administration and oversight of exchange visitors. To correct this deficiency, the Agency proposes amendment to existing regulations in an effort to provide some measure of uniformity in the conduct of exchange activities.

Recognizing that exchange visitors are dependent upon the sponsors who facilitate their entry into the United States, the Agency proposes that such sponsors demonstrate, to Agency satisfaction, their organizational and financial ability to fulfill their duties and obligations as exchange sponsors. Pursuant to proposed regulations set forth at § 514.9, non-government sponsors must affirmatively establish both their ability to pay timely all financial obligations and that sufficient funds are readily available to fulfill all obligations and responsibilities attendant to exchange sponsorship.

The Agency is obligated to introduce this requirement due to evidence of financial instability among certain Agency-designated sponsors. As a matter of administrative convenience, the Agency deems it appropriate to consider public colleges and universities as government sponsors, for the purposes of this provision only, and thereby exempts them from compliance. In addition to furnishing evidence of fiscal integrity, sponsors must also comply with additional obligations pertaining to internal organizational operations.

The proposed regulation set forth at § 514.9 also requires that sponsors adhere to Agency-promulgated regulations governing the Exchange Visitor Program. This regulation is advanced, in part, to ensure that officers, employees, and agents involved in sponsor facilitation of exchange activities are aware of the Program, its intent, and regulatory requirements. this proposed regulation will require employees, officers, and agents responsible for program administration to be adequately trained and qualified to permit assigned duties relating to exchange activities. Underlying this requirement is an Agency concern that responsibility for both exchange visitors and program administration be vested in persons who have knowingly undertaken such responsibility.

Proposed amendments governing the selection and orientation of exchange participants are set forth at § 514.10. The Agency will require that sponsors ensure that prospective exchange participants meet the eligibility criteria for program participation and that such program is suitable to the participant's background, needs, and experience. Upon selection for participation and prior to commencement of the program, sponsors will be required to provide the participant with information regarding the exchange program, travel, housing, and cost. The sponsor must also inform all exchange visitors of the two-year home residency requirement which may apply to the exchange visitor due to government funding or area of study.

Upon the exchange participant's arrival, or as soon as practical thereafter, the sponsor must provide sufficient orientation to acquaint the exchange visitor with United States customs and monitor the visitor's stay in the United States. This requirement is introduced in an effort to both facilitate the exchange visitor's adjustment to life in the United States and enhance the positive impression of the United States which is the underlying purpose of all exchange activity. Although the Agency

has determined that orientation for accompanying dependents is highly desirable, a mandatory requirement that such orientation be conducted is not proposed. The Agency strongly encourages sponsors to provide dependent orientation.

Additionally, the Agency has reviewed the health and accident insurance coverage afforded Program participants. The need for such coverage is self-evident. Given the escalating costs of U.S. health care, the current levels of coverage, in place since 1983, are now woefully inadequate. As set forth in § 514.14, the Agency proposes to increase the level of coverage to $50,000 per accident or illness. The Agency is also proposing that exchange visitors obtain coverage for repatriation of remains in the amount of $7,500 and coverage for medical evacuation to their home country in the amount of $10,000. A waiting period for pre-existing conditions, reasonable as determined by industry standards, and a deductible not in excess of $500 per accident or illness will be permitted. Provision is made for co-insurance. Policies may not exclude from coverage perils or dangers inherent to the exchange activity. For example, an insurance policy secured to cover flight training participants may not exclude injury arising from operation of small aircraft. In an effort to ensure the quality of the provided coverage, the Agency proposes that only insurance corporations having an A.M. Best policyholder rating of "A" or above, an Insurance Solvency International, Ltd. (151) rating of "A" or above, or a Standard & Poor's Claims-paying Ability rating of "AA" or above, may act as underwriters.

The proposed regulation provides for self-insurance by federal, state or local governments, state colleges and universities, and public community colleges. A non-governmental sponsor may elect to self-insure or to accept full financial responsibility for the above requirements, but may do so only with the Agency's permission.

Current regulations do not require that an accompanying spouse or dependent of an exchange visitor be covered by insurance. Proposed regulations cure this programmatic flaw by requiring accompanying dependents entering the United States on a J visa to be covered under an insurance policy. An exchange visitor's failure to secure insurance coverage for his or her self and J-2 accompanying dependents will obligate their program termination. Sponsors shall also be prepared to provide exchange visitors with information on the availability of such coverage.

Notification, Annual Reporting, and Control of Form IAP-66

A proposed regulation governing certain notification requirements is set forth at § 514.13. Such requirements include notification to the Agency of material changes in a sponsor's organizational structure which affects the citizenship requirement set forth in § 514.2, and overall ownership and control. The Agency is obligated to introduce this requirement as many designated sponsoring organizations are small entities comprised of key personnel. Upon notification of a substantial change in ownership or control, the Agency will ascertain whether designation should continue based upon the experience and expertise of the new management. It must be noted that Agency designations are not transferable.

Efficient Agency oversight and administration also dictates that sponsors apprise the Agency of any changes in responsible officers, address, or telephone number. In similar fashion, loss of licensure or accreditation, change in financial circumstances or the voluntary termination of the exchange visitor program must be reported. The Agency has also determined that notification concerning a participant's early completion or withdrawal from the sponsor's exchange visitor program is necessary. Upon receipt of such notification the Agency will deem the sponsor's obligations to an exchange visitor to have ended.

The Agency has determined that a substantial correction must be made to the current practice surrounding the care and custody of the Form IAP-66. Such forms are controlled U.S. Government documents and have been found to have a substantial black market value. The Agency has also discovered unauthorized utilization of the forms by program sponsors to facilitate the entry of foreign nationals for the purpose of participation in non-designated exchange activities. The Agency proposes to correct this abuse by institution of a strict accounting of all forms disbursed to sponsors. To this end, the Agency proposes, pursuant to the provisions of § 514.12 and § 514.13, that sponsors record and destroy damaged forms, track and record forms issued, and maintain all forms on hand in a secure fashion. An accounting for all forms will be made, in part, pursuant to an expanded annual reporting requirement.

Considerable debate has surrounded the Agency's proposal regarding annual reporting requirements. The Exchange Visitor Program is an anomaly in the U.S. immigration scheme and provides extraordinary latitude in the selection of exchange participants. As a program and an extension of U.S. foreign policy a degree of accountability is required. The burden of submitting an annual report which reflects a sponsor's activity for a year and which ensures an annual reconciliation of their usage of Forms IAP-66 is viewed by the Agency as a de minimus imposition upon designated sponsors. The Agency has elected to resurrect a one page report form which has been in use for the past thirty years and which is familiar to long established exchange sponsors. Further, the Agency takes this opportunity to advise designated sponsors that this annual reporting requirement pursuant to an oral representation made by an Agency official. Be that as it may, the regulatory requirement of an annual report has been in place since the inception of the Exchange Visitor Program. The requirement that sponsors submit an annual report will be strictly enforced.

To assist the exchange community in review of these proposed regulations, the Agency has incorporated into this Rulemaking the definitions currently set forth at 22 CFR 514.1. Minor changes, not affecting underlying meaning, have been made to most of the definitional terms. Such changes, when made, are proposed in an effort to enhance overall clarity and readability. Although definition of the term "citizenship" was the subject of a separate rulemaking, such term is included here, in final form, to facilitate overall review. Comments concerning this definition are not sought.

Finally, to assist in review of these proposed regulations the Agency attaches as appendices copies of forms which are used in conjunction with sponsor administration of exchange visitor programs. At appendix A is a modified version of the certification used to attest to the citizenship of sponsors and responsible officers. Appendix B contains the IAP-37, the Exchange Visitor Application, which has been approved by the Office of Management and Budget. The Agency anticipates that it will continue to use the form with a few minor changes to reflect § 514.4, Participant Eligibility. Appendix C contains a copy of IAP-87, Update of Information on Exchange Visitor Program Sponsor. The Agency anticipates a limited modification of this form. Finally, at appendix D, a copy of the proposed annual report form is attached for examination.

Subpart B: Specific Program Provisions

Section 514.20 Professors and Research Scholars

Although professor, researcher, and scholar exchanges are the very heart of the Exchange Visitor Program, regulations which specifically govern these exchanges have never been promulgated. In an effort toward regulatory consistency and program integrity the Agency is herein proposing regulations which specifically provide guidance regarding such exchanges.

The term "scholar," although set forth as a category of exchange in the Fulbright-Hays Act, has never before been defined in Exchange Visitor Program regulations or considered a distinct category of authorized exchange activity. This lapse is possibly due to the conceptual overlap of the term with "professor" and "researcher." The Agency proposes to correct this discrepancy by introducing the category of "short-term scholar," which is discussed below. On an additional point of terminology, the Agency has been advised that a number of academic exchange sponsors prefer to retain the current category of "research scholar" rather than "researcher." Upon deliberation, the Agency agrees that retention of this term, long used and understood within the exchange community, is appropriate.

In deciding whether to facilitate the exchange of a professor or research scholar, the sponsor shall consider the underlying purpose for which the individual is visiting the United States. It is appropriate for a professor or research scholar to come to the United States as an exchange visitor only when the underlying purpose of his or her entry into the United States is to stimulate international collaborative teaching and research efforts or to promote interchange between research and educational institutions in the United States and other countries. To this end the proposed regulations require that appointments of professors and research scholars be temporary and not on a tenure track, even if the position itself is permanent.

Recognizing that the positions of professor and research scholar are intertwined, the Agency proposes to permit professors to freely conduct research and research scholars to teach or lecture, unless disallowed by the sponsor. The definition of professor and research scholar set forth in these regulations, rather than the position description utilized by the individual educational or research institutions, is to be used by sponsors in determining the category of exchange participation.

Prior to issuance of the Form IAP–66, the responsible officer must review the parameters of the individual exchange to assess whether research or lecturing will comprise the participant's primary activity. If the exchange participant will primarily be conducting research, he or she must be categorized as a research scholar on the Form IAP–66. If the exchange participant will primarily lecture, then he or she must be categorized as a professor.

Further, the proposed regulations allow sponsors to authorize a change of category from professor to research scholar, or vise versa when the principal activities of the participant so dictate. Such change of category does not require Agency approval or notification. A change of category does not extend the duration of the exchange visitor's program beyond what is permitted at § 514.20(i).

Professors or research scholars may conduct their exchange activity at the location(s) listed on the Form IAP–66, which could be either at the location of the exchange visitor sponsor or the site of a third party facilitation the exchange. Pursuant to § 514.20(g), exchange visitors may also engage in activities at locations not listed on the Form IAP–66 if such activities constitute lectures or consultations authorized in advance by the sponsor. By way of illustration, a research scholar may conduct research at the universities listed on his or her Form IAP–66, and may also conduct short-term consultations at any location when the conditions set forth in the regulations are satisfied.

Over the years the Agency has received numerous requests from the academic community to extend the permitted duration of participation for research scholars. The National Institutes of Health and other United States Government agencies have also requested greater flexibility in arranging the duration of participation for the professors and research scholars that they sponsor. In revisiting this issue, the Agency has determined that a greater degree of flexibility in the permitted period of participation is desirable.

To this end, the Agency proposes that up to three additional years beyond the duration of participation set forth in § 514.20(i) may be authorized by the Agency when exceptional or unusual circumstances so warrant. The Agency proposes the additional time in an effort to be responsive to needs which arise from the participation of exchange visitors in international research projects and in medical and biomedical research. Based upon representations made by designated sponsors, the Agency anticipates that a small percentage of professor and research scholar exchanges will encounter the exceptional or unusual circumstances which would warrant such an extension. Requests for such extensions shall be made directly to the Agency's Exchange Visitor Program Services.

The proposed regulations also allow responsible officers to approve short-term extensions of six months or less beyond the duration of participation allowed in § 514.20(i). In addition, the Agency will entertain sponsors' request to extend the permitted period of participation for a group of research scholars engaged in specific fields of endeavor on a blanket petition basis. The Agency believes that such short-term extensions and blanket approvals will provide both desired flexibility and enhanced administrative efficiency.

Section 514.21 Short-term Scholars

The agency proposes to create the category of "short-term scholar," which is defined as a professor, research scholar, specialist, or a person with similar education or accomplishments coming to the United States on a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. Educators, scientists, research fellows, writers, museum administrators, librarians, and similar persons of recognized expertise are examples of participants appropriate for this category.

The goal of short-term scholar exchanges is to increase the velocity of the interchange of knowledge and skills and collaborative research efforts between foreign and American scholars. This may be accomplished by providing foreign scholars the opportunity to share ideas with their American colleagues, participate in educational and professional programs, confer on common problems and projects, and thereby promote improved professional relationships and communications.

Because these exchanges are of limited ratio and the participants are often senior in their field, the Agency has determined that it will not be necessary for sponsors to provide orientation or cross-cultural activities for short-term scholars. The proposed regulations exempt short-term scholars from the minimum duration of participation set forth at § 514.8(b) but limit the maximum duration of participation to four months. As this category is intended only as a vehicle

for short-term collaboration and interchange, these participants will not be eligible for a program extension.

Section 514.22 Training

Following the passage of the Smith-Mundt Act in 1948, the Department of State, the Agency's predecessor in implementing exchange programs, promulgated regulations governing educational and cultural exchanges. Among other things, these regulations recited various categories of aliens allowed to participate in exchange visitor programs pursuant to the statutory language of the Act. Among these categories were "trainee", defined as an alien seeking to enter the United States temporarily in order to participate in an exchange visitor program "for the purpose of obtaining practical training in public administration, industry, medicine, agriculture, or some other specialized field of knowledge or skill * * *" 22 CFR part 68 (1949).

In 1961, Congress in turn passed the Fulbright-Hays Act, again directing the inclusion of training as a category of exchange participation. Although an integral part of Agency-administered exchanges, it was not until 1983 that separate regulations governing training activities utilizing the J-visa were promulgated. 22 CFR 514.13(c) (1983). These regulations have not been amended or revised since first promulgated.

In response to the General Accounting Office (GAO) investigation noted above, the Agency has reviewed the legislation and legislative history underlying the Exchange Visitor Program and existing regulations to determine whether such regulations comport with the statute governing this program. As discussed below, the Agency proposes to amend existing regulations in such a manner that the criticisms raised by the GAO are addressed and distinctions between training and work are obvious and clearly drawn.

The Agency is proposing regulations which address the criticisms of the GAO and clearly distinguish between training and work that is not training. Thus, the Agency proposes that all training conducted under the aegis of the Acts be clearly defined and structured, and on a level appropriate to the trainee's background and experience.

GAO Report

The controversy over the legitimacy of certain activities of foreign nationals in the United States on exchange visitor visas sparked Congressional concern as to the propriety of certain educational and cultural exchange programs administered by the Agency. A GAO investigation and report followed.

The report by GAO, entitled "Inappropriate Uses of Educational and Cultural Exchange Visas," and dated February 16, 1990, (GAO Report) concluded that:

> A number of J-visa activities in the practical training and international visitor categories, including summer student travel/work, camp counselor, and au pair activities—some of which have been ongoing for years—do not conform to the original legislative intent concerning educational and cultural exchanges.
>
> GAO Report at 23.

While the words "trainee" and "receiving training" are not expressly defined in either of the educational and cultural exchange Acts, the GAO noted that the existing training sanctioned by the Agency "did not have the same status as the categories mentioned in the statutes and would not generally be considered to have the same educational and cultural value." *Id.* at 16.

The Agency is of the opinion that the vast preponderance of the exchange visitor training programs are conducted well within the legislative authorities created by the Act. However, the GAO found that certain training programs inappropriately "consisted primarily of employment in commercial enterprises with no cultural or educational emphasis placed on the participants' activities. This training involved participants in such capacities as waiters, cooks, hotel workers, and automobile body repairers." *Id.* at 3. It is noted that the GAO Report stated only that "some" training programs consisted primarily of employment in commercial enterprises with no cultural or educational emphasis placed on the participants' activities.

Distinction Between Work and Training

As noted above, the Agency has been criticized for allowing the Exchange Visitor Program to be used to circumvent the immigration and labor laws of the United States by allowing foreign workers to use the program under the guise of educational and cultural exchange. This criticism has centered on designated private sector training programs and generated considerable debate concerning the distinction between work, i.e. gainful employment, and legitimate training. Recognizing that training more often than not occurs in a work place setting, the Agency has determined that the distinction between unauthorized gainful employment and authorized training may best be drawn through examination of the components of a *bona finde* training program. The requirements for a *bona fide* training program are set forth in § 514.22(f).

The Training Plan

As a prerequisite to Agency designation, the Agency proposes that applicants submit a training plan which describes what the training objectives are, the competencies which the trainee will obtain through participation in the training program, a general description of the schedule of the training activities, and a justification for the use of on-the-job training to achieve the objectives of the training course. Special skills, e.g., computer training, to which the trainee will be exposed should also be noted.

The Agency has received many comments suggesting that the training plan requirement will be unduly burdensome in all cases, and in some cases, impossible to comply with because the sponsor is active in many different training areas. The Agency believes that the revised proposed regulations set forth herein meet those objectives.

Applicants need not submit a training plan for each trainee. However, the applicant must submit a training plan for each type of training it intends to conduct. For purposes of these regulations, the Agency has listed eleven broad categories and it believes that every conceivable type of training will fall within one of these eleven categories. See § 514.22(i)(2). Moreover, the Agency believes that the submission of a maximum of eleven general training plans is not unduly burdensome. Specific comment on this matter is invited.

Proposed §§ 514.22 (f) and (g) set forth that information which the applicant is to include in the training plan and describes three types of training plans which an applicant may utilize in order to comply with the regulation.

The Agency recognizes that at the time the applicant is applying for designation it may not have identified individual trainees who are going to participate in the program. In such instances, the applicant need only submit a generalized, hypothetical training plan which illustrates the training the applicant proposes to provide.

In other instances, the applicant may not have prepared the training plan at the time it applied for designation. However, if the applicant has previously been engaged in the same sort of training for which it is now seeking designation it may submit a copy of a previously used training plan.

If the applicant has already designed a structured training plan at the time it is applying for designation, a copy of such training plan should be submitted with the application.

If all of the above instances, the applicant should bear in mind that the Agency's interest is not in creating needless paperwork, but in having sufficient facts to determine that the applicant is capable of conducting the training for which designation is sought.

Points to be discussed and included in the training plan are set forth in the Appendix to the proposed regulations. In addition, the general training plan must indicate whether the training is in a specialty occupation or a non-specialty occupation.

The Agency is aware that many sponsors will expand the breadth of their programs. If a sponsor desires to add additional training areas to its program, it does not need to apply formally for re-designation. The sponsor may simply request the Agency to amend its designation to include the added training areas. The sponsor must, however, submit a general training plan for each new training area added to its designation.

Specialty and Non-Specialty Occupations

The Agency does not necessarily view a specialty occupational trainee as a worthier participant in the Exchange Visitor Program than a non-specialized occupational trainee. Therefore, non-specialty occupational training programs will be designated if otherwise in compliance with the regulations. However, the Agency considers the distinction to be significant because past experience has shown that some of the non-specialty occupational training programs were, in reality, work programs designed to meet the staffing needs of an employer. Thus, the Agency has determined that non-specialty occupational programs may require closer monitoring after designation than was previously undertaken in the past.

The Agency has concluded that the potential for inappropriate usage of the J visa is most pronounced in those non-specialized occupational areas which are generally considered unskilled in nature. For example, the Agency would not approve an application for designation of a program to train persons in clerk typist skills or in nurses' aides or orderly skills. The Agency will presume that such training would in reality be designed for staffing purposes and, therefore, inconsistent with the Agency's mission. A listing of those occupations which the Agency considers to be unskilled is set forth. Applications for designation of training programs in such occupations will not be approved.

Justification for the distinction between "specialty occupation" and "non-specialty occupation" may be found in both the original regulations governing the Exchange Visitor Program and in the legislative history of the Acts. In 1949, the Department of State permitted "trainee" participants pursuing training in "public administration, industry, medicine, agriculture, or some other *specialized* field of knowledge or skill * * *." 22 CFR part 68 (1949) (emphasis added). The legislative history of the Smith-Mundt Act refers to the training of meteorologists, agricultural research by the operation of collaborative experiments and research stations, hydroelectric experts, malaria experts, and experts in the fields of economics, business administration, agricultural design and construction, communications, and distribution of electric power. United States Information and Educational Exchange Act of 1948: Hearings on H.R. 3342 Before a Special Subcomm. of the House Comm. on Foreign Affairs, 80th Cong., 1st Sess. 148–50 (1947).

While most of the early exchange visitor training programs fell in specialized areas such as those noted above, the legislative history of the 1961 Fulbright-Hays Act strongly suggests that Congress intended the program to be broadly construed and highly flexible and adaptable to changing needs and conditions. In recognition that non-specialty occupational training programs can be an important part of our foreign policy, the Agency does not propose to exclude them from the Exchange Visitor Program. Since the passage of the Fulbright-Hays Act, the world has seen a major expansion in non-specialty occupational training and such programs have become an important part of our foreign policy, which the Agency intends to continue. However, for the reasons set forth above, the Agency will monitor non-specialty occupational training on an *ad hoc* basis in order to ensure that such training is *bona fide*.

As noted above, while the Agency will not require that a detailed training plan be submitted for each trainee, we anticipate that sponsors engaged in bona fide training programs will, in the ordinary course of business, prepare such plans and retain them in their files. The Agency may from time to time request an opportunity to inspect these training plans in order to verify sponsor compliance with Agency regulations.

Sponsor Supervision

In the proposed regulations, the sponsor of the program must be directly responsible for all aspects of the trainee's activities while the trainee is in the United States, including the selection, orientation, training, supervision, and evaluation of the trainee. The purpose of this proposal is to assure that responsibility for the trainee resides in one place. It has always been the policy of the Exchange Visitor Program that sponsors be directly responsible for these aspects of the Program, yet analysis of some programs reveals that this policy has not always been observed. The proposed regulations codify and strengthen this existing long-standing policy.

In order to carry out the actual training set forth in a sponsor's approved training plan, the Agency has determined that utilization of a third party by the sponsor may be appropriate. If the sponsor elects to delegate its responsibility for providing approved training to a third party, the sponsor is nevertheless accountable for ensuring that the third party complies with these regulations. A third party's violation of these regulations shall be imputed to the sponsor; therefore, the sponsor's obligation to monitor, control, and oversee the third party is absolute. Simply put, a third party may act for or in place of the sponsor; however, the accountability of the sponsor shall be non-delegable.

When a third party is utilized by the sponsor, the Agency requires evidence of an express written agreement between the sponsor and the third party Any such agreement shall specifically recite the third party's obligation to act in accordance with all Agency promulgated regulations applicable to the sponsor. In addition, the sponsor must provide the third party with the individualized training plan to be used to train the trainee. The sponsor shall retain a copy of such training plan for a period of three years.

The Agency will no longer approve an organization as a sponsor of a training program where the organization or its agent abdicates its responsibility to directly train and supervise the trainee. The regulations, as noted, will require that the sponsor retain full responsibility for the conduct of the program. Simply placing a trainee in a third-party training program will not be allowed in the future if the sponsor abdicates accountability for the training and well-being of the trainee.

Flight Training Programs

Included amongst the exchange visitor programs currently designated by the Agency are flight training programs. The Agency considers flight training to be in an important yet sensitive occupational area which requires that particular attention be given to quality assurance. Additionally, flight training schools require more financial resources than many other types of training programs.

Over the past two years, five of the thirty Agency-designated flight training programs have met with financial failure and recently one flight training program was suspended by the Agency for various violations of Agency regulations. These incidents suggest that the Agency must monitor more closely the flight training programs in order to ensure that program participants are adequately protected.

The Agency has engaged in considerable dialogue with representatives of flight training programs during the course of the Agency's regulatory reform effort. The Agency has conveyed to the sponsors its concerns about the financial stability of a number of sponsors and its concerns about the "work vs. training" issue involved in flight training programs. Similarly, the flight training sponsors and those seeking to become designated flight training sponsors have expressed their concern over the eighteen month maximum duration, arguing that flight trainees require more time to complete their training.

Flight training sponsors have also argued that participants in flight training programs should more properly be treated by the Agency as "students" rather than as "trainees" because typically flight training programs are more like schools than training programs in that they follow fixed curricula, have classroom instruction, and, at least in some cases, are accredited by nationally recognized accrediting agencies. It is further argued that placing flight training program participants in the student, rather than the trainee category, would also entitle the flight student to a total of eighteen months of training at the conclusion of the classroom portion of the program, rather than the maximum of eighteen months period of participation permitted under the training regulations.

The Agency has considered these arguments and has concluded that the flight training participants more appropriately fit under the training category than the student category. Moreover, the stated goals of the flight training program participants are better met under the trainee category than under the student category. For example, proposed § 514.23 ("College and University Students") requires that the student be studying at a degree-granting post-secondary educational institution. Most flight training schools do not grant degrees. Also, before a student can commence "academic training," the proposed regulation requires that the student first must have been a student in the exchange visitor program for the preceding nine months. See § 514.23(g)(2)(i)(A). The Agency has been advised that most flight students spend no more than six months in a full-time classroom or academic setting.

Therefore, in order to meet the Agency's concerns about quality assurance and financial stability of flight training programs, while at the same time allowing flight trainees to gain more training time in the U.S., the Agency is proposing the following:

1. All flight training programs must be accredited by a nationally recognized accrediting authority. If the proposed regulation is made final, the Agency will consider only the applications of those programs which have already been accredited as set forth in the regulation, or which have formally commenced the accreditation process. The Agency is aware that accreditation may take as long as one year to be completed. The Agency will, therefore, accept applications for designation from flight schools which have commenced the accreditation process, but will only conditionally designate them for up to twelve months. Similarly, currently-designated flight training programs will be conditionally redesignated for up to twelve months, but only if they have commenced the accreditation process.

2. With respect to duration of participation, flight trainees are to be granted an additional six months of training time beyond the normal 18-month maximum duration of participation. The Agency believes that a longer stay is justified in the case of flight training because of the strict training requirements of the international aviation community. As under current regulations, any extension of the program beyond twenty-four months must be specifically approved by the Agency, and such extensions will be granted only under highly unusual circumstances.

The Agency believes that this proposal is a reasonable accommodation to the need of the Agency and the needs of the flight training industry. Recognizing that there are both time and cost considerations in the accreditation process, the Agency is willing to extend the training time allowed to flight trainees in return for the flight training sponsors' acceptance of the accreditation requirement.

The Duration of Participation

The Agency had considered limiting training programs to twelve months. Upon consultation with a number of current sponsors, the Agency decided to keep the duration of training programs to a maximum of eighteen months, as is presently provided for in the regulations. The primary purposes of training under the Exchange Visitor Program are to expose the visitor to uniquely American techniques, methodology, and philosophy in the visitor's field of endeavor and to provide an opportunity for open interchange of ideas between the visitors and Americans. The law envisions that exchange visitors will return to their home country to share with their compatriots their experiences in the United States, including the fruits of their training. While many of the exchange visitor training programs funded by the United States Government are for less than eighteen months in duration, the Agency concludes that many private sector programs may require eighteen months to maximize the benefits to the trainee. An exception is being proposed for flight training programs in order to allow additional time to complete this highly specialized training. As noted above, flight training programs will be given a twenty-four month duration of participation.

Section 514.23 College and University Students

In response to requests from the academic community the Agency has undertaken the task of clearly defining when and under what circumstances a student should be issued a J visa. Sponsors should place foreign college and university students in their exchange visitor program when the students academic programs are funded by the United States Government, the government of the exchange visitor's home country, an international organization of which the United States is a member, or when the program is carried out under an agreement between the United States and a foreign government. Sponsors may also place foreign students in their exchange visitor program if the program is carried out under a written agreement between American and foreign educational institutions, or when foreign students are supported substantially by scholarships designed to promote international educational exchanges.

Further, the Agency proposes that the category of college and university

students shall be limited to exchange participants at post-secondary accredited educational institutions who are (i) pursuing a recognized full course of study leading to or culminating in the award of a U.S. degree; or (ii) engaged full-time in a prescribed course of study of up to 24 months duration. The latter category is proposed in order to allow and encourage college or university students who seek to pursue a clearly defined non-degree academic program.

8 U.S.C. 1101(a)(15)(J) provides, in part, that an exchange visitor may enter the United States under the aegis of a J visa if such visitor is a *bona fide* student actively engaged in *bona fide* academic study. 22 U.S.C. 2460(b) directs the Agency to ensure that exchange visitor programs sponsored by its Bureau of Educational and Cultural Affairs are of the highest academic standards. Pursuant to these statutes, Agency stewardship of the Exchange Visitor Program requires that the *bone fides* of an exchange visitor's academic studies be ascertained.

In order to quantify *bona fide* academic study and enhance Agency administration and oversight of the Exchange Visitor Program, definition of the term "accredited educational institution" is proposed. The Agency proposed to (i) define the *bona fides* of an educational institution by way of its accreditation status; and (ii) define the *bona fides* of student status in terms of attendance at an accredited educational institution and successful completion of the minimum number of academic credits per semester which best evidences full-time study.

It is Agency opinion and belief that accreditation is an objective and independent measurement of the *bona fides* of an "established school or institution of learning." Evidence of Agency policy and practice regarding accreditation is set forth at the current 22 CFR 514.15. This regulation authorizes the Agency to require evidence of accreditation from applicants seeking sponsor designation under the Exchange Visitor Program. The absence of a specific definition concerning accreditation was, in part, the basis of recent litigation. This litigation arose due to an Agency determination that a non-accredited educational institution was not an appropriate sponsor within the purview of the Exchange Visitor Program. Although the Agency prevailed in this litigation, the Agency now desires to amend existing regulations explicitly to enunciate the Agency's accreditation policy.

Recognizing that the expertise for determining accredited educational institutions lies with various independent accrediting authorities, the proposed Agency definition makes provision for the use of such findings on accreditation made by these independent authorities. Specifically, in review of the *bona fide* status of a post-secondary educational institution, the Agency proposes to utilize the annual listing of accreditation authorities promulgated by the Secretary of Education pursuant to 20 U.S.C. 1141(a). As explained in 34 CFR 602.1, accreditation is both a prerequisite to eligibility for various types of Federal financial assistance and a reliable measure concerning the quality of education offered by an educational institution. Agency use of such annual listing is also appropriate given the Department of Education's expertise and responsibility for oversight and implementation of Federal education initiatives. Pursuant to the proposed definition, post-secondary academic study completed at a non-accredited educational institution will not be deemed to comply with the *bona fide* requirement set forth in 8 U.S.C. 1101(a)(15)(J).

The proposed regulations set forth the requirement that exchange visitor students possess sufficient proficiency in the English language to enable them to participate in their program or are provided English language training. In addition, exchange visitor students are required to take a full course of study at a post-secondary accredited educational institution as such terms are defined in this Part. Pursuant to exceptions to this requirement set forth at § 514.23(f), provision has been made to ensure that students may maintain their status in the event of sickness or academic difficulties.

Recognizing the importance of academic training, the Agency proposes liberal regulations governing the pursuit of such opportunities. Such training may include internships, practicums, and cooperative educational programs. It may occur before graduation, after graduation, or a combination of both when the requirements set forth in § 514.23(g) are satisfied. Academic training may be as long as the period of the classroom instruction at the accredited educational institution, but shall not exceed a total of 18 months for any exchange visitor student. The Agency strongly supports training for college and university students but will require that it be an integral or critical part of the exchange visitor's academic program.

The Agency proposes that academic training be allowed for exchange visitor students when the exchange visitor: (1) Has been a student in the exchange visitor program for the preceding nine months; (2) is participating in academic training that is directly related to his or her major field of study; (3) is in good academic standing with the post-secondary accredited educational institution; (4) will adhere to the period of time permitted for academic training; (5) receives approval in advance and in writing by the responsible officer for the duration and type of training; and (6) satisfies the other requirements set forth in these regulations.

When students do not receive compensation for services when they participate in academic training during their studies, the requirements set forth in § 514.23(g) are not applicable. In this situation, the student needs only to obtain approval for such training by the academic dean or advisor and the responsible officer.

The Agency recognizes the benefits of exchange visitor students working while studying. At the same time, the Agency recognizes the importance of students completing their studies in a timely manner. The proposed regulations allow exchange visitor students to engage in part-time employment when it is approved by the responsible officer and is (1) pursuant to a scholarship, fellowship, or assistantship, or (2) necessary because of serious, urgent, and unforeseen economic circumstances which have arisen since acquiring the exchange visitor status. The regulations require that the exchange visitor student is in good academic standing and continues to comply with the full course of study requirement. Exchange visitor students shall be permitted to be employed no more than 20 hours per week, except during official school breaks and summer vacations.

A number of sponsors and other interested parties have asked the Agency to increase the maximum duration of training for Ph.D. graduates for 18 to 36 months. The rationale for such requests has been that these students need the time to complete their post-doctoral research. The Agency views academic training for exchange students as an opportunity for exposure or introduction to their profession or field of study. Foreign students often spend four to eight years or longer in the United States to complete their studies. The Agency believes the advantage of foreign students returning home to share their experiences and to contribute to their country home overrides the benefit of academic training longer than 18 months. As discussed in § 514.41, below, post-doctoral students may, in unusual or exceptional circumstances, petition

the Agency for a change of category to research scholar.

Section 514.24 Teachers

Although teacher exchanges are a vital component of the Exchange Visitor Program, regulations governing such exchanges have never been promulgated. The Agency seeks to correct this programmatic inconsistency by herein proposing regulations designed specifically to provide guidance to sponsors of such teacher exchanges.

The proposed regulations define at teacher as an individual teaching full-time in a primary or secondary accredited educational institution. As for primary and secondary schools, accredited educational institution is defined as any publicly or privately operated primary or secondary institution of learning duly recognized and declared as such by the appropriate authority of the state in which the institution is located. Teachers at the post-secondary level are under the category of professors, rather than teachers.

In deciding whether to include a teacher as a participant in its program, the sponsor shall consider the purpose for which the foreign national is visiting the United States. It is appropriate for a teacher to come to the United States as an exchange visitor teacher if (a) the individual will teach full-time at a primary or secondary accredited educational institution, and (b) the objective of the program is to promote the purpose of the Exchange Visitor Program. The proposed regulations require that the appointment of teachers be temporary and not involve permanent or long-term employment. This requirement is consistent with the intent that the exchange visitors return home after their program to share their experience with those in their country. The teaching position shall be also in compliance with any applicable collective bargaining agreement, where one exists.

As stated previously, the teacher category is reserved for primary and secondary teachers who come to the United States to teach full-time. The Agency wants to encourage educational administrators, curriculum developers, and other educational specialists at the primary and secondary level to participate in exchange visitor programs. The Agency intends that the latter group participate in exchange visitor programs under the specialist or government category, depending on who is sponsoring and selecting the exchange visitors.

Section 514.25 Secondary Students

Secondary school student exchanges are designed to afford students an opportunity to study in the United States for up to one year while living with an American host family. Such exchanges provide secondary school students an in-depth and broad exposure to American ideas and institutions through immersion in the everyday aspects of living and attending school in the United States.

Secondary school student exchange programs have been a part of United States public diplomacy efforts since 1949. Expanding from a small base of non-profit organizations dedicated to student exchange, the Agency currently designates sixty-two organizations to conduct such exchanges. Secondary student programs vary in size from 50 to 4,000 participants. In 1990, Agency-designated sponsors facilitated the entry of 24,552 secondary school students, accounting for approximately fifteen percent of all exchanges conducted under the aegis of the Exchange Visitor Program. Although generally viewed as a highly successful category of exchange activity, some secondary school student exchanges encounter problems which are best addressed through regulation.

Over the years concerns have arisen regarding the administration and operation of secondary school exchange programs. In 1982, the Agency awarded a grant to the Council of Chief State School Officers to conduct a study of such exchange activity and to make recommendations concerning possible areas of improvement. From this study sprang the impetus for the formation of the Council for Standards in International Education Travel (CSIET). Devoted to the establishment of standards to govern organizations conducting educational international travel and exchanges, CSIET evaluates such organizations seeking CSIET endorsement on the basis of their compliance with none performance standards. The Agency considers these nine standards to be appropriate guideposts for organizations engaged in international educational travel in that such standards are a distillation of current Agency regulations governing secondary school student exchanges. The proposed regulations set forth below continue to incorporate these standards but also impose additional requirements that are unique to exchange programs.

Part of an all-encompassing regulatory reform effort, the revision of regulations governing secondary school exchanges comes at an opportune moment. Nationwide, states and local school districts are beginning to devote considerable attention to the enrollment of non-resident foreign students in their schools. Although not all foreign students enrolled in local schools are participating in an exchange program, the perception of the general public is that all such students are, in fact, exchange students. Given this perception, the Agency is determined to ensure the highest possible standards for those exchanges under its auspices.

In response to egregious experiences related to the enrollment of non-resident foreign students, state and local school authorities have begun to enact various rules and regulations governing such enrollments. This piecemeal legislation is creating a patchwork of administrative requirements which hamper the ability of Agency-designated sponsors to facilitate secondary student exchanges. The Agency is concerned about this development and is devoted to achieving an overall strengthening of regulations and monitoring of program administration in an effort to forestall any further piecemeal legislation.

Program Administration

Mindful of the unique program considerations inherent to secondary school student exchanges, the Agency seeks to delineate clearly the obligations and responsibilities program sponsors must meet in administering such exchanges. Student participants are placed in a vulnerable position, far from home at a tender age. Due to this position, students are dependent upon program sponsors whose integrity, expertise, and professionalism must be above reproach.

Apparent to all observers is the fiduciary duty a sponsor owes to a student exchange participant. Such duty necessarily requires the sponsor to undertake responsibility for all aspects of the student participant's stay in the United States from the selection of a suitable host family and enrollment in a secondary school through on-going monitoring of the exchange and the student's return to the home country. To meet this duty satisfactorily the Agency concludes that an adequately trained and supervised staff, including agents or volunteers acting on the sponsor's behalf, is of paramount importance to secondary school exchange programs. The Agency therefore proposes, pursuant to the provisions of § 514.25(d) that sponsors properly train and supervise all staff members and volunteers acting on their behalf.

Working with adequately trained and supervised staff and volunteers, the Agency proposes that all sponsors

maintain a monthly schedule of personal contact with the student, school, and host family. The Agency contemplates that this degree of contact will provide adequate assurance that the student is successfully adapting to his or her new home and school environment. This proposed monthly schedule of contact is a minimum. Sponsors will be expected to increase the level of contact with the student, school, and host family when adjustment problems so dictate.

To ensure that all students are properly supervised, the Agency proposes a new requirement that program sponsors arrange no host family placement outside a 150 mile radius of the home of an organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters. A geographical limitation is proposed to enhance the sponsor's ability to maintain the proposed level of contact. This geographical limitation is a maximum. If staff members or volunteers are unavailable in a given geographic location, the sponsor must necessarily refrain from placing a student in such location.

Student Selection, Enrollment, and Orientation

Considerable debate surrounds the selection criteria for student participants. Currently, students must be between the ages of 15 and 19 years of age, be capable of functioning in an English speaking environment and must demonstrate maturity, good character, and scholastic aptitude. These criteria were developed to ensure that foreign exchange students entering United States schools could benefit from the exchange experience and provide a meaningful contribution to the educational experience of their American counterparts. Such criteria are by nature somewhat subjective but do provide general guidance to both sponsors and local school officials. The Agency has determined that modification of these selection criteria is needed.

8 U.S.C. 1101(a)(15)(J) provides, in part, that an exchange visitor may enter the United States under the aegis of a J visa if such visitor is a *bona fide* student actively engaged in *bona fide* academic study. Pursuant to this statute, Agency stewardship of the Exchange Visitor Program requires that the bona fides of an exchange visitor's academic studies be ascertained. The Agency concludes, in light of this statutory requirement, that a modification of the maximum age for participation in a secondary school student exchange program is required.

The Agency is obligated to utilize the United States standard of 12 years of primary and secondary school study in assessing *bona fide* student status. Students who have completed not more than eleven years of primary and secondary study will be deemed, automatically, *bona fide* secondary school students. Attendance in kindergarten should be excluded for the purpose of calculating years of study under this 12 year standard. This standard is of limited importance except to those students who continue their studies into A-level or international baccalaureate programs or their equivalent. Students who complete this additional level of study are, in academic terms, the equivalent of United States college and university students.

Students intending to continue their studies in an A-level or international baccalaureate program may participate in a secondary school student exchange program prior to their enrollment in A-level or international baccalaureate studies. Such students will not have completed 12 years of study as determined by United States standards and would therefore be appropriately placed with their United States peers at the senior year of high school level.

After consultation with Agency-designated sponsors, and in an effort to accommodate potential secondary school student exchange participants who have completed international baccalaureate or A-level studies, the Agency has determined that *bona fide* secondary school student status should also be extended to participants who are not more than 18 and a half years of age at the time of enrollment in a United States secondary school.

It has come to the Agency's attention that some students have returned to the United States in an exchange program for a second year of study. The Agency concludes that this is an inappropriate practice which must be curtailed. Current regulations limit secondary school exchanges to no more than one year. The proposed regulations continue this limitation. To this end, the Agency proposes at § 514.25(e), below, that sponsors specifically inquire whether a potential exchange student has previously participated in a secondary school exchange program and disqualify for further participation any student who has.

Provisions governing the enrollment in United States schools of selected student participants are set forth at § 514.25(f). The Agency proposes to safeguard this program's integrity and good reputation among school administrators by continuing to require the prior written acceptance of the student by an appropriate school official. Each September the Agency is contacted by local school principals who have been surprised to find an unannounced exchange student on the school's doorstep. Given the administrative burden and inconvenience which accompanies unanticipated arrivals, the Agency will henceforth strictly enforce the regulatory requirement that all students be authorized for school enrollment prior to their entry into the United States.

As a policy matter, the Agency seeks to ensure that all exchange participants are properly and timely informed of matters germane to their exchange experience. Pursuant to § 514.25(g) set forth below, the Agency proposes that secondary student exchange sponsors provide all participants with advance notice of travel, school, community, and host family arrangements. This information must be provided well enough in advance of the student's departure from the home country to be of use to the student. Additionally, the student must be apprised of all operating procedures, rules, and regulations governing participation in the exchange program.

Host Family Selection, Placement, and Orientation

The Agency has considered, at some length, the recurrent problems associated with host family placements. Aware that tensions will develop naturally from the obligations which arise from serving as a host, the Agency seeks to introduce some measure of uniformity to host family selections. Specific provisions governing host family selection are set forth at § 514.24(j), below.

First and foremost among such proposed selection criteria is the need to ascertain that potential host families fully understand both the rewards of hosting an international student as well as the duties and obligations attendant thereto. To this end, the Agency proposes that sponsors utilize a standard application form which solicits a detailed profile of the family and conduct an in-person interview with all family members residing in the home. In-person interviews will allow the sponsor to determine whether the potential host family is capable of providing a comfortable and nurturing home environment and that the decision to serve as a host family is one which is supported by all family members.

Due to the vulnerable position in which a student is placed by the nature of these exchanges, sponsors will be expected to undertake appropriate safeguards to ensure that the potential host family is of good reputation and character. Recognizing that one incident of abuse is beyond the pale of acceptability, the Agency must insist that sponsors exercise due diligence in the screening of all potential host families. A mere superficial compliance with this regulatory requirement will not be tolerated. Recommendations from members of the community as well as solicitation of the local school official's opinion of the potential host family may be considered a bare minimum in this regard. In similar fashion, sponsors must also satisfy themselves that the potential host family possess adequate financial resources to undertake hosting obligations.

Having adequately screened the potential host family, sponsors will in turn be expected to properly orient the family concerning the exchange activity. Host families must be fully informed of the sponsor's rules and regulations which govern the exchange program and be provided with a copy of Agency promulgated Exchange Visitor Program regulations. In addition to these requirements, the Agency proposes, pursuant to § 514.25(k) below, that sponsors conduct orientation workshops designed to familiarize the host family with cultural differences and practices as well as strategies for effective cross-cultural interaction.

Finally, the Agency has concluded that the quality and integrity of secondary school student exchanges are best safeguarded by requiring sponsors to secure a host family placement for a student participant prior to his or her departure from the home country. This requirement, set forth at § 514.25(1), below, when coupled with the requirement of advance written acceptance by local school officials will remove any uncertainly from the parameters of the student's exchange.

The Agency has been advised by sponsors that host family placements are always made before the student arrives in the United States. Without debating the veracity of this statement, the Agency concludes that a mechanism to ensure that such placements have been made in timely fashion is required.

To ensure that such host family placements, as well as school placements, have been made the Agency proposes that sponsors submit to the Agency, by August 1st of each school year a listing of student participants, their school and host family placement. This requirement is proposed in lieu of listing the name and address of the host family and school placement on the Form IAP-66 and embodies the suggestions of various exchange sponsors. The Agency concludes that such a listing will provide the desired certainty in respect to the parameters of each individual exchange but will also allow sponsors to continue their administrative process as long as possible.

Section 514.25 Specialists

Exchanges of American and foreign specialists exemplify the reciprocal exchanges of persons that the Fulbright-Hays Act seeks to promote. These exchanges have resulted in a flow of specialists between the United States and other countries, and have contributed to the growth of mutual understanding and dissemination of knowledge that is at the heart of the Exchange Visitor Program. Such exchanges are primarily nonacademic and provide opportunities to increase the interchange of knowledge and ideas between American and foreign specialists, and promote improved professional relationships and communications.

Although specialists have played an important role in the Exchange Visitor Program, regulations which specifically address this category of exchange visitor participation have never been promulgated. The Agency is herein proposing regulations which are designed specifically to provide this guidance to sponsors and to clarify the relationship between sponsors, the Agency, and exchange visitors.

Specialists may be appropriately sponsored as an exchange participant if the underlying purpose of such exchange is to stimulate international collaboration between individuals in the professions, businesses, and government. The proposed regulations require that the appointment of a specialist be temporary and not involve permanent or long-term employment.

Section 514.27 Alien Physicians

Federal law requires that foreign physicians seeking to pursue graduate medical education or training in the United States must do so on a J visa. This centralization of authority for the admission of such clients is due, in part, to past concerns regarding the academic and medical qualifications of foreign trained physicians. Since 1971, the Educational Commission for Foreign Medical Graduates ("ECFMG") has administered the issuance of Form IAP-66 for foreign medical graduates coming to the United States to pursue graduate medical education or training.

Foreign physicians must successfully complete examinations administered by ECFMG which measure their command of medical sciences. Such exam was, until 1983, the Visa Qualifying Examination. Currently, the required exam is Parts I and II of the National Board of Medical Examiners Examination. The National Board of Medical Examiners plan, however, to adopt as of January 1993 a new examination, the United States Medical Licensure Examination Steps I, II, and III. In light of this impending change the proposed regulations require an alien physician participant to successfully pass this examination.

The remaining proposed regulations reflect past practice regarding administration of these exchanges. A statement of need from the participant's home country and an annual statement executed by the participant reflecting intent to return to the home country remain in place.

Section 514.28 International Visitors

The Agency proposes that the category of international visitors be for its exclusive use. Sponsors other than the Agency will have comparable categories to use for short-term exchanges as discussed below. In the proposed regulations, international visitors programs are for foreign nationals who are recognized or potential leaders and are selected by the Agency to participate in observation tours, discussions, consultations, professional meetings, conferences, workshops, and travel.

The international visitors category is for people-to-people programs which seek to develop and strengthen professional and personal ties between key foreign nationals, Americans, and American institutions. The Agency proposes to continue the general limitation of participation for international visitors to one year. Such exchanges are intended specifically for short-term exchanges.

The Agency encourages the private sector and other government agencies to sponsor similar types of short-term exchange programs. The active participation of all parties is critical to the development and success of short-term exchange programs. In the proposed regulations, the Agency sets forth the categories of short-term scholar and specialist, especially for the private sector, and government visitors for exchangees selected by U.S. federal, state, and local government agencies.

Section 514.29 Government Visitors

The Agency is proposing to create the government visitors category to encourage U.S. federal, state, and local government agencies to expand their role in the Exchange Visitor Program. Currently, a number of government agencies are designated sponsors of the Exchange Visitor Program. The Agency intends that government sponsors continue to use a variety of categories for their exchange visitors, including the category of government visitors.

For the purpose of this section, government agencies include such entities as U.S. federal, state, and local government agencies (e.g., federal agency or commission, a state department of education, county government, incorporated city, and local school district). A government agency as used in this category does include an international organization of which the U.S. is a member by treaty or statute. However, a government agency as used in this section does not include state colleges or universities, unless such programs are sponsored by their state department of education.

The Agency is proposing that foreign nationals be eligible for a government visitors program when they meet the following three criteria. They shall be (a) selected by a U.S. federal, state, or local government agency, (b) engaged in consultation, observation, training, or demonstration of special skills, and (c) an influential or distinguished person. Under this category, exchange visitors would be eligible to participate in such activities as observation tours, discussions, consultations, professional meetings, conferences, workshops, and travel.

Government visitors programs are people-to-people programs designed to enable government visitors to better understand American culture and society, and to contribute to enhanced American knowledge of foreign cultures. The objective of government visitors programs is to develop and strengthen professional and personal ties between key foreign nationals and Americans and American institutions. These programs are for such persons as editors, business and professional persons, government officials, and labor leaders. This category is for programs of up to 18 months in duration.

Section 514.30 Camp Counselors

As discussed in Subpart A above, the Agency has determined that camp counselor programs are an appropriate addition to the matrix of exchange activities conducted under the Exchange Visitor Program. Such exchanges have a long history and have provided thousands of foreign nationals the opportunity to observe the United States and its people through their employment with domestic summer camp facilities.

Although the Agency has traditionally viewed these exchanges as a youth activity, upon review it appears appropriate to expand permissible participants to include *bona fide* youth workers and individuals demonstrating special skills. The Agency proposes that all participants be at least eighteen years of age and have not previously participated more than once in a camp counselor exchange. This latter requirement is proposed in an effort to ensure that as many persons as possible are recruited for these exchanges and that the participants are not utilized for staffing purposes inconsistent with exchange objectives.

Sponsors must conduct in-person interviews with all potential participants and secure references regarding the participant's suitability for a camp placement. Most importantly, sponsors must under no circumstance facilitate the entry of a participant for whom no camp placement has been arranged. The very nature of an exchange requires a prearranged placement. Recruitment of individuals and their "warehousing" in hotels awaiting placement arising from staff shortages is not viewed as an acceptable practice by the Agency. To ensure that placements are arranged in advance a placement report, reflecting the participant's name and placement, must be submitted to the Agency no later than July 1st of each program year.

Subpart C: Status of Exchange Visitors

Regulations proposed in this subpart govern various administrative chores relating to an exchange participant's visa status. At § 514.40, the Agency proposes criteria for termination of a program participant's exchange visitor status. This regulation directs the sponsor to terminate a participant for failure to maintain insurance coverage. Such provision is necessary to prompt compliance with the proposed insurance requirements. Sponsors may terminate an exchange participant for serious violation of sponsor program guidelines and directives. Sponsors shall terminate a participant due to his or her failure to pursue the activities for which sponsored.

At § 514.41 the Agency proposes regulations governing changes to a visitor's category of participation. Few participants request a change in their category of participation and the Agency has generally discouraged such action as a program matter. Recognizing that a change of category may often benefit both the participant and the Exchange Visitor Program, the Agency proposes that requests for such change be submitted to the Agency for approval. The Agency intends to approve only those requests which are due to unusual or exceptional circumstances. A change in category must be clearly consistent and closely related to the participant's original exchange objective. By way of illustration, a Ph.D. student participant may, upon a showing of unusual and exceptional circumstance, change to the research scholar category.

In an effort to simplify the visa status requirements for exchange participants, the Agency proposes that transfer of program transactions be facilitated by the sponsors involved without INS adjudication or Agency review. As set forth at § 514.42 sponsors seeking to facilitate a change of program for an exchange participant shall secure the participant's release from the original sponsor and notify the Agency by submitting a duly executed Form IAP–66 reflecting such transfer. In similar fashion, the mechanics of extending a participant's program have also been simplified.

The Agency proposes that sponsors extend a participant's program by executing a new Form IAP–66 which reflects the new program termination date. INS adjudication of this extension will not be required so long as the extension does not exceed the categorical duration of participation limitation. As illustration, a sponsor may extend a research participant's program, one year at a time, so long as the three year category limitation on research scholar programs is not exceeded. As set forth in § 514.43, the sponsor shall notify the Agency of this action by forwarding a duly executed Form IAP–66 reflecting such extension. In those circumstances in which an extension past the categorical duration of participation is sought, Agency approval in INS adjudication will be required.

Finally, the provisions governing application of the two-year home-country physical presence requirement are set forth at § 514.44. This long-standing program requirement is applicable to participants for whom government financing of the exchange was made or who have acquired skills for which there is a need in their home country. The Agency has developed, in cooperation with foreign governments, a listing of such skills. This "skills list" may be found at 49 FR 24194, *et seq.* (June 12, 1984). Revision of the skills list

will begin in the near future. Waiver of the two-year home country requirement is possible and provisions governing such waiver requests are also set forth in this regulation. Provisions addressing waiver procedures as well as the composition and functions of a Waiver Review Board are also set forth.

Subpart D: Sanctions

The Agency first promulgated regulations providing for sanctions for violations of the exchange Visitor Program regulations in 1978. The regulations were expanded in 1978 to provide additional procedural due process rights of those threatened with suspension or revocation for violations of the Exchange Visitor Program Designation Suspension and Revocation Board ("the Board").

That the Board has had to be convened only once since 1987 to hear a revocation case speaks highly of the thousands of institutions which have been designated over the years as exchange visitor program sponsors. Nevertheless, the Agency has long been hamstrung in its oversight of the Exchange Visitor Program by the absence of regulations providing for sanctions of less severity than suspension or revocation. As part of the overall regulatory reform of the Exchange Visitor Program, the Agency believes that the sanctions regulations need, on the one hand, to be strengthened so as to provide violations of the Exchange visitor Program regulations and, on the other hand, to provide the sponsors with clearly defined procedural due process rights. This will improve the Agency's managerial oversight and allow the Agency to move rapidly against a sponsor whose acts or omissions endanger the health, safety or welfare of a program participant.

As is true of all the Exchange Visitor Program regulations, the ultimate goals of the sanctions regulations are to further the foreign policy interest of the United States and to protect the health, safety and welfare of Exchange Visitor Program participants. A violation of the regulations may result in both of those goals being frustrated. For example, a secondary school student exchange program sponsor that willfully or negligently allows a teenage exchangee to come to the U.S. without first having placed the exchangee with a host family, or that fails to confirm transportation arrangements for the exchangee, may have endangered that teenager's health, safety and/or welfare. Should a teenager be injured in an accident or as a victim of a crime, it is not only a personal tragedy, but there well may be adverse foreign policy effects arising from the incident.

To hypothesize another situation, if a sponsor fails to ensure that a participant in an exchange visitor training program is covered by health and accident insurance, and the trainee is injured in the course of his or her training and requires extensive medical treatment for which the trainee is unable to pay, then not only does the health care provider suffer financially but the reputation of the Exchange Visitor Program suffers as well. Indeed, resulting claims made by the health care provider may well have adverse foreign policy effects.

Clearly, not all violations of the Exchange Visitor Program regulations are of equal gravity. The proposed regulations recognize that violations of the regulations range over a spectrum from, for example, an inadvertent, negligent failure to comply with a program reporting requirement, at one end of the spectrum, to a willful act endangering the health or safety of a program participant, at the other end of the spectrum. Recognition of this spectrum of violations is reflected in the various sanctions provided for in the proposed regulations. Like the spectrum of violations, the sanctions also cover a spectrum, ranging from "lesser sanctions" for less serious violations to revocation for the most serious violations. The proposed regulations provide procedural due process safeguards at each level of sanctioning. The sanctions fall into four categories.

1. Lesser Sanctions

For minor violations of the regulations, which interfere with the Agency's proper administration of the Exchange Visitor Program but do not rise to the level of endangering the health, safety or welfare of program participants or of bringing the Program or the Agency into notoriety or disrepute, the proposed regulations provide for the imposition of sanctions of less severity than suspension or revocation. Examples of such violations may include, but are not limited to, the following: Failure to timely provide the Agency with an annual report; failure to provide the Agency with specially requested information to which it is entitled under the regulations; failure to adequately safeguard Forms IAP–66; negligent misrepresentations made by a sponsor in its promotional literature. The proposed regulations provide that, with respect to such violations of the regulations, the Agency may, in its discretion, impose any or all of the following sanctions: A letter of reprimand, warning that repeated or persistent violations of the regulations may result in a suspension or revocation of the sponsor's designation, or a directive to the sponsors that it must reduce the scope of its exchange programs numerically, geographically, or in terms of the types of exchange programs it offers.

Upon being given notice that the agency is imposing such a sanction, the sponsor has the opportunity to submit to the Agency any arguments in explanation or mitigation of the alleged violation. The sponsor may request a conference to discuss its submission. However, the Agency is not required to grant such a conference. The Exchange Visitor Program Office, upon its review of such submission may, in its discretion, modify, withdraw, or continue the imposition of the sanctions.

2. Suspension

The proposed regulations provide that in all suspension actions, other than the summary suspension, the sponsor is given notice in writing that the Agency intends to suspend the sponsor's designation for a period not to exceed one hundred twenty (120) days, specifying the grounds for the suspension. Before the suspension takes effect, the sponsor has an opportunity to submit a response to the Agency, setting forth any reason as to why the Agency should not suspend, and may include any documentary evidence or affidavits in support thereof. After the Agency reviews the sponsor's submission, it notifies the sponsor of its decision on whether or not to effect the suspension. If the decision is to effect the suspension and of its right to a formal hearing before the Board.

The proposed regulations also set forth the sponsor's procedural rights before the Board. The key difference between the "summary suspension" and all other suspension proceedings is that in the former the suspension takes effect immediately upon notice being given to the sponsor, whereas in the latter the suspension does not take effect until the Board decides to effect the suspension after the completion of the appeal and hearing.

3. Summary Suspension

Current regulations provide for a form of summary suspension. 22 CFR 514.17(b). However, the current regulations require the Agency to give the sponsor at least ten days notice that it intends to suspend the designation. The suspension does not take effect until the Office of General Counsel considers and takes into account any response submitted by the sponsor. If the Office of General Counsel decides to

effect the suspension, then the sponsor may appeal to the Board, which must make a decision within ten working days from receipt of the appeal. Thus, the summary suspension is summary in name only; the process, even in the best of circumstances, is lengthy. The health, safety or welfare of a program participant might already have been endangered. Under current regulations the Agency is virtually powerless to act in a prompt and decisive manner.

In order to remedy this deficiency, the proposed regulations provide for a true summary suspension which empowers the Agency to send a sponsor a written notice of the Agency's intent to suspend the sponsor's designation for up to sixty (60) days. Prior to the suspension becoming effective, however, the sponsor has a right to submit a protest to the Agency setting forth any reason why its designation should not be suspended. The Agency will review the protest and decide whether or not to effect the suspension. If the decision is made to effect the suspension the sponsor may appeal the suspension to the Board. However, the suspension is not stayed during the pendency of the appeal.

The summary suspension, as is set forth in the proposed regulation, is to be used only in the most serious situations where the sponsor's acts of omission or commission could have the effect of endangering the health, safety or welfare of an exchange visitor program participant and the Agency deems that immediate action is necessary.

4. Revocation

For serious willful violations of the Exchange Visitor Program regulations or for the omission or commission or an act which has or could have the effect of endangering the health, safety or welfare of an exchange visitor, where the Agency concludes that a continuation of the sponsor's designation is detrimental to the Exchange Visitor Program a revocation of the sponsor's designation may be the most appropriate sanction. Revocation is also the only realistic sanction to impose on the sponsor who willfully or through gross negligence repeatedly violates the regulations and takes no meaningful steps to bring itself into compliance.

Whereas the current regulations require that revocation must be preceded by suspension, the proposed regulations eliminates that requirement. Revocation commences with the Agency giving the sponsor not less than thirty days notice in writing, specifying the grounds for such revocation and the effective date of the revocation. The grounds for the revocation shall be stated in the notice, and before the revocation may take effect the sponsor has an opportunity to submit a response to the Agency providing any information in explanation or mitigation of the violations charged.

Upon receipt of such submission, the Agency will review same and notify the sponsor, in writing, of its decision. The sponsor is also notified of its right to appeal the revocation and of its right to a formal hearing. Within ten days of its receipt of the notice effecting the revocation, the sponsor may file its appeal with the Board. The filing of the notice of appeal serves to stay the revocation pending the appeal. The proposed regulation set forth the procedural rights accorded the sponsor at the hearing before the board.

5. Denial of Application for Redesignation

Current regulations make no provision for an appeal by an applicant in those cases where the Agency denies approval of an application for designation of an exchange visitor program. The proposed regulation creates a right of appeal for the applicant whose application is denied by the Office of Exchange Visitor Program Services and gives to that applicant the same procedural due process protections as are granted to sponsors against whom sanctions are imposed.

The proposed regulations also set forth the composition of the Board, which remains the same as under current regulations and set forth in detail the powers of the Board in conducting hearings under this subpart.

Sponsors should also be aware that certain sanctions, other than those set forth in this section of the regulations, may be available. For example, 18 U.S.C. 10001 makes it a crime to knowingly and willingly make any false, fictitious or fraudulent statements or representations in any matter within the jurisdiction of any Agency of the United States.

Implementation Schedule

The Agency recognizes the impact of a major regulatory revision upon program sponsors. Accordingly, informed comment regarding implementation of these regulations is specifically requested.

The Agency anticipates that implementation upon promulgation of a final rule will not result in substantial disruption of sponsor operations. Provisions governing insurance requirements, however, may prove problematic. For this reason the Agency proposes that insurance requirements need not be met until the start of the 93–94 academic year.

Public Comment

The Agency is inviting comments from the public on the proposed regulations notwithstanding that it is under no legal requirement to do so. The designation of exchange visitor sponsors and administration of the Exchange Visitor Program are a foreign affairs function. The Administrative Procedure Act, 5 U.S.C. 553(a)(1) (1989), specifically exempts form application of the Act a "foreign affairs function of the United States."

In the interest of preserving its valuable working relationship with the exchange community, the Agency is providing a sixty-day period for written comments on the proposed regulations. In order to expedite review of the comments the Agency requests that interested parties submit five copies of their comments.

The Agency informally circulated a prior draft of the proposed regulations to some members of the exchange community and received informal comments in response. The Agency reviewed those comments and incorporated suggestions into these proposed regulations. If these parties wish further consideration of their position, or wish to influence the outcome of the final rule, they must submit written comments to the Agency in response to this proposal.

The information collection requirement contained in this regulation will be submitted to the Office of Management and Budget (OMB) for review and approval under the provision of the Paperwork Reduction Act.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The reporting and regulatory requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. The Agency has previously sought, and OMB has cleared, a portion of the reporting requirements set forth in this proposed rule, specifically those related to Forms IAP–66 (15 minutes), IAP–37 (1 hour) and IAP–87 (20 minutes per respondent). It is estimated that an additional one-time reporting

requirement will be imposed upon the currently designated 1,200 sponsors regarding their proposed obligation to seek redesignation. This burden will be approximately one hour per sponsor. Further, an annual reporting requirement regarding program activity will result in an estimated 30 minutes burden per sponsor.

Comments on this matter should be submitted to both the Agency and OMB and addressed as follows:

Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, Attn: USIA Desk Officer.

United States Information Agency, Office of the General Counsel, 301 4th St., SW., room 700, Washington, DC 20547, Attn: Stanley S. Colvin.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: September 30, 1992.

Alberto J. Mora,

General Counsel.

Accordingly, 22 CFR part 514 is revised to read as follows:

PART 514—EXCHANGE VISITOR PROGRAM

Subpart A—General Provisions

Subpart B—Specific Program Provisions

Subpart C—Status of Exchange Visitors

Subpart D—Sanctions

Subpart E—Termination and Revocation of Programs

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

Subpart A—General Provisions

§ 514.1 Purpose.

(a) The regulations set forth in this part implement the Mutual Educational and Cultural Exchange Act of 1961 (the "Act"). 22 U.S.C. 2451 (1988). The purpose of the Act is to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. Educational and cultural exchanges assist the Agency in furthering the foreign policy objectives of the United States. These exchanges are defined by section 102 of the Act and are limited to the activities that are described therein and are in compliance with the Immigration and Nationality Act.

(b) The Director of the United States Information Agency facilitates activities specified in the Act, in part, by designating public and private entities to act as sponsors of the Exchange Visitor Program. The purpose of the Program is to provide foreign nationals with opportunities to participate in educational and cultural programs in the United States and return home to share their experiences, and to encourage Americans to participate in educational and cultural programs in other countries. Exchange visitors enter the United States on a J visa. The regulations set forth in this subpart are applicable to all sponsors.

§ 514.2 Definitions.

Accredited educational institution means any publicly or privately operated primary, secondary, or post-secondary institution of learning duly recognized and declared as such by the appropriate authority of the state in which such institution is located; *provided, however,* That in addition to any state recognition, all post-secondary institutions shall also be accredited by a nationally recognized accrediting agency or association as recognized by the United States Secretary of Education but shall not include any institution whose offered programs are primarily vocational in nature.

Act means the Mutual Educational and Cultural Exchange Act of 1961, as amended.

Agency means the United States Information Agency.

Citizen of the United States means:

(1) An individual who is a citizen or permanent resident of the United States or one of its territories or possessions; or,

(2) A general or limited partnership created or organized under the laws of the United States, or of any State, the District of Columbia, or a territory or possession of the United States, of which a majority of the partners are citizens of the United States; or,

(3) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any state, the District of Columbia, or a territory or possession of the United States, which:

(i) Has its principal place of business in the United States, and

(ii) Has its shares or voting interests publicly traded on a U.S. stock exchange; or, if its shares or voting interests are not publicly traded on a U.S. stock exchange, it shall nevertheless be deemed to be a citizen of the United States if a majority of its officers, Board of Directors, and its shareholders are citizens of the United States; or,

(4) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or any state, the District of Columbia, or territory or possession of the United States, and

(i) Which is qualified with the Internal Revenue Service as a tax-exempt organization pursuant to § 501(c) of the Internal Revenue Code; and

(ii) Which has its principal place of business in the United States; and,

(iii) In which a majority of its officers and a majority of its Board of Directors or other like body vested with its management are citizens of the United States; or,

(5) An accredited college, university, or other post-secondary educational institution created or organized under the laws of the United States, or of any

State, including a county, municipality, or other political subdivision thereof, the District of Columbia, or of a territory or possession of the United States; or,

(6) An agency of the United States, or of any state or local government, the District of Columbia, or a territory or possession of the United States.

Consortium means a not-for-profit corporation or association formed by two or more accredited educational institutions for the purpose of sharing educational resources, conducting research, and/or developing new programs to enrich or expand the opportunities offered by its members.

Country of nationality or last legal residence means either the country of which the exchange visitor was a national at the time status as an exchange visitor was acquired or the last foreign country in which the visitor had a legal permanent residence before acquiring status as an exchange visitor.

Cross-cultural activity is an activity designed to promote exposure and interchange between exchange visitors and Americans so as to increase their understanding of each other's society, culture, and institutions. Examples of such activities are intercultural workshops, receptions for American and foreign faculty, educational field trips, international festivals, international conferences, and local community events. A cross-cultural activity is in addition to the principal activity of the exchange visitor's program (e.g., teaching, lecturing, training, studying, or demonstrating special skills).

Designation means the written authorization given by the Agency to an exchange visitor program applicant to conduct an exchange visitor program as a sponsor.

Director means the Director of the United States Information Agency or an employee of the Agency acting under a delegation of authority from the Director.

Exchange visitor means a foreign national who has been selected by a sponsor to participate in an exchange visitor program and who is seeking to enter or has entered the United States temporarily on a J–1 visa. The term does not include the visitor's immediate family.

Exchange Visitor Program means the international exchange program administered by the Agency to implement the Act by means of educational and cultural programs. When "exchange visitor program" is set forth in lower case, it refers to the individual program of a sponsor which has been designated by the Agency.

Exchange Visitor Program Services means the Agency staff delegated authority by the Director to administer the Exchange Visitor Program in compliance with the regulations set forth in this part.

Exchange visitor's government means the government of the country of the exchange visitor's nationality or the country where the exchange visitor has a legal permanent residence.

Financed directly means financed in whole or in part by the United States Government or the exchange visitor's government with funds contributed directly to the exchange visitor in connection with his or her participation in an exchange visitor program.

Financed indirectly means:

(1) Financed by an international organization, with funds contributed by either the United States or the exchange visitor's government for use in financing international educational and cultural exchanges, or

(2) Financed by an organization or institution with funds made available by either the United States or the exchange visitor's government for the purpose of furthering international educational and cultural exchange.

Form IAP–66 means a Certificate of Eligibility, a controlled document of the Agency.

Full course of study means enrollment in an academic program of classroom participation and study at an accredited educational institution as follows:

(1) Secondary school students shall satisfy the attendance and course requirements of the State in which the school is located;

(2) College and university students shall register for and complete a full course of study, as defined by the accredited educational institution in which the student is registered, unless exempted in accordance with § 514.23(f).

Graduate medical education or training means participation in a program in which the alien physician will receive graduate medical education or training, which generally consists of a residency or fellowship program involving health care services to patients, but does not include participation in a program involving observation, consultation, teaching or research in which there is no element or only incidental elements of patient care. This program may consist of a medical specialty, a directly related medical subspecialty, or both.

Home-country physical presence requirement means the requirement that an exchange visitor who is within the purview of section 212(e) of the Immigration and Nationality Act (substantially quoted in § 514.44) must reside and be physically present in the country of nationality or last legal permanent residence for an aggregate of at least two years following departure from the United States before the exchange visitor is eligible to apply for an immigrant visa or permanent residence, a nonimmigrant H visa as a temporary worker or trainee, or a nonimmigrant L visa as an intracompany transferee, or a nonimmigrant H or L visa as the spouse or minor child of a person who is a temporary worker or trainee or an intracompany transferee.

Immediate family means the alien spouse and minor unmarried children of an exchange visitor who are accompanying or following to join the exchange visitor and who are seeking to enter or have entered the United States temporarily on a J–2 visa or are seeking to acquire or have acquired such status after admission. For the purpose of these regulations, a minor is a person under the age of 21 years old.

J. visa means a non-immigrant visa issued pursuant to 8 U.S.C. 1101(a)(15)(J). A J–1 visa is issued to the exchange visitor. J–2 visas are issued to the exchange visitor's immediate family.

Non-specialty occupation means any occupation that is not a specialty occupation (q.v.). Non-specialty occupations range from unskilled occupations up to and including skilled occupations requiring at least two years training or experience.

On-the-job training means an individual's observation of and participation in given tasks demonstrated by experienced workers for the purpose of acquiring competency in such tasks.

Prescribed course of study means a non-degree academic program with a specific educational objective. Such course of study may include intensive English language training, classroom instruction, research projects, and/or academic training to the extent permitted in § 514.23.

Reciprocity means the participation of a United States citizen in an educational and cultural program in a foreign country in exchange for the participation of a foreign national in the Exchange Visitor Program. Where used herein, "reciprocity" shall be interpreted broadly; unless otherwise specified, reciprocity does not require a one-for-one exchange or that exchange visitors be engaged in the same activity. For example, exchange visitors coming to the United States for training in American banking practices and Americans going abroad to teach foreign nationals public administration would be considered a reciprocal exchange,

when arranged or facilitated by the same sponsor.

Responsible officer means the employee or officer of a designated sponsor who has been listed with the Agency as assuming the responsibilities outlined in § 514.11. The designation of alternate responsible officers is permitted and encouraged. The responsible officer and alternate responsible officers must be United States citizens or permanent residents.

Specialty occupation means an occupation that requires theoretical and practical application of a body of highly specialized knowledge to perform fully in the stated field of endeavor. It requires completion of a specified course of education, where attainment of such knowledge or its equivalent is the minimum competency requirement recognized in the particular field of endeavor in the United States. Some examples of specialized fields of knowledge are public and business administration, agricultural research, architecture, engineering, computer and physical sciences, accounting, and print and broadcast journalism.

Sponsor means a legal entity designated by the Director of the United States Information Agency to conduct an exchange visitor program.

Third party means an individual or organization to whom the sponsor has delegated partial responsibilities to carry out its Exchange Visitor Program obligations and responsibilities.

§ 514.3 Sponsor eligibility.

(a) Entities eligible to apply for designation as a sponsor of an exchange visitor program are:

(1) United States Local, State and Federal government agencies;

(2) International agencies or organizations of which the United States is a member and which have an office in the United States; or

(3) Reputable organizations which are "citizens of the United States," as that term is defined in § 514.2.

(b) To be eligible for designation as a sponsor, an entity is required to:

(1) Demonstrate, to the Agency's satisfaction, its ability to comply and remain in continual compliance with all provisions of part 514; and

(2) Meet at all times its financial obligations and responsibilities attendant to successful sponsorship of its exchange visitor program.

§ 514.4 Categories of participant eligibility.

Sponsors may select foreign nationals to participate in their exchange visitor programs. Participation by foreign nationals in an exchange visitor program is limited to individuals who shall be engaged in the following activities in the United States:

(a) *Student.* An individual who is:

(1) Studying in the United States:

(i) pursuing a full course of study at a secondary accredited educational institution;

(ii) pursuing a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited educational institution; or

(iii) engaged full-time in a prescribed course of study of up to 24 months duration conducted by a post-secondary accredited educational institution;

(2) Engaged in academic training as permitted in § 514.23(g); or

(3) Engaged in English language training at:

(i) a post-secondary accredited educational institution, or

(ii) an institute approved by or acceptable to the post-secondary accredited educational institution where the college or university student is to be enrolled upon completion of the language training.

(b) *Short-term scholar.* A professor, research scholar, or person with similar education or accomplishments coming to the United States on a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions.

(c) *Trainee.* An individual participating in a structured training program conducted by the selecting sponsor.

(d) *Teacher.* An individual teaching full-time in a primary or secondary accredited educational institution.

(e) *Professor.* An individual primarily teaching, lecturing, observing, or consulting at post-secondary accredited educational institutions, museums, libraries, or similar types of institutions. A professor may also conduct research, unless disallowed by the sponsor.

(f) *Research scholar.* An individual primarily conducting research, observing, or consulting in connection with a research project at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. The research scholar may also teach or lecture, unless disallowed by the sponsor.

(g) *Specialist.* An individual who is an expert in a field of specialized knowledge or skill coming to the Untied States for observing, consulting, or demonstrating special skills.

(h) *Other person of similar description.* An individual of description similar to those set forth in paragraphs (a) through (g) coming to the United States, in a program designated by the Agency under this category, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. The programs designated by the Agency in this category consist of:

(1) *International visitor.* An individual who is a recognized or potential leader, selected by the Agency for consultation, observation, research, training, or demonstration of special skills in the United States.

(2) *Government visitor.* An individual who is an influential or distinguished person, selected by a U.S. Federal, State, or local government agency for consultation, observation, training, or demonstration of special skills in the United States.

(3) *Camp counselor.* An individual selected to be a counselor in a summer camp in the United States who imparts skills to American campers and information about his or her country or culture.

§ 514.5 Application procedure.

(a) Any entity meeting the eligibility requirements set forth in § 514.3 may apply to the Agency for designation as a sponsor. Such application shall be made on Form IAP–37 ("Exchange Visitor Program Application") and filed with the Agency's Exchange Visitor Program Services.

(b) The application shall set forth, in detail, the applicant's proposed exchange program activity and shall demonstrate its prospective ability to comply with Exchange Visitor Program regulations.

(c) The applicant must provide:

(1) Evidence of legal status as a corporation, partnership, or other legal entity (e.g., charter, proof of incorporation, partnership agreement, as applicable) and current certificate of good standing;

(2) Evidence of financial responsibility as set forth at § 514.9(e);

(3) Evidence of accreditation if the applicant is a post-secondary educational institution;

(4) Evidence of licensure, if required by local, State, or Federal law, to carry out the activity for which it is to be designated;

(5) A resolution or directive by the applicant's governing body authorizing the application for sponsor designation; and

(6) Certification by the applicant that it and its responsible officer and alternate responsible officers are citizens of the United States as defined

at § 514.2 using the language set forth in appendix A.

(d) The Agency may request any additional information and documentation which its deems necessary to evaluate the application.

(e) An organization seeking designation should allow the Agency no less than six months to process its application for designation.

§ 514.6 Designation.

(a) Upon a favorable determination that the proposed exchange program meets all statutory and regulatory requirements, the Agency may, in its sole discretion, designate an entity meeting the eligibility requirements set forth in § 514.3 as an exchange visitor program sponsor.

(b) Designation shall confer upon the sponsor authority to engage in one or more activities specified in § 514.4. A sponsor shall not engage in activities not specifically authorized in its written designation.

(c) Designations are effective for a period of five years. In its discretion, the Agency may designate programs, including experimental programs, for less than five years.

(d) Designations are not transferable or assignable.

§ 514.7 Redesignation.

(a) Upon expiration of a given designation term, a sponsor may seek redesignation for another five-year term.

(b) To apply for redesignation, a sponsor shall submit to the Exchange Visitor Program Services a letter indicating its desire for redesignation.

(c) Request for redesignation shall be evaluated according to the criteria set forth at § 514.6(a) taking into account the sponsor's annual reports and other documents reflecting its record as an exchange visitor program sponsor.

(d) A sponsor seeking redesignation should apply to the Agency no less than four months prior to the expiration date of its designation.

§ 514.8 General program requirements.

(a) *Size of program.* Sponsors, other than Federal government agencies, shall have no less than five exchange visitors per calendar year.

(b) *Minimum duration of program.* Sponsors, other than federal government agencies, shall provide each exchange visitor, except short-term scholars, with a minimum period of participation in the United States of three weeks.

(c) *Reciprocity.* In the conduct of their exchange programs, sponsors shall make a good faith effort to achieve the fullest possible reciprocity in the exchange of persons.

(d) *Cross-cultural activities.* Sponsors shall offer or make available to exchange visitors cross-cultural activities both at and away from the site where the exchange activities are centered. The extent and types of the cross-cultural activities shall be determined by the needs and interests of the particular category of exchange visitors. Sponsors will be responsible to determine the appropriate type and number of cross-cultural programs for their exchange visitors. The Agency encourages sponsors to give their exchange visitors the broadest exposure to American society, culture and institutions.

§ 514.9 General Obligations of Sponsors.

(a) *Adherence to agency regulations.* Sponsors are required to adhere to all regulations set forth in part 514.

(b) *Legal status.* Sponsors shall maintain legal status. A change in a sponsor's legal status (e.g. partnership to corporation) shall require application for designation of the new legal entity.

(c) *Accrediation and licensure.* Sponsors shall remain in compliance with all local, state, federal, and professional requirements necessary to carry out the activity for which they are designated, including accreditation and licensure, if applicable.

(d) *Representations and disclosures.* Sponsors shall:

(1) Provide accurate and complete information, to the extent lawfully permitted, to the Agency regarding their exchange visitor programs and exchange visitors;

(2) Provide only accurate information to the public when advertising their exchange visitor programs or responding to public inquires;

(3) Provide literature to prospective exchange visitors which clearly explains the activities, costs, conditions, and restrictions of the program;

(4) Not use program numbers on any advertising materials or publications intended for general circulation; and

(5) Not represent that any program is endorsed, sponsored, or supported by the Agency or the United States Government, except for United States Government sponsors or exchange visitor programs financed directly by the United States Government to promote international educational exchanges. However, sponsors may represent that they are designated by the Agency as a sponsor of an exchange visitor program.

(e) *Financial responsibility.* (1) Sponsors shall maintain the financial capability to meet at all times their financial obligations and responsibilities attendant to successful sponsorship of their exchange visitor programs.

(2) The Agency may require non-government sponsors to provide evidence satisfactory to the Agency that funds necessary to fulfill all obligations and responsibilities attendant to sponsorship of exchange visitors are readily available and in the sponsor's control, including such supplementary or explanatory financial information as the Agency may deem appropriate such as, for example, audited financial statements.

(3) The Agency may require any non-government sponsor to secure a payment bond in favor of the Agency guaranteeing all financial obligations arising from the sponsorship of exchange visitors.

(f) *Staffing and support services.* Sponsors shall ensure:

(1) Adequate staffing and sufficient support services to administer their exchange visitor programs; and

(2) That their employees, officers, agents, and third parties involved in the administration of their exchange visitor programs are adequately qualified, appropriately trained, and comply with the Exchange Visitor Program regulations.

(g) *Appointment of responsible officer.* (1) The sponsor shall appoint a responsible officer and such alternate responsible officers as may be necessary to perform the duties set forth at § 514.11.

(2) The responsible officer and alternate responsible officers shall be employees or officers of the sponsor. The Agency may, however, in its discretion, authorize the appointment of an individual who is not an employee or officer to serve as an alternate responsible officer.

(3) The Agency may recommend or direct the replacement of the responsible officer or any alternate responsible officer as provided for in § 514.50.

(4) The Agency may limit the number of alternate responsible officers appointed by the sponsor.

§ 514.10 Program administration.

Sponsors are responsible for the effective administration of their exchange visitor programs. These responsibilities include:

(a) *Selection of exchange visitors.* Sponsors shall provide a system to screen and select prospective exchange visitors to ensure that they are eligible for program participation, and that:

(1) The program is suitable to the exchange visitor's background, needs, and experience; and

(2) The exchange visitor possesses sufficient proficiency in the English

language to participate in his or her program.

(b) *Pre-arrival information.* Sponsors shall provide exchange visitors with pre-arrival materials including, but not limited to, information on:

(1) The purpose of the Exchange Visitor Program;

(2) Home-country physical presence requirement;

(3) Travel and entry into the United States;

(4) Housing;

(5) Fees payable to the sponsor;

(6) Other costs that the exchange visitor will likely incur (e.g., living expenses) while in the United States;

(7) Health care and insurance; and

(8) Other information which will assist exchange visitors to prepare for their stay in the United States.

(c) *Orientation.* Sponsors shall offer orientation for all exchange visitors. Sponsors are encouraged to provide orientation for the exchange visitor's immediate family, especially those who are expected to be in the United States for more than one year. Orientation shall include, but not be limited to, information concerning:

(1) Life and customs in the United States;

(2) Local community resources (e.g., public transportation, medical centers, schools, libraries, recreation centers, and banks), to the extent possible;

(3) Available health care, emergency assistance, and insurance coverage;

(4) A description of the program in which the exchange visitor is participating;

(5) Rules that the exchange visitors are required to follow under the sponsor's program;

(6) Address of the sponsor and the name and telephone number of the responsible officer; and

(7) Address and telephone number of the Exchange Visitor Program Services of the Agency and a copy of the Exchange Visitor Program brochure outlining the regulations relevant to the exchange visitors.

(d) *Form IAP–66.* Sponsors shall ensure that only the responsible officer or alternate responsible officers issue Forms IAP–66.

(e) *Monitoring of exchange visitors.* Sponsors shall monitor, through employees, officers, agents, or third parties, the exchange visitors participating in their programs. Sponsors shall:

(1) Ensure that the activity in which the exchange visitor is engaged is consistent with the category and activity listed on the exchange visitor's Form IAP–66;

(2) Monitor the progress and welfare of the exchange visitor to the extent appropriate for the category; and

(3) Require the exchange visitor to keep the sponsor apprised of his or her address and telephone number, and maintain such information.

(f) *Requests by the agency.* Sponsors shall, to the extent lawfully permitted, furnish to the Agency within a reasonable time all information, reports, documents, books, files, and other records requested by the Agency on all matters related to their exchange visitor programs.

(g) *Inquiries and investigations.* Sponsors shall cooperate with any inquiry or investigation that may be undertaken by the Agency.

(h) *Retention of records.* Sponsors shall retain all records related to their exchange visitor program and exchange visitors for a minimum of three years.

§ 514.11 Duties of Responsible Officers.

Responsible officers shall train and supervise alternate responsible officers. Responsible officers and alternate responsible officers shall:

(a) *Knowledge of regulations and codebook.* Be thoroughly familiar with the Exchange Visitor Program regulations and the Agency's current *Codebook and Instructions for Responsible Officers.*

(b) *Advisement and assistance.* Ensure that the exchange visitor obtains sufficient advice and assistance to facilitate the successful completion of the exchange visitor's program.

(c) *Communications.* Conduct the official communications relating to the exchange visitor program with the Agency, the United States Immigration and Naturalization Service, or United States Department of State. Reference to the sponsor's program number shall be made on any correspondence with the Agency.

(d) *Custody of the Form IAP–66.* Act as custodian for the control, issuance, and distribution of Form IAP–66 as set forth in § 514.12.

§ 514.12 Control of Forms IAP–66.

Forms IAP–66 shall be used only for authorized purposes. To maintain adequate control of Forms IAP–66, responsible officers or alternate responsible officers shall:

(a) *Requests.* Submit written requests to the Agency for a one-year supply of Forms IAP–66, and allow four to six weeks for the distribution of these forms. The Agency has the discretion to determine the number of Forms IAP–66 to be sent to a sponsor. The Agency will take into consideration the current size of the program and the projected expansion of the program in the coming 12 months. If requested, the Agency will consult with the responsible officer prior to determining the number of Forms IAP–66 to be sent to the sponsor. Additional forms may be requested later in the year if needed by the sponsor.

(b) *Verification.* Prior to issuing Form IAP–66, verify that the exchange visitor:

(1) Is eligible, qualified, and accepted for the program in which he or she will be participating;

(2) Possesses adequate financial resources to complete his or her program; and

(3) Possesses adequate financial resources to support any accompanying dependents.

(c) *Issuance of Form IAP–66.* Issue the Form IAP–66 only so as to:

(1) Facilitate the entry of a new participant of the exchange visitor program;

(2) Extend the stay of an exchange visitor;

(3) Facilitate program transfer;

(4) Replace a lost or stolen Form IAP–66;

(5) Facilitate entry of an exchange visitor's alien spouse or minor unmarried children into the United States separately;

(6) Facilitate re-entry of an exchange visitor who has traveled outside the United States during the program; or

(7) Facilitate a change of category when permitted by the Agency.

(d) *Safeguards.* (1) Store Forms IAP–66 securely to prevent unauthorized use;

(2) Prohibit transfer of any blank Form IAP–66 to another sponsor or other person unless authorized in writing (by letter or facsimile) by the Agency to do so;

(3) Notify the Agency promptly by telephone (confirmed promptly in writing) or facsimile of the document number of any completed Form IAP–66 that is presumed stolen or any blank Form IAP–66 lost or stolen; and,

(4) Forward the completed Form IAP–66 only to an exchange visitor, either directly or via an employee, officer, or agent of the sponsor, or to an individual designated by the exchange visitor.

(e) *Accounting.* (1) Maintain a record of all Forms IAP–66 received and/or issued by the sponsor;

(2) Destroy damaged and unusable Forms IAP–66 on the sponsor's premises after making a record of such forms (e.g. forms with errors or forms damaged by a printer); and

(3) Request exchange visitors and prospective exchange visitors to return any unused Form IAP–66 sent to them and make a record of Forms IAP–66

which are returned to the sponsor and destroy them on the sponsor's premises.

§ 514.13 Notification requirements.

(a) *Change of circumstances.* Sponsors shall notify the Agency promptly in writing of any of the following circumstances:

(1) Change of its address, telephone, or facsimile number;

(2) Change in the composition of the sponsoring organization which affects its citizenship as defined by § 514.2;

(3) Change of the responsible officer or alternate responsible officers;

(4) A major change of ownership or control of the sponsor's organization;

(5) Change in financial circumstances which may render the sponsor unable to comply with its obligations as set forth in 512.9(e);

(6) Loss of licensure or accreditation;

(7) Loss or theft of Forms IAP–66 as specified at § 514.12(d)(3);

(8) Litigation related to the sponsor's exchange visitor program, when the sponsor is a party; and

(9) Termination of its exchange visitor program.

(b) *Serious problem or controversy.* Sponsors shall inform the Agency promptly by telephone (confirmed promptly in writing) or facsimile of any serious problem or controversy which could be expected to bring the Agency or the sponsor's exchange visitor program into notoriety or disrepute.

(c) *Status of exchange visitor.* Sponsors shall notify the Agency and the United States Immigration and Naturalization Service in writing when:

(1) The exchange visitor has completed or withdrawn from a program prior to the ending date on his or her Form IAP–66;

(2) The exchange visitor ceases to maintain exchange visitor status; or

(3) An exchange visitor's participation in the Exchange Visitor Program is terminated in accordance with § 514.40.

§ 514.14 Insurance.

(a) Sponsors shall require each exchange visitor to have insurance in effect which covers the exchange visitor for sickness or accident during the period of time that an exchange visitor participates in the sponsor's exchange visitor program. Minimum coverage shall provide:

(1) Medical benefits of at least $50,000 per accident or illness;

(2) Repatriation of remains in the amount of $7,500;

(3) Expenses associated with the medical evacuation of the exchange visitor to his or her home country in the amount of $10,000; and,

(4) A deductible not to exceed $500 per accident or illness.

(b) An insurance policy secured to fulfill the requirements of this section:

(1) May require a waiting period for pre-exisitng conditions which is reasonable as determined by current industry standards;

(2) May include provision for co-insurance under the terms of which the exchange visitor may be required to pay up to 25% of the covered benefits per accident or illness; and,

(3) Shall not unreasonably exclude coverage for perils inherent to the activities of the exchange program in which the exchange visitor participates.

(c) Any insurance policy secured to fulfill the above requirements must be underwritten by an insurance corporation having an A.M. Best rating of "A" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A" or above, a Standard & Poor's Claims-paying Ability rating of "AA" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating service as the Agency may from time to time specify. Insurance coverage backed by the full faith and credit of the government of the exchange visitor's home country shall be deemed to meet this requirement.

(d) Federal, state or local government agencies, state colleges and universities, and public community colleges may, if permitted by law, self-insure any or all of the above-required insurance coverage.

(e) At the request of a non-governmental sponsor of an exchange visitor program, and upon a showing that such sponsor has funds readily available and under its control sufficient to meet the requirements of this section, the Agency may permit the sponsor to self-insure or to accept full financial responsibility for such requirements.

(f) The Agency, in its sole discretion, may condition its approval of self-insurance or the acceptance of full financial responsibility by the non-governmental sponsor by requiring such sponsor to secure a payment bond in favor of the Agency guaranteeing the sponsor's obligations hereunder.

(g) An accompanying spouse or dependent of an exchange visitor is required to be covered by insurance in the amounts set forth in § 514.14(a) above. Sponsors shall inform exchange visitors of this requirement, in writing, in advance of the exchange visitor's arrival in the United States.

(h) An exchange visitor who fails to maintain the insurance coverage set forth above while a participant in an exchange visitor program or who makes a material misrepresentation to the sponsor concerning such coverage shall be deemed to be in violation of these regulations and shall be subject to termination as a participant.

(i) A sponsor shall terminate an exchange visitor's participation in its program if the sponsor determines that the exchange visitor or any accompanying spouse or dependent fails to remain in compliance with this section.

§ 514.15 Annual reports.

Sponsors shall submit an annual report to the Agency. Such report shall be filed on an academic or calendar year basis, as directed by the Agency, and shall contain the following:

(a) *Program report and evaluation.* A brief summary of the activities in which exchange visitors were engaged, including an evaluation of program effectiveness;

(b) *Reciprocity.* A description of the nature and extent of reciprocity occurring in the sponsor's exchange visitor program during the reporting year;

(c) *Cross-cultural activities.* A summary of the cross-cultural activities provided for its exchange visitors during the reporting year;

(d) *Proof of insurance.* Certification of compliance with insurance coverage requirements set forth in § 514.14.

(e) *Form IAP–66 usage.* A report of Form IAP–66 usage during the reporting year setting forth the following information:

(1) The total number of blank Forms IAP–66 received from the Agency during the reporting year;

(2) The total number of Forms IAP–66 voided or destroyed by the sponsor during the reporting year and the document numbers of such forms;

(3) The total number of Forms IAP–66 issued to potential exchange visitors that were returned to the sponsor or not used for entry into the United States; and

(4) The total number and document identification number sequence of all blank Forms IAP–66 in the possession of the sponsor on December 31 of the reporting year.

§ 514.16 Employment.

(a) Except as provided in § 514.23 and § 514.25, *infra*, the exchange visitor shall not engage in gainful employment that both produces income from U.S. sources and is unrelated to the exchange visitor's program.

(b) An exchange visitor who engages in unauthorized employment shall be deemed to be in violation of his or her lawful status and be subject to

termination as participant in an exchange visitor program.

(c) The acceptance of employment by an accompanying spouse or minor child of an exchange visitor is governed by Immigration and Naturalization Service regulations.

§ 514.17 Fees and charges. [Reserved]

Subpart B—Specific Program Provisions

§ 514.20 Professors and research scholars.

(a) *Introduction.* These regulations govern professors and research scholars, except:

(1) Alien physicians in graduate medical education or training, who are governed by regulations set forth at § 514.27; and

(2) Short-term scholars, who are governed by regulations set forth at § 514.21.

(b) *Purpose.* A primary purpose of the Exchange Visitor Program is to foster the exchange of ideas between Americans and foreign nationals and stimulate international collaborative teaching and research efforts. The exchange of professors and research scholars promotes interchange, mutual enrichment, and linkages between research and educational institutions in the United States and foreign countries. It does so by providing foreign professors and research scholars the opportunity to engage in research, teaching, and lecturing with their American colleagues, to participate actively in cross-cultural activities with Americans, and to ultimately to share their experiences and increased knowledge about the United States and their substantive fields.

(c) *Designation.* The Agency may, in its sole discretion, designate bona fide programs which offer foreign nationals the opportunity to engage in research, teaching, lecturing, observing, or consulting at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions in the United States.

(d) *Visitor eligibility.* An individual participating in a program which furthers the objectives under § 514.20(b) and whose activities are compatible with said objectives shall be eligible to participate in an exchange visitor program as a professor or research scholar. The exchange visitor's appointment to a position shall be temporary, even if the position itself is permanent. The individual shall not be on a tenure track.

(e) *Issuance of Form IAP–66.* The Form IAP–66 shall be issued only after the professor or research scholar has been accepted by the institution(s) where he or she will participate in an exchange visitor program.

(f) *Location of the exchange.* Professors or research scholars shall conduct their exchange activity at the location(s) listed on the Form IAP–66, which could be either at the location of the exchange visitor sponsor or the site of a third party facilitating the exchange. An exchange visitor may also engage in activities at locations not listed on the Form IAP–66 if such activities constitute occasional lectures or consultations as permitted by § 514.20(g).

(g) *Occasional lectures or consultations.* Professors and research scholars may participate in occasional lectures and short-term consultations without compensation for services, unless disallowed by the sponsor. Such lectures and consultations must be incidental to the exchange visitor's primary program activities. For the purpose of this section, reimbursement for travel, lodging and other out-of-pocket expenses for participating in conferences, seminars, meetings, and similar types of short-term activities shall not be considered compensation for services. If the occasional lectures and short-term consultations involve compensation for services, then the following criteria and procedures shall be satisfied:

(1) *Criteria.* The occasional lectures or short-term consultations shall:

(i) Be directly related to the objectives of the exchange visitor's program;

(ii) Be incidental to the exchange visitor's primary program activities; and

(iii) Not delay the completion date of the visitor's program.

(2) *Procedures.* (i) To obtain authorization to engage in occasional lectures or short-term consultations involving compensation for services, the exchange visitor shall present to the responsible officer:

(A) A letter from the offeror setting forth the terms and conditions of the offer to lecture or consult, including the duration, number of hours, field or subject, amount of compensation, and description of such activity; and

(B) A letter from his or her department head or supervisor recommending such activity and explaining how it would enhance international exchange.

(ii) The responsible officer shall review the letters required in § 514.20(g)(2)((i) above and make a written determination whether such activity is warranted and satisfies the criteria set forth in § 514.20(g)(1).

(h) *Category.* At the discretion of the responsible officer, professors may freely engage in research and research scholars may freely engage in teaching and lecturing, unless disallowed by the sponsor. Because these activities are so intertwined, such a change of activity will not be considered a change of category necessitating a formal approval by the responsible officer or reporting to the Agency. Any Form IAP–66 issued to the exchange visitor should reflect the current category of the exchange visitor, either professor or research scholar.

(i) *Duration of participation.* The exchange professor and research scholar shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which time shall not exceed three years. A change of category shall not extend the exchange visitor's period of participation beyond the permitted three-year maximum duration.

(j) *Extension of program.* Professors and research scholars may be considered for program extensions for up to 36 months as follows:

(1) *Six-month extension.* The responsible officer has the discretion to approve an extension of up to six months for professors or research scholars beyond the three year duration of participation permitted under § 514.20(i), when exceptional or unusual circumstances so warrant. The purpose of such an extension is to provide the professor or research scholar the necessary time to complete his or her teaching and research responsibilities. The responsible officer shall notify the Agency as required in § 514.43(c) when authorizing such an extension.

(2) *Additional extension.* The Agency, in its discretion, may approve an extension for a professor or research scholar for exceptional or unusual circumstances. Applications to the Agency for such extension should be filed no later than 45 days before the expiration of the exchange visitor's authorized stay. The application shall be in writing and shall:

(i) State the period of time the sponsor is requesting the extension for the exchange visitor; and

(ii) Include a letter from the department head or supervisor of the exchange visitor;

(A) Indicating the expected date of completion of the exchange program; and

(B) Providing a description of the exceptional or unusual circumstances which warrant such an extension.

§ 514.21 Short-term scholars.

(a) *Introduction.* These regulations govern scholars coming to the United States for a period of up to four months

to lecture, observe, consult, and to participate in seminars, workshops, conferences, study tours, professional meetings, or similar types of educational and professional activities.

(b) *Purpose.* The Exchange Visitor Program promotes the interchange of knowledge and skills among foreign American scholars. It does so by providing foreign scholars the opportunity to exchange ideas with their American colleagues, participate in educational and professional programs, confer on common problems and projects, and promote professional relationships and communications.

(c) *Designation.* The Agency may, in its sole discretion, designate bona fide programs which offer foreign nationals the opportunity to engage in short-term visits for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions.

(d) *Visitor eligibility.* A person participating in the Exchange Visitor Program under this section shall satisfy the definition of a short-term scholar as set forth in § 514.4.

(e) *Cross-cultural activities and orientation.* Due to the nature of such exchanges, sponsors of programs for short-term scholars shall be exempted from the requirements of providing cross-cultural activities and orientation as set forth in § 514.8(d) and § 514.10(c). However, sponsors are encouraged to provide such programs for short-term scholars whenever possible.

(f) *Location of the exchange.* The short-term scholar shall participate in the Exchange Visitor Program at the conferences, workshops, seminars, or other events or activities stated on his or her Form IAP–66.

(g) *Duration of participation.* The short-term scholar shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which time shall not exceed four months. Programs under this section are exempted from § 514.8(b) governing the minimum duration of program. Extensions beyond the duration of participation are not permitted under this category.

§ 514.22 Trainees.

(a) *Introduction.* These regulations govern all exchange visitor programs under which foreign nationals are provided with opportunities for receiving training in the United States. Regulations dealing with training opportunities which may, under certain conditions, be authorized for foreign students who are studying at post-secondary accredited educational institutions in the United States are found at § 514.23. Regulations governing medical trainees are found at § 514.27.

(b) *Purpose of Training.* The primary objectives of training are to enhance the exchange visitor's skills in his or her specialty or non-specialty occupation through participation in a structured training program and to improve the participant's knowledge of American techniques, methodologies, or expertise within the individual's field of endeavor. Such training programs are also designed to enable the exchange visitor trainee to understand better American culture and society and to enhance American knowledge of foreign cultures and skills by providing the opportunity for an open interchange of ideas between the exchange visitor trainees and their American counterparts. Use of the Exchange Visitor Program for employment or work purposes is strictly prohibited. For this reason the regulations in this section are designed to distinguish between receiving training, which is permitted, and gaining experience, which is not permitted unless as a component of a *bona fide* training program.

(c) *Designation of training programs.* (1) The Agency groups are occupations into specialty, non-specialty, or unskilled occupational categories. The Agency will designate training programs in specialty and non-specialty occupations. Training programs in unskilled occupations or occupations in other categories which the Agency may from time to time identify by publication in the Federal Register will not be designated. For purposes of these regulations, the Agency considers those occupations listed in the United States Department of Labor's "Schedule B" to be unskilled occupations, and the Agency will not designate training programs in those occupations. See appendix to part 514.

(2) For purposes of designation, the Agency will designate specialty and skilled non-specialty occupational training programs in any of the following occupational categories:

(i) Arts and Culture;
(ii) Information Media and Communications;
(iii) Education;
(iv) Business and Commercial;
(v) Banking and Financial;
(vi) Aviation;
(vii) Science, Mechanical and Industrial;
(viii) Construction and Building Trades;
(ix) Agricultural;
(x) Public Administration;
(xi) Training, Other (Specify).

(3) Once designated, the sponsor may provide training in any occupation falling within the designated category, if not otherwise prohibited from doing so. Sponsors shall provide training to exchange visitors only in the category or categories for which they have obtained Agency designation.

(d) *Obligations of training program sponsors.* (1) Sponsors designated by the Agency to provide training to foreign exchange visitors shall:

(ii) Possess and maintain the demonstrable competence to provide training in the subjects offered to exchange visitors.

(ii) Impart skill, knowledge, and competencies to the trainee through a structured program of activities supportive of the training experience. These may include, for example, classroom training, seminars, rotation through several departments, on-the-job training, and attendance at conferences, as appropriate.

(iii) Develop, prior to the start of training, a detailed training plan geared to defined objectives for each trainee or group of similarly-situated trainees.

(iv) Provide for continuous supervision and periodic evaluation of each trainee.

(v) Have available sufficient plant, equipment, and trained personnel to provide the training specified.

(2) Sponsors designated by the Agency to provide training to foreign exchange visitors shall not:

(i) Provide training in unskilled occupations; or

(ii) Place trainees in positions which are filled or would be filled by full-time or part-time employees.

(e) *Use of third parties.* (1) The sponsor may utilize the services of third parties in the conduct of the designated training program. If a third party is utilized, the sponsor and the third party shall execute a written agreement which delineates the respective obligations and duties of the parties, and specifically recites the third party's obligation to act in accordance with these regulations. The sponsor shall maintain a copy of such agreement in its files.

(2) The sponsor's use of a third party in the conduct of a designated training program does not relieve the sponsor of its obligation to comply, and to ensure the third party's compliance, with all applicable regulations. Any failure on the part of the third party to comply with all applicable regulations will be imputed to the sponsor.

(f) *Application for designation of training programs.* (1) An applicant for

designation as an exchange visitor training program shall demonstrate to the Agency its ability to comply with both the General Provisions set forth in subpart A, and the obligations of training sponsors set forth in § 514.22(d).

(2) (i) An applicant shall provide the Agency with documentary evidence of its competence to provide the training for which designation is sought.

(ii) If a third party will be used to conduct the training, documentary evidence of the third party's competence to conduct the training shall be included.

(iii) If the applicant intends to utilize the services of third parties to conduct the training, a copy of an executed third-party agreement or, if one has not yet been executed; an illustrative copy of the type of agreement the applicant intends to execute with third parties shall be submitted with the application.

(3) If the training program is accredited in accordance with § 514.22(n), the applicant shall include a copy of the accreditation in its application.

(4) The application shall include a certification that:

(i) The applicant will dedicate sufficient physical plant, equipment, and trained personnel to provide the training specified;

(ii) The training program is not designed to recruit and train aliens for employment in the United States;

(iii) The applicant will not place trainees in positions which displace full-time or part-time employees.

(5) As to each occupational division for which the applicant seeks designation, the applicant shall indicate whether it intends to provide training in specialty or non-specialty occupations, or both.

(6) In order to meet the requirements of this subsection and to evidence the applicant's competence to provide training, the applicant for designation may submit any one of the following types of training plans for each division for which designation is sought:

(i) If the applicant has already designed a structured training plan to use in the proposed exchange visitor program, a copy of such training plan may be submitted with the application;

(ii) If the applicant has not yet prepared a new training plan, but has been engaged previously in the type of training for which designation is being sought, the applicant may demonstrate its capability to conduct such training by submitting a copy of a previously used training plan;

(iii) If the applicant proposes to create individualized training plans for as yet unidentified trainees, then the applicant may submit a hypothetical training plan which illustrates the training the applicant proposes to provide.

(g) *The training plan.* Each training plan required to be prepared by a sponsor for each trainee pursuant to § 514.22(d)(1)(iii) above, shall include, at a minimum,

(1) a statement of the objectives of the training;

(2) the skills to be imparted to the trainee;

(3) a copy of the training syllabus or chronology;

(4) a justification for the utilization of on-the-job training to achieve stated course competencies; and,

(5) a description of how the trainee will be supervised and evaluated.

(h) *Agency consultation with experts.* The Agency may consult experts whenever its examination of a training plan or its evaluation of application for designation indicates the need for such expertise in making an evaluation.

(i) *Records.* Sponsors shall retain for three years all records pertaining to individual trainees, including training plans, trainee evaluations, and agreements with third parties. Such records shall be made available to the Agency upon the Agency's request.

(j) *Selection of trainees.* In addition to meeting the requirements of § 514.10(a), trainees shall be fully qualified to participate successfully in a structured training program at a level appropriate for the individual trainee's career development. However, such training shall not be duplicative of the trainee's prior training and experience.

(k) *Duration of participation.* The duration of participation shall correspond to the length of the program set forth in the sponsor's designation. The maximum period of participation in the Exchange Visitor Program for a trainee shall not exceed 18 months total.

(l) *Financial and program disclosure.* Sponsors shall provide trainees, prior to their arrival in the United States, with:

(1) A written statement which clearly states the stipend, if any, to be paid to the trainee;

(2) The costs and fees for which the trainee will be obligated;

(3) An estimate of living expenses during the duration of the trainee's stay, and;

(4) A summary of the training program which recites the training objectives and all significant components of the program.

(m) *Evaluation.* In order to ensure the quality of the training program, the sponsor shall develop procedures for the on-going evaluation of each training segment. Such evaluation shall include, as a minimum, semi-annual and concluding evaluation reports from the trainee and his or her immediate supervisor, signed by both parties. For training courses of less than nine months duration, evaluation reports are required, at a minimum, at mid-point and upon conclusion of the training course. Evaluation reports shall be kept in the custody of the sponsor for a period of three years and shall be made available to the Agency upon request.

(n) *Flight training.* (1) The Agency will consider the application for designation of a flight training program if such program complies with the above regulations, and, additionally,

(i) is, at the time of making said application, a Federal Aviation Administration certificated pilot school pursuant to title 14, Code of Federal Regulations, part 141; and

(ii) at the time of making said application is accredited as a flight training program by an accrediting agency which is listed in the current edition of the United States Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or is accredited as a flight training program by a member of the Council on Postsecondary Accreditation; or,

(iii) at the time of making said application has formally commenced the accreditation process with an accrediting agency which is listed in the current edition of the United States Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or with a member of the Council on Postsecondary Accreditation. If the application for designation is approved, such designation shall be for up to twelve months duration, with continued designation thereafter conditioned upon completion of the accreditation process.

(2) Notwithstanding the provisions of § 514.22 (k), *supra*, the maximum period of participation for exchange visitors in designated flight training programs shall not exceed 24 months total. Any request for extension of time in excess of that authorized under this subsection shall be made in accordance with § 514.43, *infra*.

§ 514.23 College and University students.

(a) *Purpose.* Programs under § 514.23 provide foreign students the opportunity to participate in a designated exchange program while studying at a degree-granting post-secondary accredited educational institution. Such exchanges are intended to promote mutual understanding by fostering the exchange of ideas between foreign students and their American counterparts.

(b) *Designation.* The Agency may, in its sole discretion, designate bona fide programs which offer foreign nationals the opportunity to study in the United States at post-secondary accredited educational institutions.

(c) *Selection criteria.* Sponsors select the college and university students who participate in their exchange visitor programs. Sponsors shall secure sufficient background information on the students to ensure that they have the academic credentials required for their program. Students are eligible for the Exchange Visitor Program, if at any time during their college studies in the United States:

(1) They or their program are financed directly or indirectly by:

(i) The United States Government;

(ii) The government of the student's home country; or

(iii) An international organization of which the United States is a member by treaty or statute;

(2) The programs are carried out pursuant to:

(i) An agreement between the United States Government and a foreign government; or

(ii) A written agreement between American and foreign educational institutions; or

(3) The exchange visitors are supported substantially by one or more scholarships from public or private organizations, rather than personal or family funds, for the purpose of promoting international educational exchanges.

(d) *Admissions requirement.* In addition to satisfying the requirements of § 514.10(a), sponsors shall ensure that the exchange visitor student has been admitted to the post-secondary accredited educational institution(s) listed on the Form IAP-66 before issuing the form.

(e) *Full course of study requirement.* Exchange visitor students shall pursue a full course of study at a post-secondary accredited educational institution in the United States as defined in § 514.2, except under the following circumstances:

(1) *Vacation.* During official school breaks and summer vacations if the student is eligible and intends to register for the next term.

(2) *Medical problem.* If the student is compelled to reduce or interrupt a full course of study due to an illness or medical condition and the student presents to the responsible officer:

(i) A written statement from a physician requiring or recommending an interruption or reduction in studies; and

(ii) Written approval by the academic dean or advisor to reduce the number of credits for the school term.

(3) *Academic difficulties.* If the student is compelled to pursue less that a full course of study for a term and:

(i) Receives a statement from the academic dean or advisor recommending that the student reduce his or her academic load to less than a full course of study due to academic difficulties; and

(ii) Obtains written approval from the responsible officer to pursue less than a full course of study for the term.

(4) *Non-degree program.* If the student is engaged full-time in a prescribed course of study in a non-degree program of up to 24 months duration conducted by a post-secondary accredited educational institution.

(5) *Academic training.* If the student is participating in authorized academic training in accordance with § 514.23(g).

(6) *Graduation.* If the student needs less than a full course of study to complete all degree requirements in the final term.

(f) *Academic training.* (1) A student may participate in academic training programs during his or her studies, without compensation for services, with the approval of the academic dean or advisor and the responsible officer.

(2) A student may participate in academic training programs during his or her studies, with compensation for services, and/or immediately after completion of the formal course work or graduation, with or without compensation, when the following criteria, procedures, and evaluation requirements are satisfied.

(i) *Criteria.* The exchange visitor:

(A) Has been a student in the exchange visitor program for the preceding nine months;

(B) Is participating in academic training that is directly related to his or her major field of study at the post-secondary accredited educational institution listed on his or her Form IAP-66;

(C) Is in good academic standing with the post-secondary accredited educational institution;

(D) Will participate in academic training programs for the period necessary to complete the goals and objectives of the training, provided that the total amount of time for an exchange visitor to participate in academic training programs shall not exceed any of the following:

(*1*) The time recommended by the academic dean or advisor and approved by the responsible officer;

(*2*) The period of the classroom instruction at the post-secondary accredited educational institution; and

(*3*) A total of 18 months for all academic training programs of the exchange visitor; and

(E) Receives approval in advance and in writing by the responsible officer for the duration and type of academic training.

(ii) *Procedures.* To obtain authorization to engage in academic training:

(A) The exchange visitor shall present to the responsible officer a letter of recommendation from the student's academic dean or advisor setting forth:

(*1*) The goals and objectives of the specific training program;

(*2*) A description of the training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training;

(*3*) Hope the training relates to the student's major field of study; and

(*4*) Why it is an integral or critical part of the academic program of the exchange visitor student.

(B) The responsible officer shall:

(*1*) Determine if and to what extent the student has previously participated in academic training as an exchange visitor student, in order to ensure the student does not exceed the period permitted in § 514.23(g);

(*2*) Review the letter required in section (A) above; and

(*3*) Make a written determination whether the academic training currently being requested is warranted, and the criteria set forth in § 514.23(g)(2)(i) are satisfied.

(iii) *Evaluation requirements.* To ensure the quality of the academic training program, the sponsor shall develop procedures to evaluate its effectiveness and appropriateness in achieving the stated goals and objectives.

(A) Evaluations shall include, at a minimum, mid-point and concluding evaluation reports from the exchange visitor and his or her immediate supervisor, signed by both parties.

(B) The responsible officer shall maintain copies of evaluation reports or have reasonable access to such reports.

(G) *Student employment.* Exchange visitor students may engage in part-time employment when the following criteria and conditions are satisfied.

(1) The student employment:

(i) Is pursuant to the terms of a scholarship, fellowship, or assistantship; or

(ii) Is necessary because of serious, urgent, and unforeseen economic

circumstances which have arisen since acquiring exchange visitor status.

(2) Exchange visitor students may engage in employment as provided in paragraph (g)(1) of this section if the:

(i) Student is in good academic standing at the post-secondary accredited educational institution;

(ii) Student continues to engaged in a full course of study, except for official school breaks and summer vacations;

(iii) Employment totals no more than 20 hours per week, except during official school breaks and summer vacations; and

(iv) The responsible officer has approved the specific employment in advance and in writing. Such approval may be valid up to twelve months, but is automatically withdrawn if the student's program is ferminated.

(h) *Duration of participation.* (1) *Degree of students.* Exchange visitor students who are in degree program shall be authorized to participate in the Exchange Visitor Program as long as they are either:

(i) Studying at the post-secondary accredited educational institution listed on their Form IAP–66 and are:

(A) Pursuing a full course of study as set forth in § 514.23(f), and

(B) Maintaining satisfactory advancement towards the completion of their academic program; or

(ii) Participating in an authorized academic training program as permitted in § 514.23(g).

(2) *Non-degree students.* Exchange visitors who are non-degree students shall be authorized to participate in the Exchange Visitor Program for up to 24 months, if they are:

(i) Participating full-time in a prescribed course of study conducted by a post-secondary accredited educational institution; and

(ii) Maintaining satisfactory advancement towards the completion of their academic program.

§ 514.24 Teachers.

(a) *Purpose.* These regulations govern exchange visitors who teach full-time in primary and secondary accredited educational institutions. Programs under § 514.24 promote the interchange of American and foreign teachers in public and private schools and the enhancement of mutual understanding between people of the United States and other countries. They do so by providing foreign teachers opportunities to teach in primary and secondary accredited educational institutions in the United States, to participate actively in cross-cultural activities with Americans in schools and communities, and to return home ultimately to share their experiences and their increased knowledge of the United States. Such exchanges enable visitors to understand better American culture, society, and teaching practices at the primary and secondary levels, and enhance American knowledge of foreign cultures, customs, and teaching approaches.

(b) *Designation.* The Agency may, in its discretion, designate bona fide programs satisfying the objectives in section (a) above as exchange visitor programs in the teacher category.

(c) *Visitor eligibility.* A foreign national shall be eligible to participate in an exchange visitor program as a full-time teacher if the individual:

(1) Meets the qualifications for teaching in primary or secondary schools in his or her country of nationality or last legal residence;

(2) Satisfies the standards of the U.S. state in which he or she will teach;

(3) Is of good reputation and character;

(4) Seeks to come to the United States for the purpose of full-time teaching at a primary or secondary accredited educational institution in the United States; and

(5) Has a minimum of three years of teaching or related professional experience.

(d) *Visitor Selection.* Sponsors shall adequately screen teachers prior to accepting them for the program. Such screening, in addition to the requirements of § 514.10(a), shall include:

(1) Evaluating the qualifications of the foreign applicants to determine whether the criteria set forth in § 514.24(c) are satisfied; and

(2) Securing references from colleagues and current or former employers, attesting to the teachers' good reputation, character and teaching skills.

(e) *Teaching position.* Prior to the issuance of the Form IAP–66, the exchange visitor shall receive a written offer and accept in writing a teaching position from the primary or secondary accredited educational institution in which he or she is to teach. Such position shall be in compliance with any applicable collective bargaining agreement, where one exists. The exchange visitor's appointment to a position at a primary or secondary accredited educational institution shall be temporary, even if the teaching position is permanent.

(f) *Program disclosure.* Before the program begins, the sponsor shall provide the teacher, in addition to what is required in § 514.10(b), with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program, including a written statement of the teaching requirements and related professional obligations; and

(3) A written statement which clearly states the compensation, if any, to be paid to the teacher and any other financial arrangements in regards to the exchange visitor program.

(g) *Location of the exchange.* The teacher shall participate in an exchange visitor program at the primary or secondary accredited educational institution(s) listed on his or her Form IAP–66 and at locations where the institution(s) are involved in official school activities (e.g., school field trips and teacher training programs).

(h) *Duration of participation.* The teacher shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed three years.

§ 514.25 Secondary School Students.

(a) *Introduction.* These regulations govern Agency designated exchange visitor programs under which foreign national secondary students are afforded the opportunity for up to one year of study in a United States public or private secondary school, while living with an American host family. As used herein, the term "sponsor" shall mean an Agency designated non-profit organization and its officers, employees, and agents; the term "student" shall mean a foreign national whose entry into the United States is for the purpose of study and attendance at a United States secondary school.

(b) *Program Sponsor Eligibility.* Eligibility for designation as a secondary school student exchange program sponsor shall be limited to;

(1) Organizations with tax-exempt status as conferred by the Internal Revenue Service pursuant to section 501(c)(3); and

(2) Organizations which are United States citizens as such terms is defined § 514.2.

(c) *Program Eligibility.* Secondary school students exchange programs designated by the Agency shall:

(1) Require all participants to pursue a full course of study at an accredited educational institution as such terms are defined in this Part of not less than one academic semester (or quarter

equivalency) nor more than two academic semesters (or quarter equivalency) duration; and

(2) Be conducted on an academic calendar year basis provided, however, participants may begin in the second semester of an academic year if specifically permitted to do so, in writing, by the school in which the exchange visitor is enrolled.

(d) *Program administration.* Sponsors shall ensure that all officers, employees, agents, and volunteers action on their behalf:

(1) Are adequately trained and supervised;

(2) Make no student placement outside a 150 mile radius of the home of an organizational representative authorized to act on the sponsors behalf in both routine and emergency matters arising from a student's participation in their exchange program;

(3) Ensure that no organizational representative act as both host family and area supervisor for any student participant whom that organizational representative may host;

(4) Maintain a monthly schedule of personal contact with the student, school, and host family; and

(5) Adhere to all regulatory provisions set forth in this Part and all additional terms and conditions governing program administration that the Agency may from time to time impose.

(e) *Student selection.* In addition to satisfying the requirements of § 514.10(a), sponsors shall ensure that all participants in a designated secondary school student exchange program:

(1) Are *bona fide* students who:

(i) Are secondary school students in their home country who have not completed more than eleven years of primary and secondary study, exclusive of kindergarten; or

(ii) Are at least 15 years of age but not more than 18 and six months years of age at the time of initial school enrollment;

(2) Demonstrate maturity, good character, and scholastic aptitude; and

(3) Have not previously participated in an academic year or semester secondary school student exchange program in the United States.

(f) *Student enrollment.* (1) Sponsors shall secure prior written acceptance for the enrollment of any student participant in a United States public or private secondary school. Such prior acceptance shall:

(i) Be secured from the school principal or other authorized school administrator of the school or school system that the student participant will attend; and

(ii) Include written arrangements concerning the payment of tuition or waiver thereof if applicable.

(2) Sponsors shall maintain copies of all written acceptances and make such documents available for Agency inspection upon request.

(3) Sponsors shall submit to the school placement a written English language summary of the student's complete academic course work prior to commencement of school.

(4) Under no circumstance shall a sponsor facilitate the entry into the United States of a student for whom a school placement has not been secured.

(5) Sponsors shall not facilitate the enrollment of more than five students in one school unless the school itself has requested, in writing, the placement of more than five students.

(g) *Student orientation.* In addition to the orientation requirements set forth herein at § 514.10, all sponsors shall provide students, prior to their departure from the home country, with the following information:

(1) A summary of all operating procedures, rules, and regulations governing student participation in the exchange program;

(2) A detailed profile of the school, family, and community in which the student is placed;

(3) A detailed summary of travel arrangements;

(4) An identification card which lists the student's name, United States home placement address and telephone number, and a telephone number which affords immediate contact with both the Agency and sponsor in case of emergency. Such cards may be provided in advance of home country departure or immediately upon entry into the United States.

(h) *Student extra-curricular activities.* Students may participate in school sanctioned and sponsored extra-curricular activities, including athletics, if such participation is:

(1) authorized by the local school district in which the student is enrolled; and

(2) authorized by the state authority responsible for determination of athletic eligibility, if applicable.

(i) *Student employment.* Students may not be employed on either a full or part-time basis but may accept sporadic or intermittent employment such as babysitting or yard work.

(j) *Host family selection.* Sponsors shall adequately screen all potential host families and at a minimum shall:

(1) provide potential host families with a detailed summary of the exchange program and the parameters of their participation, duties, and obligations;

(2) utilize a standard application form for all host family applicants which provides a detailed summary and profile of the host family, the physical home environment, family composition, and community environment;

(3) conduct an in-person interview with all family members residing in the home;

(4) ensure that the host family is capable of providing a comfortable and nurturing home environment;

(5) ensure that the host family is of good reputation and character by securing two personal references for each host family from the school or community, attesting to the host family's good reputation and character;

(6) ensure that the host family has adequate financial resources to undertake hosting obligations; and

(7) maintain a permanent record of application forms, evaluations, and interviews for all selected host families for a period of three years.

(k) *Host family orientation.* In addition to the orientation requirements set forth in § 514.10, sponsors shall:

(1) inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange program; and

(2) provide all selected host families with a copy of Agency promulgated Exchange Visitor Program regulations; and

(3) advise all selected host families of strategies governing cross cultural interaction and conduct workshops which will familiarize the host family with cultural differences and practices.

(l) *Host family placement.* (1) Sponsors shall secure, prior to the student's departure from the home country, a host family placement for each student participant. Sponsors shall not:

(i) Facilitate the entry into the United States for a student for whom a host family placement has not been secured; and

(ii) Place more than one student with a host family without the express prior written consent of the Agency.

(2) Sponsors shall advise both the student and host family, in writing, of the respective family compositions and backgrounds of each and shall facilitate and encourage the exchange of correspondence between the two prior to the student's departure from the home country.

(3) In the event of unforeseen circumstances which necessitate a change of host family placement, the sponsor shall document the reasons

necessitating such change and provide the Agency with an annual statistical summary reflecting the number and the reason for such change in host family placement.

(m) *Placement report.* In lieu of listing the name and address of the host family and school placement on a participant's Form IAP–66, sponsors must, no later then August 1st of each academic year, submit to the Agency a report of all academic year program participants. Such report shall set forth the participant's name, school, and host family placements. A report of semester participants entering United States schools during the January to June term shall be submitted to the Agency by December 15th of the preceding year.

§ 514.26 Specialists.

(a) *Introduction.* These regulations govern experts in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating special skills, except:

(1) Research scholars and professors, who are governed by regulations set forth at § 514.20;

(2) Short-term scholars, who are governed by regulations set forth at § 514.21; and

(3) Alien physicians in graduate medical education or training, who are governed by regulations set forth at § 514.27.

(b) *Purpose.* The Exchange Visitor Program promotes the interchange of knowledge and skills among foreign and American specialists, who are defined as experts in a field of specialized knowledge or skills, and who visit the United States for the purpose of observing, consulting, or demonstrating their special skills. It does so by providing foreign specialists the opportunity to observe American institutions and methods of practice in their professional fields, and to share their specialized knowledge with their American colleagues. The exchange of specialists promotes mutual enrichment, and furthers linkages among scientific institutions, government agencies, museums, corporations, libraries, and similar types of institutions. Such exchanges also enable visitors to better understand American culture and society and enhance American knowledge of foreign cultures and skills. This category is intended for exchanges with experts in areas, for example, as mass media communication, environmental science, youth leadership, international educational exchange, museum exhibitions, labor law, public administration, and library science. This category is not intended for experts covered by the exchange visitor categories listed in § 514.26(a)(1)–(3) above.

(c) *Designation.* The Agency may, in its discretion, designate bona fide programs satisfying the objectives in section (b) above as an exchange visitor program in the specialist category.

(d) *Visitor eligibility.* A foreign national shall be eligible to participate in an exchange visitor program as a specialist if the individual:

(1) Is an expert in a field of specialized knowledge or skill;

(2) Seeks to travel to the United States for the purpose of observing, consulting, or demonstrating his or her special knowledge or skills; and

(3) Does not fill a permanent or long-term position of employment while in the United States.

(e) *Visitor selection.* Sponsors shall adequately screen and select specialists prior to accepting them for the program, providing a formal selection process, including at a minimum:

(1) Evaluation of the qualifications of foreign nationals to determine whether they meet the definition of specialist as set forth in § 514.4(g); and

(2) Screening foreign nationals to ensure that the requirements of § 514.10(a) are satisfied.

(f) *Program disclosure.* Before the program begins, the sponsor shall provide the specialist, in addition to what is required in § 514.10(b), with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program; and

(3) A written statement which clearly states the stipend, if any, to be paid to the specialist.

(g) *Issuance of Form IAP–66.* The Form IAP–66 shall be issued only after the specialist has been accepted by the organization(s) with which he or she will participate in an exchange visitor program.

(h) *Location of the exchange.* The specialist shall participate in an exchange visitor program at the location(s) listed on his or her Form IAP–66.

(i) *Duration of participation.* The specialist shall be authorized to participate in the Exchange Visitors Program for the length of time necessary to complete the program, which shall not exceed one year.

§ 514.27 Alien physicians.

(a) *Purpose.* Pursuant to the Mutual Educational and Cultural Exchange Act, as amended by the Health Care Professions Act, Public Law 94–484, the Agency facilitates exchanges for foreign medical graduates seeking to pursue graduate medical education or training at accredited schools of medicine or scientific institutions. The Agency also facilitates exchanges of foreign medical graduates seeking to pursue programs involving observation, consultation, teaching, or research activities.

(b) *Clinical exchange programs.* The Educational Commission for Foreign Medical Graduates must sponsor alien physicians who wish to pursue programs of graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions if they:

(1) Have adequate prior education and training to participate satisfactorily in the program for which they are coming to the United States;

(2) Will be able to adapt to the educational and cultural environment in which they will be receiving their education or training;

(3) Have the background, needs, and experiences suitable to the program as required in § 514.10(a)(1);

(4) Have competency in oral and written English;

(5) Have passed either Parts I and II of the National Board of Medical Examiners Examination, the Foreign Medical Graduate Examination in the Medical Sciences, the United States Medical Licensing Examination, Step I and Step II, or the Visa Qualifying Examination (VQE) prepared by the National Board of Medical Examiners, administered by the Educational Commission for Foreign Medical Graduates. N.B. Graduates of a school of medicine accredited by the Liaison Committee on Medical Education is exempted by law from the requirement of passing either Parts I and II of the National Board of Medical Examiners Examination or the Visa Qualifying Examination (VQE); and,

(6) Provide a statement of need from the government of the country of their nationality or last legal permanent residence. Such statement must provide written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien physician seeks to acquire and shall be submitted to the Educational Commission for Foreign Medical Graduates by the participant's government. The statement of need must bear the seal of the concerned government and be signed by a duly designated official of the government. The text of such statement of need shall read as follows:

Name of applicant for Visa: _____. There currently exists in (Country) a need for qualified medical

practitioners in the specialty of _____. (Name of applicant for Visa) has filed a written assurance with the government of this country that he/she will return to this country upon completion of training in the United States and intends to enter the practice of medicine in the specialty for which training is being sought.

Stamp (or Seal and signature) of issuing official of named country.
Dated:_____

_____
Official of named Country.

(c) *Non-clinical exchange programs.* (1) A United States university or academic medical center which has been designated an exchange visitor program by the Director of the United States Information Agency is authorized to issue From IAP–66 to alien physicians to enable them to come to the United States for the purposes of observation, consultation, teaching, or research if:

(i) The responsible officer or duly designated alternate of the exchange visitor program involved signs and appends to the Form IAP–66 a certification which states "this certifies that the program in which (name of physician) is to be engaged is solely for the purpose of observation, consultation, teaching, or research and that no element of patient care is involved" or,

(ii) The dean of the involved accredited United States medical school or his or her designee certifies to the following five points and such certification is appended to the Form IAP–66 issued to the prospective exchange visitor alien physician:

(A) The program in which (name of physician) will participate is predominantly involved with observation, consultation, teaching, or research.

(B) Any incidental patient contact involving the alien physician will be under the direct supervision of a physician who is a U.S. citizen or resident alien and who is licensed to practice medicine in the State of _____.

(C) The alien physician will not be given final responsibility for the diagnosis and treatment of patients.

(D) Any activities of the alien physician will conform fully with the State licensing requirements and regulations for medical and health care professionals in the State in which the alien physician is pursuing the program.

(E) Any experience gained in this program will not be creditable towards any clinical requirements for medical specialty board certification.

(2) The Educational Commission for Foreign Medical Graduates may also issue Form IAP–66 to alien physicians who are coming to the United States to participate in a program of observation, consultation, teaching, or research provided the required letter of certification as outlined in this paragraph is appended to the Form IAP–66.

(d) *Public health and preventive medicine programs.* A United States university, academic medical center, school of public health, or other public health institution which has been designated as an exchange visitor program by the Director of the United States Information Agency is authorized to issue Form IAP–66 to alien physicians to enable them to come to the United States for the purpose of entering into those programs which do not include any clinical activities involving direct patient care. Under these circumstances, the special eligibility requirements listed in paragraphs _____ and _____ of this section need not be met.

The responsible officer or alternate responsible officer of the exchange visitor program involved shall append a certification to the Form IAP–66 which states:

This certifies that the program in which (name of physician) is to be engaged does not include any clinical activities involving direct patient care.

(e) *Duration of participation.* (1) The duration of an alien physician's participation in a program of graduate medical education or training is limited to the time typically required to complete such program. Duration shall be determined by the Director of the United States Information Agency at the time of the alien physician's entry into the United States. Such determination shall be based on criteria established in coordination with the Secretary of Health and Human Services and which take into consideration the requirements of the various medical specialty boards as evidenced in the Directory of Medical Specialties published by Marquis Who's Who for the American Board of Medical Specialties.

(2) Duration of participation is limited to seven years unless the alien physician has demonstrated to the satisfaction of the Director that the country to which the alien physician will return at the end of such specialty education or training has an exceptional need for an individual with the additional qualifications.

(3) Subject to the limitations set forth above duration of participation may, for good cause shown, be extended beyond the period of actual training or education to include the time necessary to take an examination required for certification by a specialty board.

(4) The Director may include within the duration of participation a period of supervised medical practice in the United States if such practice is an eligibility requirement for certification by a specialty board.

(i) Alien physicians shall be permitted to undertake graduate medical education or training in a specialty or subspecialty program whose board requirements are not published in the Director of Medical Specialists if the Board requirements are certified to the Director and to the Educational Commission for Foreign Medical Graduates by the Executive Secretary of the cognizant component board of the American Board of Medical Specialties.

(ii) The Director may, for good cause shown, grant an extension of the program to permit an alien physician to repeat one year of clinical medical training.

(5) The alien physician must furnish the Attorney General each year with an affidavit (Form I–644) that attests the alien physician:

(i) Is in good standing in the program of graduate medical education or training in which the alien physician is participating, and

(ii) Will return to the country of his nationality or last legal permanent residence upon completion of the education or training for which he came to the United States.

(f) *Change of program.* The alien physician may, once and not later than two years after the date the alien physician enters the United States as an exchange visitor or acquires exchange visitor status, change his designated program of graduate medical education or training if the Director approves the change and if the requirements of paragraphs 514.27 (b) and 514.27 (e) of this section are met for the newly designated specialty.

(g) *Applicability of Section 212(e) of the Immigration and Nationality Act.* (1) Any exchange visitor physician coming to the United States on or after January 10, 1977 for the purpose of receiving graduate medical education or training is automatically subject to the two-year home-country physical presence requirement of section 212(e) of the Immigration and Nationality Act, as amended. Such physicians are not eligible to be considered for section 212(e) waivers on the basis of "No Objection" statements issued by their governments.

(2) Alien physicians coming to the United States for the purpose of observation, consultation, teaching, or research are not automatically subject to the two-year home-country physical presence requirement of section 212(e) of the Immigration and Nationality Act,

as amended, but may be subject to this requirement if they are governmentally financed or pursuing a field of study set forth on their countries' Exchange Visitor Skills List. Such alien physicians are eligible for consideration of waivers under section 212(e) of the Immigration and Nationality Act, as amended, on the basis of "No Objection" statements submitted by their governments in their behalf through diplomatic channels to the Director of the United States Information Agency.

§ 514.28 International Visitors.

(a) *Purpose.* The international visitor category is for the exclusive use of the Agency. Programs under § 514.28 are for foreign nationals who are recognized or potential leaders and are selected by the Agency to participate in observation tours, discussions, consultation, professional meetings, conferences, workshops, and travel. These programs are designed to enable the international visitors to better understand American culture and society and contribute to enhanced American knowledge of foreign cultures. The category is for people-to-people programs which seek to develop and strengthen professional and personal ties between key foreign nationals and Americans and American institutions.

(b) *Selection.* The Agency and third parties assisting the Agency shall adequately screen and select prospective international visitors to determine compliance with § 514.10(a) and the visitor eligibility requirements set forth below.

(c) *Visitor eligibility.* An individual participating in an exchange visitor program as an international visitor shall be:

(1) Selected by the Agency;

(2) Engaged in consultation, observation, research, training, or demonstration of special skills; and

(3) A recognized or potential leader in a field of specialized knowledge of skill.

(d) *Program disclosure.* At the beginning of the program, the sponsor shall provide the international visitor with:

(1) Information on the length and location(s) of his or her exchange visitor program; and

(2) A summary of the significant components of the program.

(e) *Issuance of Form IAP–66.* The Form IAP–66 shall be issued only after the international visitor has been selected by the Agency.

(f) *Location of the exchange.* The international visitor shall participate in an exchange visitor program at locations approved by the Agency.

(g) *Duration of participation.* The international visitor shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed one year.

§ 514.29 Government visitors.

(a) *Purpose.* The government visitor category is for the exclusive use of the U.S. federal, state, or local government agencies. Programs under § 514.29 are for foreign nationals who are recognized as influential or distinguished persons, and are selected by U.S. federal, state, or local government agencies to participate in observation tours, discussions, consultation, professional meetings, conferences, workshops, and travel. These are people-to-people programs designed to enable government visitors to better understand American culture and society, and to contribute to enhanced American knowledge of foreign cultures. The objective is to develop and strengthen professional and personal ties between key foreign nationals and Americans and American institutions. The government visitor programs are for such persons as editors, business and professional persons, government officials, and labor leaders.

(b) *Designation.* The Agency may, in its sole discretion, designate as sponsors U.S. federal, state, and local government agencies which offer foreign nationals the opportunity to participate in people-to-people programs which promote the purpose as set forth in (a) above.

(c) *Selection.* Sponsors shall adequately screen and select prospective government visitors to determine compliance with § 514.10(a) and the visitor eligibility requirements set forth below.

(d) *Visitor eligibility.* An individual participating in an exchange visitor program as a government visitor shall be:

(1) Selected by a U.S. federal, state, and local government agency;

(2) Engaged in consultation, observation, training, or demonstration of special skills; and

(3) An influential or distinguished person.

(e) *Program disclosure.* Before the beginning of the program, the sponsor shall provide the government visitor with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program; and

(3) A written statement which clearly states the stipend, if any, to be paid to the government visitor.

(f) *Issuance of Form IAP–66.* The Form IAP–66 shall be issued only after the government visitor has been selected by a U.S. federal, state, or local government agency and accepted by the private and/or public organization(s) with whom he or she will participate in the exchange visitor program.

(g) *Location of the exchange.* The government visitor shall participate in an exchange visitor program at the locations listed on his or her Form IAP–66.

(h) *Duration of participation.* The government visitor shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed eighteen months.

§ 514.30 Camp Counselors.

(a) *Introduction.* In order to promote diverse opportunities for participation in educational and cultural exchange programs, the Agency designates exchange sponsors to facilitate the entry of foreign nationals to serve as counselors in U.S. summer camps. These programs promote international understanding by improving American knowledge of foreign cultures while enabling foreign participants to increase their knowledge of American culture. The foreign participants are best able to carry out this objective by serving as counselors per se, that is, having direct responsibility for supervision of groups of American youth and of activities that bring them into interaction with their charges. While it is recognized that some chores are an essential part of camp life for all counselors, this program is not intended to assist American camps in bringing in foreign nationals to serve as administrative personnel, cooks, or menial laborers, such as dishwashers or janitors.

(b) *Participant eligibility.* Participation in camp counselor exchange programs is limited to foreign nationals who:

(1) Are at least 18 years of age;

(2) Are bona fide youth workers, students, teachers, or individuals with specialized skills; and

(3) Have not previously participated more than once in a camp counselor exchange.

(c) *Participant selection.* In addition to satisfying the requirements in § 514.10(a), sponsors shall adequately screen all international candidates for camp counselor programs and at a minimum:

(1) Conduct an in-person interview; and

(2) Secure references from a participant's employer or teacher

regarding his or her suitability for participation in a camp counselor exchange.

(d) *Participant orientation.* Sponsors shall provide participants, prior to their departure from the home country, detailed information regarding:

(1) Duties and responsibilities relating to their service as a camp counselor;

(2) Contractual obligations relating to their acceptance of a camp counselor position; and

(3) Financial compensation for their service as a camp counselor.

(e) *Participant placements.* Sponsors shall place eligible participants at camping facilities which are:

(1) Accredited;

(2) A member in good standing of the American Camping Association;

(3) Officially affiliated with a nationally recognized non-profit organization; or

(4) Have been inspected, evaluated, and approved by the sponsor.

(f) *Participant compensation.* Sponsors shall ensure that international participants receive pay and benefits commensurate with those offered to their American counterparts.

(g) *Participant supervision.* Sponsors shall provide all participants with a phone number which allows 24 hours immediate contact with the sponsor.

(h) *Program administration.* Sponsors shall:

(1) Comply with all provisions set forth in Subpart A of this part;

(2) Not facilitate the entry of any participant for a program of more than four months duration; and

(3) Under no circumstance facilitate the entry into the United States of a participant for whom a camp placement has not been pre-arranged.

(i) *Placement report.* In lieu of listing the name and address of the camp facility at which the participant is placed on Form IAP-66, sponsors shall submit to the Agency, no later than July 1st of each year, a report of all participant placements. Such report shall reflect the participant's name and camp placement.

Subpart C—Status of Exchange Visitors

§ 514.40 Termination of exchange visitor status.

A sponsor shall terminate an exchange visitor's participation in its program when the exchange visitor:

(a) Fails to pursue the activities for which he or she was admitted to the United States;

(b) Is unable to continue, unless otherwise exempted pursuant to these regulations;

(c) Violates the Exchange Visitor Program regulations and/or the sponsor's rules governing the program, if, in the sponsor's opinion, termination is warranted;

(d) Fails to maintain the insurance coverage required under § 514.14 of these regulations; or,

(e) Engages in unauthorized employment.

§ 514.41 Change of category.

(a) The Agency may, in its discretion, permit an exchange visitor to change his or her category of exchange participation. Any change in category must be clearly consistent with and closely related to the participant's original exchange objective and necessary due to unusual or exceptional circumstances.

(b) A request for change of category along with supporting justification must be submitted to the Agency by the participant's sponsor. Upon Agency approval the sponsor shall issue to the exchange visitor a duly executed Form IAP-66 reflecting such change of category and provided a notification copy of such form to the Agency.

§ 514.42 Transfer of program.

(a) Program sponsors may permit an exchange visitor to transfer from one designated program to another designated program. The responsible officer of the program to which the exchange visitor is transferring must:

(1) Verify the exchange visitor's visa status; and

(2) Obtain, prior to transfer, a release signed by the responsible officer of the exchange visitor's current sponsor.

(b) The responsible officer of the program to which the exchange visitor is transferring shall issue to the exchange visitor a duly executed Form IAP-66 reflecting such transfer and provide a notification copy of such form to the Agency.

§ 514.43 Extension of program.

(a) Responsible officers may, pursuant to the provisions set forth in this section, extend an exchange visitor's participation in the Exchange Visitor Program.

(b) Responsible officers shall, under no circumstance, authorize an extension which would permit an exchange visitor to exceed the permissible period of participation authorized for his or her specific category.

(c) A responsible officer extending the program of an exchange visitor shall issue to the exchange visitor a duly executed Form IAP-66 reflecting such extension and provide a notification copy of such form to the Agency.

(d) An exchange visitor seeking a program extension in excess of that authorized for his or her specific category of participation shall:

(1) Adequately illustrate why exceptional or unusual circumstances justify such extension;

(2) Secure the prior written approval of the Agency for such extension; and

(3) Apply to the United States Immigration and Naturalization Service for approval of such extension.

§ 514.44 Two-Year Home-country physical presence requirement.

(a) **Statutory Basis for Rule.** § 212(e) of the Immigration and Nationality Act, as amended, provides in substance as follows:

(1) No person admitted under § 101(a)(15)(J) or acquiring such status after admission

(i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the United States Government or by the government of the country of his nationality or of his last legal permanent residence;

(ii) who at the time of admission or acquisition of status under § 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged [See "Exchange Visitor Skills List", 49 FR 24194, *et seq.* (June 12, 1984) as amended];

(iii) who came to the United States or acquired such status in order to receive graduate medical education or training shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last legal permanent residence for an aggregate of at least two years following departure from the United States.

(2) Upon the favorable recommendation of the Director of the United States Information Agency, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after the latter has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen

of the United States or a legal permanent alien), or that the alien cannot return to the country of his nationality or last legal permanent resident because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the national interest.

(3) Except in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, the Attorney General, upon the favorable recommendation of the Director of the United States Information Agency, may also waive such two-year foreign residency requirement in any case in which the foreign country of the alien's nationality or last legal permanent residence has furnished the Director of the United States Information Agency a statement in writing that it has no objection to such waiver in the case of such alien.

(b) *Request for waiver on the basis of exceptional hardship or probable persecution on account of race, religion, or political opinion.* (1) An exchange visitor who seeks a waiver of the two-year home-country physical presence requirement on the grounds that such requirement would impose exceptional hardship upon the exchange visitor's spouse or child (if such spouse of child is a citizen of the United States or a legal permanent resident alien), or on the grounds that such requirement would subject the exchange visitor to persecution on account of race, religion, or political opinion, shall submit the application for waiver (INS Form ~~I-~~612) to the District Office of the Immigration and Naturalization Service having administrative jurisdiction over the exchange visitor's place of temporary residence in the United States, or, if the exchange visitor has already departed the United States, to the district Office having administrative jurisdiction over the exchange visitor's last legal place of residence in the United States.

(2)(i) If the Commissioner of Immigration and Naturalization Service ("Commissioner") determines that compliance with the two-year home-country physical presence requirement would impose exceptional hardship upon the spouse or child of the exchange visitor, or would subject the exchange visitor to persecution on account of race, religion, or political opinion, the Commissioner shall transmit a copy of his determination together with a summary of the details of the expected hardship or persecution, to the Waiver Review Branch, office of Exchange Visitor Program Services, in the Agency's Office of General Counsel.

(ii) With respect to those cases in which the Commissioner has determined that compliance with the two-year home-county physical presence requirement would impose exceptional hardship upon the spouse or child of the exchange visitor, the Waiver Review Branch shall review the Commissioner's determination, together with the supporting evidence accompanying it, make a recommendation, and forward it to the Commissioner. If deem appropriate the Agency may request the views of each of the exchange visitors sponsors concerning the waiver application. Except as set forth in § 514.44(e)(2), *infra*, the recommendation of the Waiver Review Branch shall constitute the final decision of the Agency and such recommendation shall be forwarded to the Commissioner.

(iii) With respect to those cases in which the Commissioner has determined that compliance with the two-year home-country physical presence requirement would subject the exchange visitor to persecution on account of race, religion, or political opinion, the Waiver Review Branch shall review the Commissioner's determination, together with the supporting evidence accompanying it, and after consulting thereon with the Bureau of Human Rights and Humanitarian Affairs of the United States Department of State, make a recommendation, and forward such recommendation to the Commissioner. Except as set forth in § 514.44(e)(2), *infra*, the recommendation of the Waiver Review Branch shall constitute the final decision of the Agency and such recommendation shall be forwarded to the Commissioner.

(c) *Requests for waiver made by an interested United States Government agency.* If an exchange visitor is a participant in an exchange visitor program sponsored by or of interest to an agency of the United States Government, said agency may apply to the Waiver Review Branch for a waiver of the two-year home-country physical presence requirement on the grounds that the granting of the waiver would be in the national interest and the exchange visitor's compliance with said requirement would be detrimental to a program or activity of interest to that agency. The application shall identify by name or location the organization which will utilize the exchange visitor's services and the name and address of the exchange visitor in the United States. The Waiver Review Branch shall review the application and forward its recommendation to the Commissioner. Except as set forth in § 514.44(e)(2), *infra*, the recommendation of the Waiver Review Branch shall constitute the final decision of the Agency and such recommendation shall be forwarded to the Commissioner.

(d) *Requests for waiver made on the basis of a statement from the exchange visitor's home country that it has no objection to the waiver.* (1) Applications for waiver of the two-year home-country physical requirement may be supported by a statement of no objection by the exchange visitor's country of nationality of last legal permanent residence. The statement of no objection shall be directed to the Director through diplomatic channels; i.e., from the country's Foreign Office to the Agency through the U.S. Mission in the foreign country concerned, or through the foreign country's head of mission or duly appointed designee in the United States to the Director in the form of a diplomatic note. This note shall include applicant's full name, date and place of birth, and present address. Upon receipt of the no objection statement, the Waiver Review Branch shall instruct the applicant to complete a data sheet and to provide all Forms IAP-66 and the data sheet to the Waiver Review Branch. If deemed appropriate, the Agency may request the views of each of the exchange visitor's sponsors concerning the waiver application.

(2) Except as set forth in § 514.44(e)(2), *infra*, the recommendation of the Waiver Review Branch shall constitute the final decision of the Agency and such recommendation shall be forwarded to the Commissioner.

(3) An exchange visitor who is a graduate of a foreign medical school and who is pursuing a program in graduate medical education or training in the United States is prohibited under section 212(e) of the Immigration and Nationality Act from applying for a waiver on the basis of no objection from his or her country of nationality or last legal permanent residence.

(e) *The Exchange Visitor Waiver Review Board.* (1) The Exchange Visitor Waiver Review Board ("Board") shall consist of the following Agency officers:

(i) The Deputy Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, who shall serve as presiding officer of the Board;

(ii) An officer appointed by the Deputy Associate Director of the Bureau of Educational and Cultural Affairs from an appropriate office of the Bureau; and

(iii) The country desk officer for the geographic area office responsible for the geographical area of the waiver applicant, or his or her designee.

(2) The Director of the office of Exchange Visitor Program Services or his or her designee shall serve as the Executive Secretary of the Board and shall present the facts of the waiver case to the Board, but shall not take part in the Board's deliberations.

(3) A person who has had substantial prior involvement in the particular case pending before the Board shall not be appointed to serve on the Board.

(4) The following waiver cases shall be referred to the Board for review:

(i) Cases involving requests of interested United States Government agencies, in which the recommendation of the Waiver Review Branch was unfavorable;

(ii) Cases in which another federal agency has provided the Agency with a written opposition to a waiver in which the recommendation of the Waiver Review was favorable;

(iii) Cases in which a no objection letter has been submitted by the government of the exchange visitor's country of nationality or last legal residence, and in which the exchange visitor's participation in an exchange visitor program was financed by the United States Government in an amount not exceeding $2,000, and as to which the recommendation of the Waiver Review Branch was unfavorable;

(iv) Cases involving claims of probable persecution on the grounds of race, religion, or political opinion, in which the Department of State has provided the Agency with a written opinion that there is no genuine basis for a claim of probable persecution on the ground alleged by the applicant, and as to which the recommendation of the Waiver Review Board was favorable; and,

(v) Cases in which for any reason the Waiver Review Branch requests Board review of its decision.

(f) *Action on cases referred to the Board.* (1) In each case to be referred to the Board pursuant to § 514.44(e), *supra*, the Waiver Review Branch shall transmit its complete file on the case along with a request to convene the Board, to the General Counsel of the Agency.

(2) The General Counsel shall promptly convene the Board.

(3) The General Counsel shall appoint, on a case-by-case basis, from among the attorneys in the Office of the General Counsel, one attorney to serve as legal advisor to the Board.

(4) Upon being convened, the Board shall review the case file and the policy, program, and foreign relations implications of the case.

(5) The Board may consult with the attorney in the Office of the General Counsel who has been designated to serve as legal advisor to the Board.

(6) The Board may request that officers of the Waiver Review Branch appear before the Board and explain orally the basis for the recommendation of the Waiver Review Branch; however, no persons other than members of the Board and the Board's legal advisor may be present during the Board's deliberations.

(7) At the conclusion of its review of the case, the Board shall make a written recommendation either granting or denying the waiver application.

(8) Each member of the Board shall sign the recommendation and promptly transmit the recommendation to the Waiver Review Branch for forwarding to the Commissioner.

(9) The recommendation of the Board in any case reviewed by it shall constitute the final recommendation of the Agency and such recommendation shall be forwarded to the Commissioner.

Subpart D—Sanctions

§ 514.50 Sanctions.

(a) *Reason for sanctions.* The Agency may, upon a determination by the office of Exchange Visitor Program Services ("EVPS"), impose sanctions against a sponsor which has:

(1) Willfully or negligently violated one or more provisions of this part;

(2) Evidenced a pattern of willful or negligent failure to comply with one or more provisions of this part;

(3) Committed an act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or,

(4) Committed an act or acts which may have the effect of bringing the Agency or the Exchange Visitor Program into notoriety or disrepute.

(b) *Lesser sanctions.* (1) In order to ensure full compliance with the regulations in this part, the Agency, in its discretion and depending on the nature and seriousness of the violation, may impose any or all of the following sanctions ("lesser sanctions") on a sponsor for any of the reasons set forth in § 514.50(a):

(i) a written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this Part may result in suspension or revocation of the sponsor's exchange visitor program designation, or other sanctions as set forth herein;

(ii) A declaration placing the exchange visitor sponsor or probation, for a period of time determined by the Agency in its discretion, signifying a pattern of serious willful or negligent violation of regulations such that further violations could lead to suspension or revocation;

(iii) A corrective action plan designed to cure the sponsor's violations; or,

(iv) A limitation or reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of the sponsor's recruitment or activity.

(2) Within ten days of service of the written notice to the sponsor imposing any of the sanctions set forth in this paragraph, the sponsor may submit to EVPS any statement or information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and may request a conference. Upon its review and consideration of such submission, the Agency may, in its discretion, modify, withdraw, or confirm such sanction. The decision of EVPS with regard to lesser sanctions (i) to (iii) and (iv), if the proposed limitation in the size of the sponsor's program is equivalent to 10 percent or less of the number of authorized visitors in the sponsor's program during the previous calendar year, is not appealable.

(c) *Suspension or significant program limitation.* (1) Upon a finding that a suspension, or a reduction in the sponsor's program equivalent to a number greater than 10 percent of the number of authorized visitors, is warranted for any of the reasons set forth at § 514.50(a), EVPS shall given written notice to the sponsor of the Agency's intent to impose the sanction, specifying therein the reasons for such sanction and the effective date thereof, which shall be not sooner than 30 days after the date of the letter of notification.

(2) Prior to the proposed effective date of such sanction, the sponsor may submit a protest to EVPS, setting forth therein any reasons why suspension should not be imposed, and presenting any documentary evidence in support thereof.

(3) EVPS shall review and consider the sponsor's submission and, within seven (7) days of receipt thereof, notify the sponsor in writing of its decision on whether the sanction is to be affected. In the event that the decision is to impose the sanction, such notice shall inform the sponsor of its right to appeal the sanction and of its right to a formal hearing thereon.

(4) The sponsor may within ten (10) days after receipt of the aforesaid notice effecting the sanction, appeal the sanction to the Exchange Visitor

Program Designation, Suspension and Revocation Board ("Board") by filing a notice of appeal with the Agency's General Counsel, room 700, 301 4th Street, SW., Washington, DC 20547. The filing of the notice of appeal shall serve to stay the effective date of the sanction pending appeal.

Upon receipt of the notice of appeal, the General Counsel or his or her designee shall forthworth convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in § 514.50(i), *infra*.

(d) *Summary suspension.* (1) EVPS may, upon a finding that a sponsor has willfully or negligently committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, and upon written notice to the sponsor specifying the reason therefor and the effective date thereof, notify the sponsor of the Agency's intent to suspend the designation of the sponsor's program for a period not to exceed sixty (60) days.

(2) No later than three (3) days after receipt of such notification, the sponsor may submit a rebuttal to the EVPS, setting forth therein any reasons why a suspension should be imposed.

(3) The sponsor may present any statement or information in such protest, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction. Within three (3) days of receipt of such submissions, EVPS shall notify the sponsor in writing of its decision whether to effect the suspension. In the event the decision is to effect the suspension, such notice shall advise the sponsor of its right to appeal the suspension and of its right to a formal hearing thereon.

(4) The sponsor may, within ten (10) days after receipt of the aforesaid notice continuing the suspension, appeal the suspension to the Board by filing a notice of appeal with the Agency's General Counsel, room 700, 301 4th Street, SW., Washington, DC 20547. The filing of the notice of appeal of a summary suspension shall not serve to stay the suspension pending appeal.

(5) Upon receipt of the notice of appeal, the General Counsel or his or her designee shall, within three (3) days, convene the Board. Thereafter, proceeding before the Board shall follow the regulations set forth in § 514.50(i), *infra*.

(e) *Revocation.* (1) EVPS may, for any reason set forth at § 514.50(a), give the sponsor not less than thirty (30) days notice in writing of its intent to revoke the sponsor's exchange visitor program designation, specifying therein the grounds for such revocation and the effective date of the revocation. Revocation need not be preceded by the imposition of a summary suspension, a suspension, or any lesser sanctions.

(2) Within ten (10) days of receipt of the aforesaid notice of intent to revoke, the sponsor shall have an opportunity to show cause as to why such revocation should not be imposed, and may submit to EVPS any statement of information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the violations charged.

(3) EVPS shall review and consider the sponsor's submission and thereafter notify the sponsor in writing of its decision on whether the revocation is to be effected. In the event that the decision on whether the revocation is to effect the revocation, such notice shall advise the sponsor of its right to appeal the revocation and of its right to a formal hearing thereon.

(4) The sponsor may, within twenty (20) days after receipt of the aforesaid notice effecting the revocation, appeal the revocation to the Board by filing a notice of appeal with the Agency's General Counsel, room 700, 301 4th Street, SW., Washington, DC 20547. The filing of the notice of appeal shall serve to say the effective date of the revocation pending appeal.

(5) Upon receipt of the notice of appeal the General Counsel or his or her designee shall, within ten (10) days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in § 514.50(i), *infra*.

(f) *Denial of application for redesignation.* (1) EVPS shall give an applicant for redesignation not less than thirty (30) days notice in writing of its intentions to deny the application for exchange visitor program redesignation, specifying therein the grounds for such denial.

(2) Within ten (10) days of receipt of the aforesaid notice of intent to deny the application, the applicant shall have an opportunity to demonstrate why the application should be approved, and may submit to EVPS any statement or information including, if appropriate, any documentary evidence or affidavits in support of its application.

(3) EVPS shall review and consider the applicant's submission and thereafter notify the applicant in writing of its decision on whether the application for redesignation will be approved. In the event that the decision is to deny the applicant, such notice shall advise the applicant of its right to appeal the denial and of its right to a formal hearing thereon.

(4) The applicant may, within twenty (20) days after receipt of the aforesaid notice of denial, appeal the denial to the Board by filing a notice of appeal with the Agency's General Counsel, room 700, 301 4th Street, SW., Washington, DC 20547.

(5) Upon receipt of the notice of appeal the General Counsel or his or her designee shall, within ten (10) days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in § 514.50(i), *infra*.

(g) *The Exchange Visitor Program Designation, Suspension, and Revocation Board.* (1) The Exchange Visitor Program Designation, Suspension, and Revocation Board ("Board") shall consist of:

(i) The Deputy Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, who shall serve as presiding officer of the Board;

(ii) The Deputy Director of the relevant geographic area office, or his or her designee; and

(iii) A member of the public appointed by the Deputy Associate Director of the Bureau of Educational and Cultural Affairs. A different public member shall be appointed for each sanction case brought before the Board.

(2) The General Counsel of the Agency shall appoint an attorney in the Office of the General Counsel to prosecute the case before the Board on behalf of the Agency. Such attorney shall not take part in the deliberations of the Board.

(3) The General Counsel of the Agency shall also appoint an attorney in the Office of the General Counsel to serve as a legal advisor to the Board. Such attorney shall not have had any substantial prior involvement with the particular case pending before the Board.

(h) *General powers of the Board.* At any hearing before the Board pursuant to this Part, the Board may:

(1) Administer oaths and affirmations;

(2) Rule on offers of proof and receive any oral or documentary evidence;

(3) Require the parties to submit lists of proposed witnesses and exhibits, and otherwise regulate the course of the hearing;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(5) Dispose of motions, procedural requests, or similar matters; and

(6) Make decisions, which shall include findings of fact and conclusions of law on all the material issues of fact and conclusions of law on all the material issues of fact, law or discretion

presented on the record, and the appropriate sanction or denial thereof.

(i) *Proceedings before the Board.* The following procedures shall govern all designation, suspension, summary suspension, and revocation proceedings before the Board:

(1) Upon being convened, the Board shall schedule a hearing, within ten (10) days, at which hearing the parties may appear on their own behalf or by counsel, present oral or written evidence, and cross-examine witnesses. A substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding;

(2) At the conclusion of the hearing, the Board shall promptly review the evidence and issue a written decision within ten (10) days, signed by a majority of the members, stating the basis for its decision. The decision of the majority shall be the decision of the Board. If a Board member disagrees with the majority, the member may write a dissenting opinion;

(3) If the Board decides to affirm the suspension, summary suspension, revocation, or denial of redesignation, a copy of its decision shall be delivered to EVPS, the sponsor, the Immigration and Naturalization Service, and the Bureau of Consular Affairs of the Department of State. EVPS, at its discretion, may distribute the Board's decision as it deems appropriate; and

(4) The suspension, revocation, or denial of designation shall be effective as of the date of the Board's decision.

(j) *Effect of suspension, summary suspension, revocation, or denial of redesignation.* A sponsor against which an order of suspension, summary suspension, revocation, or denial of redesignation has been entered shall not thereafter issue any Forms IAP–66, advertise, recruit, or otherwise promote its program, and under no circumstances shall the sponsor facilitate the entry of an exchange visitor. Suspension, summary suspension, revocation, or denial of redesignation shall not invalidate any Forms IAP–66 issued prior to the effective date of the suspension, summary suspension, revocation, or denial of redesignation, nor shall the suspension, summary suspension, revocation, or denial of redesignation in any way diminish or restrict the sponsor's legal or financial responsibilities to existing program participants.

(k) *Miscellaneous*—(1) *Computation of time.* In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, or legal holidays, shall be excluded in the computation.

(2) *Service of notice on sponsor.* When used in these regulations the terms "written notice to the sponsor" shall mean service of written notice upon either the president, managing director, responsible officer, or alternate responsible officer of the sponsor.

Subpart E—Termination and Revocation of Programs

§ 514.60 Termination of Designation.

Designation shall be terminated when any of the circumstances set forth in this section occur.

(a) *Voluntary termination.* A sponsor may voluntarily terminate its designation by notifying the Agency of such intent. The sponsor's designation shall terminate upon such notification. Such sponsor may reapply for designation.

(b) *Inactivity.* A sponsor's designation shall automatically terminate for inactivity if the sponsor fails to comply with the minimum size or duration requirements, as specified in §§ 514.8 (a) and (b), in any twelve month period. Such sponsor may reapply for program designation.

(c) *Failure to file annual reports.* A sponsor's designation shall automatically terminate if the sponsor fails to file annual reports for two consecutive years. Such sponsor is eligible to reapply for program designation upon the filing of the past due annual reports.

(d) *Change in ownership or control.* An exchange visitor program designation is not assignable or transferable. A major change in ownership or control automatically terminates the designation. However, the successor sponsor may apply to the Agency for redesignation and may continue its exchange visitor activities while approval of the application for redesignation is pending before the Agency.

(1) With respect to a for-profit corporation, a major change in ownership shall be deemed to have occurred when thirty-three and one-third percent (33⅓ percent) or more of its stock is sold or otherwise transferred within a 12 month period;

(2) With respect to a not-for-profit corporation, a major change of control shall be deemed to have occurred when fifty percent or more of the board of trustees, or other like body vested with its management, is replaced within a 12 month period.

(e) *Loss of licensure or accreditation.* A sponsor's designation shall automatically terminate in the event that the sponsor fails to remain in compliance with local, state, federal, or professional requirements necessary to carry out the activity for which it is designated, including loss of accreditation or licensure.

(f) *Failure to apply for redesignation.* Prior to the conclusion of its current designation period, the sponsor is required to apply for redesignation pursuant to the terms and conditions of § 514.7. Failure to apply for redesignation will result in the automatic termination of the sponsor's designation. If so terminated, the former sponsor may apply for a new designation, but the program activity will be suspended during the pendency of the application.

§ 514.61 Revocation.

A designation may be terminated by revocation for cause as specified in § 514.60. A sponsor whose designation has been revoked may not apply for a new designation within a five-year period.

§ 514.62 Responsibilities of the sponsor upon termination or revocation.

Upon termination or revocation of its designation, the sponsor shall:

(a) Fulfill its responsibilities to all exchange visitors who are in the United States at the time of the termination or revocation;

(b) Notify exchange visitors who have not entered the United States that the program has been terminated unless a transfer to another designated program can be obtained; and

(c) Return all Forms IAP–66 in the sponsor's possession to the Agency within 30 days of program termination or revocation.

Appendix A to Part 514—Certification of Responsible Officers and Sponsors

In accordance with the requirement at § 514.5(c)(6), the text of the certifications shall read as follows:

1. Responsible Officers and Alternate Responsible Officers

I hereby certify that I am the responsible officer (or alternate responsible officer, specify) for exchange visitor program number _____, and that I am a United States citizen or permanent resident. I understand that the United States Information Agency may request supporting documentation as to my citizenship or permanent residence at any

time and that I must supply such documentation when and as requested. (Name of organization) agrees that my inability to substantiate the representation of citizenship or permanent residence made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all Forms IAP-66 transferred to it.

Signed in ink by

_____

(Name)

_____

(Title)

Witness:

_____

This _____ day of _____, 19____.

Subscribed and sworn to before me this _____ day of _____, 19 .

_____

Notary Public

2. Sponsors

I hereby certify that I am an officer of (Name of Organization) with the title of (specify); that I am authorized by the (Board of Directors, Trustees, etc.) to sign this certification and bind (Name of Organization); and that a true copy certified by (Board of Directors, Trustees, etc.) of such authorization is attached. I further certify that (Name of Organization) is a citizen of the United States as that term is defined at 22 CFR § 514.2. (Name of Organization) agrees that inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all Forms IAP-66 transferred to it.

Signed in ink by

_____

(Name)

_____

(Title)

Attestation/Witness:

_____

This _____ day of _____, 19____.

Subscribed and sworn to before me this _____ day of _____, 19 .

_____

Notary Public

Appendix B to Part 514—Exchange Visitor Program Services; Exchange-Visitor Program Application

FORM APPROVED OMB _____

Serial No. _____

_____

1. Name and Address of Sponsoring Organization

_____

2. Name and Title of Responsible Officer

_____

Telephone Number

_____

3. Name and Title of Alternate Responsible Officer

Telephone Number _____

4. Type of Application (check one)

New _____ Re-Apply _____

Re-Designation _____

Section I—Program Participant Data (For Definition & Length of Stay See 22 CFR _____)

5. Participation by Category (indicate total no. and approximate duration of stay in each category)

A. Student
B. Teacher
C. Professor
D. Researcher
E. Short-Term Scholar
F. Specialist
G. Trainee
  1. Specialty
  2. Nonspeciality
H. Int'l Visitor
I. Gov't Visitor
J. Physicians
k. Camp Cnslr
L. Sumr/Wk/Trvl

_____

6. Method of Selection

_____

7. Arrangements for Financial Support of Exchange Visitor while in the U.S.

_____

Section II—Program Data

8. Outline of Proposed Activities (If training, See Reverse)

_____

9. Arrangements for Supervision and Direction

_____

10. Purpose of Objective

_____

11. Role of other Organizations Associated with Program (if any)

_____

Section III—Certification

12. Citizenship Certification of Organization and Responsible Officer (see reverse)

13. I certify that information given in this application is true to the best of my knowledge and belief and that I have completed appropriate information on reverse of this form.

_____

Signature of Responsible Officer

Date _____

_____

(See Reverse side for instructions)

Instructions for all Programs

If additional space is needed in supplying answers to any questions, please use continuation sheets on plain white paper

1–3. Names and address of organization and telephone numbers.

4. Select type of application.

5. Select appropriate categories (see 22 CFR prior to filling out this data.

6–7. Complete information on program sponsor.

8–11. Complete information on program.

IF TRAINING PROGRAM, identify appropriate fields: 01–Arts & Culture; 02–Information Media and Communications; 03–Education; 04–Business and Commercial; 05–Banking and Financial; 06–Aviation; 07–Science, Mechanical and Industrial; 08–Construction and Building Trades; 09–Agricultural; 10–Public Administration; 11–Training, Other.

Reapplication and Redesignation

If your organization is making reapplication as an exchange visitor program, or applying for redesignation under 22 CFR _____, please certify to the following:

I hereby certify that as an officer of the organization making application for an exchange program under 22 CFR _____ or 22 CFR _____ that the following documents which have been submitted to the United States Information Agency, Exchange Visitor Program Services, remain in effect and not altered in any way:

(1) Legal status as a corporation such as Articles of Incorporation and By Laws. Provide dates and state of both: _____.

(2) Accreditation. Provide date, type of accreditation, and State of accreditation: _____.

(3) Evidence of Licensure. Provide date, type of license, and state of licensure: _____.

(4) Authorization of governing body authorizing application. Please provide date of such authorization and authorizing body: _____.

(5) Activities in which the organization has been engaged have not changed since application dated: _____

(6) Citizenship. Provide the date of compliance with citizenship requirements: _____. If citizenship compliance is not current, please complete the following:

Organization: I hereby certify that I am an officer of _____ with the title of _____; that I am authorized by the Board of Directors, Trustees, etc.) to sign this certification and bind _____; and that a true copy certified by the Board of Directors, Trustees, etc.) of such authorization is attached. I further certify that _____ is a citizen of the United States as that term is defined at 22 CFR 514.1.

Responsible Officer or Alternate Responsible Officer: I hereby certify that I am the responsible officer (or alternate responsible officer) for _____, and that I am a citizen of the United States (or a person lawfully admitted to the United States for permanent residence. _____ agrees that my inability to substantiate my citizenship or status as a permanent resident will result in the immediate withdrawal of its designation

and immediate return of or accounting for all IAP–66 forms transferred to it.

Certification as to (1)–(6) Requirements

I understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by (Name _____

Title _____

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public

USIA Use Only

Type of program: _____

Subtype if applicable: _____

No. Forms IAP–66: _____

Categories: _____

Please return form to: Exchange Visitor Program Services-GC/V, United States Information Agency, Washington, DC 20547.

Note: Public reporting burden for this collection of information (Paperwork Reduction Project: OMB No. 3116–0011) is estimated to average ____ minutes/hours per response, including time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to USIA Clearance Officer, M/ASP, U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Appendix C to Part 514—Update of Information on Exchange-Visitor Program Sponsor

Please amend the United States Information Agency records for Exchange-Visitor Program Number _____ assigned to _____ as follows:

(Name of institution/organization)

1. Change the name of the Program Sponsor from the above to _____

_____

2. Change the address of the Program Sponsor

From: _____

_____

_____

_____

To: _____

_____

_____

(city) (state) (zip)

_____

(city) (state) (zip)

3. ( ) Change the telephone number from _____ to _____

( ) Change the fax number from _____ to _____

4. ( ) Change the name of the Responsible Officer of the above program from _____ to _____

5. a. Delete the following Alternate Responsible Officer:

_____

_____

_____

_____

_____

5. b. Add the following Alternate Responsible Officer:

_____

_____

_____

_____

_____

(Citizenship is required for all Responsible and Alternate Responsible Officers—See Reverse)

6. ( ) Send _____ (Indicate number) IAP–66 forms. (Please allow four to six weeks for response and remember to submit the annual report)

7. ( ) Send _____ copies of this form.

8. ( ) Send _____ copies of *Codes for Educational and Cultural Exchange.*

9. ( ) Cancel the above named Exchange Visitor Program.

_____

(Signature of Responsible or Alternate Responsible Officer)

_____

(Date)

_____

(Title of Signing Officer)

Appendix D to Part 514—Annual Report; Exchange Visitor Program Services (GC/V), United States Information Agency, Washington, DC 20547, (202–401–7964)

Exchange Visitor Program No. _____

Reporting Period _____

Provide range of forms IAP–66 documents covered by this report

(_____ - _____). _____

(a) Statistical Report

(1) Activity by Category

	Number
Professor	
Research Scholar	
Short-term Scholar	
Trainee	
Student (College and University)	
Student (Practical Trainee)	
Teacher	
Student (Secondary)	
Specialists	
Physicians	
International Visitors	
Government Visitors	
Camp Counselors	
Total	

(2) Forms IAP–66 Reconciliation

(i) Number of Forms IAP–66 voided or otherwise not used by participant _____

(ii) Number of Forms IAP–66 issued for dependents _____

(iii) Number of Forms IAP–66 currently on hand _____

(b) Program Evaluation

On a separate sheet, please provide a brief narrative report on program activity, difficulties encountered and their resolution, program transfers, anticipated growth and the proposed new activity, cross-cultural activities, as well as the reciprocal component of the program.

I, The Responsible Officer of the program indicated above, certify that we have complied with the insurance requirement (22 CFR 514.14). I also certify that the information contained in this report is complete and correct to the best of my knowledge and belief.

_____

Responsible Officer (signed)

Date _____

_____

Name and address of sponsoring institution

Appendix E to Part 514—Unskilled Occupations

The current descriptions of Schedule B occupations appear following the list at 20 CFR 656.11 and are incorporated herein by reference. Schedule B currently lists the following occupations.

(1) Assemblers
(2) Attendants, Parking Lot
(3) Attendants (Service Workers such as Personal Services Attendants, Amusement and Recreation Service Attendants)
(4) Automobile Service Station Attendants
(5) Bartenders
(6) Bookkeepers
(7) Caretakers
(8) Cashiers
(9) Charworkers and Cleaners
(10) Chauffeurs and Taxicab Drivers
(11) Cleaners, Hotel and Motel
(12) Clerks, General
(13) Clerks, Hotel

(14) Clerks and Checkers, Grocery Stores
(15) Clerk Typist
(16) Cooks, Short Order
(17) Counter and Fountain Workers
(18) Dining Room Attendants
(19) Electric Truck Operators
(20) Elevator Operators
(21) Floorworkers
(22) Groundskeepers
(23) Guards
(24) Helpers, any industry
(25) Hotel Cleaners
(26) Household Domestic Service Workers
(27) Housekeepers
(28) Janitors
(29) Key Punch Operators
(30) Kitchen Workers
(31) Laborers, Common
(32) Laborers, Farm
(33) Laborers, Mine
(34) Loopers and Toppers
(35) Material Handlers
(36) Nurses' Aides and Orderlies
(37) Packers, Markers, Bottlers and Related
(38) Porters
(39) Receptionists
(40) Sailors and Deck Hands
(41) Sales Clerks, General
(42) Sewing Machine Operators and Handstitchers
(43) Stock Room and Warehouse Workers
(44) Streetcar and Bus Conductors
(45) Telephone Operators
(46) Truck Drivers and Tractor Drivers
(47) Typist, Lesser Skilled
(48) Ushers, Recreation and Amusement
(49) Yard Workers

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Friday
October 9, 1992

Federal Register

Part IV

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1305
Head Start Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1305

RIN 0970-AB02

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is amending 45 CFR part 1305 which governs eligibility requirements for enrollment of children in Head Start.

Currently, most Head Start grantees have more children living in their service areas than they are able to serve. Each grantee must make decisions regarding recruitment, selection and enrollment of children.

The purpose of this rule is to specify procedures that will assure that these decisions are carefully planned and made at the local level; give all interested families an opportunity to be considered for enrollment; and help maintain full enrollment, allowing as many eligible children as possible to be served.

EFFECTIVE DATE: This rule is effective November 9,1992.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Acting Associate Commissioner, Head Start Bureau. (202)205-8569.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start, as authorized under the Head Start Act (the Act), section 635 of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, (42 U.S.C. 9831 *et seq.*) is a national program providing comprehensive child development services. These services are provided primarily to low-income children, age three to five, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children. Parents receive training and education that fosters their understanding of and involvement in the development of their children. They also become involved in the development, conduct, and direction of local programs.

In fiscal year 1991, Head Start served 582,325 children through a network of approximately 1,340 grantees and 620 delegate agencies. Delegate agencies have approved written agreements with grantees to operate Head Start programs.

While Head Start is intended to serve primarily low-income children and their families, Head Start's regulations permit up to 10 percent of the children in local programs to be from families who are not low-income. The Act requires that a minimum of 10 percent of enrollment opportunities in each State be made available to children with disabilities. Such children are expected to participate in the full range of Head Start activities with their non-disabled peers, and to receive needed special education and related services.

II. Purpose of the Final Rule

The purpose of this rule is to define a process to be used by local Head Start programs for the recruitment, enrollment and selection of Head Start children that is organized, focused, and more uniform among grantees and which provides opportunities for the greatest number of children to be considered for Head Start services.

Currently, Head Start grantees are funded to serve a geographic area. This area may be a city, county, multicity, multicounty, or other area that possesses a commonality of interest needed to operate a Head Start program. In the past, we have assumed that a grantee is responsible for providing Head Start services to its entire service area, even though its operations may have long been concentrated in certain parts of the area because resources were limited. We are concerned that, as funding for Head Start programs increases, grantees may tend to expand services in the areas where they are already operating, rather than move into unserved parts of their service area. We are, therefore, requiring: (1) That grantees clearly identify a specific service area which is agreed to, in writing, by the responsible HHS official, and (2) that grantees consider the needs of and recruit children from the entire geographic area they have agreed to serve, to the extent their financial resources allow. This, combined with the establishment of new grantees in currently unserved communities or service areas, will enable the maximum number of children to have an opportunity to enroll in Head Start.

In order to help children carry the gains they have made in Head Start into school, we are also requiring that once a child is enrolled in Head Start as either a three or a four year old, he or she is to remain in the program until kindergarten or first grade is available to the child in the child's community, except when there are compelling reasons for the child not to remain in Head Start. This would, in most instances, prevent a child from being enrolled as a three year old but not served at age four, as is possible under current regulations. This rule would also draw attention to the importance of grantees carefully weighing the need for more than one year of Head Start services when making decisions to enroll younger children, since serving a child for more than one year means that another child will not have the opportunity for a Head Start experience.

Under current regulations, when there are more income-eligible children than can be served, programs must select those families with the lowest income. When programs adhere to this single criterion, it limits their ability to respond to a variety of special circumstances in their communities, such as the needs of families involved in substance abuse or of single parents who are working.

In addition, the current regulation may cause programs to enroll three year old children and serve them for two years, not because they believe they need an additional year of service, but simply because their family income is slightly lower than another child's.

We are expanding the criteria for selecting among income-eligible children by allowing each program to define other criteria, in addition to lowest income. Such criteria might include the age of children or the special needs that a family may have. We believe this will result in programs establishing criteria for selection that are more closely based on the needs in their communities and the capacity of their programs. However, as programs determine their own selection criteria based on local needs and circumstances, we want to urge programs to consider serving the maximum number of children during the year before they enter public school. Programs are expected to serve the children with the greatest need for and who can benefit the most from Head Start. When a program's resources are limited, such choices should involve considering whether the needs of three year olds justify providing them with two years of service at the expense of eligible four year olds who would thereby not be served at all.

In addition to these major elements, this rule requires that Head Start grantees:

• Make decisions about the design of their program based on a periodic community needs assessment that includes the collection and analysis of data about demographics, available resources and the needs of families and children.

• Implement a recruitment process that is designed to inform all income-eligible families within their recruitment area of the availability of services so families may have a fair opportunity to apply and be considered for enrollment when the number of children who can be served is limited.

• Maintain funded enrollment so that resources can be used efficiently.

• Implement appropriate family support procedures for those children with patterns of unexcused absences so these children have a greater opportunity to obtain the benefits of regular attendance.

III. Rulemaking History

This Rule was published in the **Federal Register** (55 FR 29970) on July 23, 1990 as a Notice of Proposed Rulemaking (NPRM). The NPRM proposed amendments to part 1305 based on changing conditions that have affected the Head Start program over the past several years. The most significant factors are the following:

• Some grantees are not maintaining funded enrollment levels throughout the program year. In some cases, grantees achieve full enrollment in the beginning of the year but are not able to fill vacancies that occur during the year. In other cases, grantees are not able to achieve full enrollment at any time during the program year.

• Some grantees are serving children for more than one year simply because they need to fill vacancies. In some instances, this occurs because the program's recruitment area is too small and children must be served for two years simply to meet agreed upon enrollment levels, while children receive no services in communities outside the recruitment area.

• Many grantees are experiencing high turnover rates among program enrollees. The national average for children who drop out of the program after they have been enrolled is 20 percent of an agency's funded enrollment. There is a need to make sure that all grantees have systems in place for filling vacancies as they occur.

• Many grantees are finding that the number and location of eligible children in their service area have changed considerably over time. In some cases, there are many more children eligible to be served than in the past. Other grantees have experienced significant population shifts from one part of their service area to another. There is a need to make sure that enrollment opportunities are available where the need for Head Start services is greatest.

• The number of State and locally funded preschool programs continues to increase. In some cases, this means a significant decrease in the number of children who are available to be served by Head Start. Grantees must take into account other preschool services for low-income children in their community when determining the need for Head Start services in specific areas.

This final rule reorganizes the content of part 1305 and sets forth additional actions to be taken by Head Start grantees and delegate agencies to recruit, select and enroll those children and families who are most in need of or who will benefit the most from Head Start services.

The final rule contains revisions to the NPRM which incorporate, as appropriate, the comments received from the general public, local Head Start staff and parents, national organizations and other interested agencies.

IV. Section by Section Discussion of the NPRM

We received 85 letters with over 250 separate comments on various sections of the proposed revisions to part 1305. Many of the comments were positive and supportive of the clarity and comprehensive nature of the revisions. A number of comments also expressed specific concerns regarding particular sections of the proposed regulation. We have reviewed all of the comments received and, after full consideration, have modified some sections of the NPRM. Discussed below are the revised sections and the rationale for making a change from the NPRM.

Section 1305.2 Definitions

The definition of children with disabilities in paragraph (a) was changed since the publication of the NPRM. It now reflects the amended definition in the Individuals with Disabilities Education Act (IDEA) as required by section 640(d) of the Head Start Act.

In response to comments received, the phrase "within the past 12 months" was added to the definition of migrant families in paragraph (1) to make it clear that children served by Migrant Head Start programs are to be from mobile migrant families that have moved within the past 12 months.

Section 1305.3 Determining Community Needs

With respect to paragraph (a), we have made a small clarifying change, requiring grantee service areas to be approved by the responsible HHS official.

Several respondents from programs serving migrant farmworker families expressed concern about their ability to identify their service area at the time they submit a refunding application unless the service area could be broadly defined. For example, if crops fail or if the weather is bad, migrants may not return to an area where they have been in the past. We believe that the language in the NPRM is adequate to allow for negotiation with the responsible HHS official to approve a geographic area that would be broad enough to meet the needs of Migrant Head Start programs. However, the final rule has been changed to require that the responsible HHS officials approve each grantee's service area in writing.

A number of comments were received concerning the requirement in paragraph (b) that each grantee must conduct a community needs assessment once every three years and that it contain specific data regarding the local community. Some of the respondents supported the community needs assessment information requirements and indicated that the data are reasonable and available. Some indicated that the data are typical of those currently being used in their agencies. Other respondents disagreed. Some indicated that Census data are the only reliable data available in their communities and that these data are only useful for a limited number of years. Some indicated that the racial and ethnic data are not reliable because of undercounting in some communities. Several indicated that data on the numbers of low-income children with disabilities are not available, since disabling conditions are not identified by income categories.

In response to these concerns, we modified some of the data requirements. We ordered the data requirements into a more logical sequence of information and we clarified some of the wording. We also acknowledge that some of the data, particularly Census data, may not remain accurate over the length of time that they are needed. We expect that grantees will estimate some of the information, particularly the numbers of eligible children, and may have to use proxy data or make adjustments as decennial Census data become less current. We have inserted the word

"estimated" regarding the number, geographic location and racial and ethnic composition of children in the grantee's service area.

Comments received on paragraph (c) of this section of § 1305.3 were favorable. A technical change was made for clarification.

Paragraph (d) of § 1305.3 proposed an annual update of the community needs assessment to assure that changes in the community are reflected in the Head Start program decision-making process. Several respondents suggested that we eliminate the updates in years two and three since communities do not change that much. We believe that there may be instances where there are significant changes in community circumstances over a one or two year period, and, therefore, we are keeping the language as it was proposed. We do not expect grantees to conduct an extensive review of community needs assessment information in the second and third years, but rather to limit analysis and information to those areas where there have been significant changes that require a program to adjust plans for Head Start services.

There were no comments regarding paragraphs (e) and (f) of § 1305.3 and no changes have been made.

Section 1305.4 Age of Children and Family Income Eligibility

Paragraph (a) of § 1305.4 proposed a change in the age eligibility requirement by stating that a child would be eligible for Head Start services when the child is at least three years of age by the date used in the community to determine eligibility for public school, unless the approved grant award specifies otherwise. All comments on this paragraph were positive and no changes have been made.

Several respondents were concerned that the discussion regarding giving four-year-old children priority over other age groups implied that programs were limited to serving four-year-old children. The purpose of the discussion in the preamble to the NPRM was to emphasize the principle that programs must make decisions regarding the needs of each child when selecting those to be served by Head Start. Some children may have needs that would warrant more than one year of Head Start services. Others may not have the same level of need. All children, once enrolled in Head Start, are to remain in the program until they are eligible for public school, unless there are compelling reasons for the child not to remain in Head Start.

Paragraph (b) reiterates the current requirement contained in § 1305.4 that at least 90 percent of the children who are enrolled in the program must be from low-income families. Several respondents, many of them parents of children enrolled in the same Head Start Program, requested that the income-eligibility guidelines be raised to allow programs the option of serving children from families that are barely over the income-eligibility guidelines. Others suggested that Head Start income eligibility should be the same as that of the USDA Child Care Feeding Program for free and reduced meals. We are not changing the requirement that at least 90 percent of families must be at or below the income-eligibility guidelines, since we are currently serving only a portion of the eligible children from families that are at or below the guidelines. In addition, changing this requirement would involve a change in the Head Start legislation regarding how the poverty line is determined.

There were no comments on paragraphs (c), (d), and (e) of § 1305.4 and no changes have been made.

Section 1305.5 Recruitment of Children

This section describes actions to be taken by Head Start grantees and delegate agencies when recruiting Head Start children.

Paragraph (a) requires that each Head Start Program employ a recruitment process that assures full enrollment in the Head Start Program. Several respondents wrote in support of this requirement, indicating that it reflects current practice in their Head Start Programs. Others, while supporting an intensive recruitment effort, were concerned that the NPRM implied door-to-door recruitment that is not always possible because of limited staff and safety factors. This paragraph is a restatement of the existing policy contained in the Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A. 1.a., 1.b and 1.c. The intent of this requirement is to reach those children most in need of or who could benefit most from Head Start services in order to provide them with an opportunity to apply for admission to the program. In response to the concern stated above, we changed the word "must" to "may" in the last sentence of paragraph (a) concerning activities in the recruitment process.

Paragraph (b) of the NPRM added a new requirement that, during the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all application requirements for the program are completed before the selection process begins. There was one comment supporting this section and no change has been made.

Paragraph (c) of the NPRM added a new requirement that, for each program, except migrant programs, the number of applications obtained during the recruitment process that occurs prior to the beginning of the enrollment year must be at least 20 percent greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year. There were 21 comments on this section. Some respondents supported having a specific, measurable requirement regarding the number of applications each program must obtain during the major recruitment effort. Most, however, disagreed, indicating that the amount was not realistic, especially for large programs. Some indicated that it would not eliminate the need for ongoing recruitment to fill vacancies within 30 days of their occurrence, since families on the waiting list are often as transient as families enrolled in the program. Others indicated that, as programs begin to serve a higher percentage of the eligible population in certain communities, it will become more difficult to adhere to this requirement. We agree that current and future increases in the number of children served by each grantee may make it increasingly difficult for grantees to meet the requirement for a fixed percentage of applications. We are modifying paragraph (c) of this section by dropping a fixed percentage of applications that programs are required to obtain during recruitment and are requiring programs simply to obtain a number of applications that is greater than the enrollment opportunities that are available over the course of the year. This will allow each Head Start program to establish an individualized target.

We proposed a new requirement to address the drop-out pattern of migrant programs in paragraph (d) of the NPRM that, prior to beginning Head Start services in a new community, migrant programs must obtain a number of applications that is at least 20 percent greater than the enrollment opportunities that are available while they are providing services in that community. Respondents from programs serving children of migrant farmworkers did not believe that this requirement was realistic for their programs, since it is often difficult to anticipate the number of families that will require

Head Start services. Most families are enrolled as they arrive in a community and need Head Start services. Enrollment is often gradual in the first few weeks of services. We agree that this requirement would be difficult to implement for programs serving migrant children and we are eliminating this paragraph from the final regulation.

Paragraph (e) in the NPRM contained an exception to the requirements contained in paragraphs (c) and (d) for programs that do not obtain sufficient applications from Head Start eligible families to meet the requirement. Since we are eliminating the requirements of obtaining twenty percent more applications than the enrollment opportunities that are available that were contained in paragraphs (c) and (d), it is not necessary to retain paragraph (e) and it has been eliminated from the final regulation.

Section 1305.6 Selection Process

This section contains requirements for establishing and implementing a process for selecting children and families to be enrolled in the program. Using selection criteria that are based on the information obtained from the community needs assessment, each program must go through a process that selects those children and families that are most in need of and who could benefit most from Head Start services. This is intended to assure that each program considers all of the children and families applying for admission to the program in order to identify the children and families that are most in need of Head Start services, as defined by each program for the community it is serving.

Paragraph (a) incorporates the requirement found in the Enrollment and Attendance Policies, S–30–317–1–40, A.1.e., regarding the selection of children and families. It requires that each grantee and delegate agency must establish a written process for selecting children and families that is based on the program's specific selection criteria. A single comment on this paragraph came from a director of a program serving migrant farmworker families. The respondent indicated that it is difficult for migrant programs to have an extensive selection process since families are enrolled as they arrive in a community. While it may be difficult for programs serving migrant farmworker families to compare all children and families that could be served when selecting which families have the greatest need for Head Start services, we believe that it is important for migrant programs to have pre-established criteria for selecting each family as they apply for services. Families and children that meet the criteria would then be selected for services. We, therefore, are not changing this paragraph.

Paragraph (b) requires that, in selecting children and families to be served, the Head Start program shall consider income, age, and individual child and family needs. This would change the current requirement in § 1305.4 that children from the lowest income families shall be given preference. All comments related to this paragraph were positive, supporting the opportunity to consider child and family needs in addition to income when selecting children to be served by the Head Start program. We have, however, added new language previously contained in the NPRM in paragraph (d) of this section, that proposed to require programs to give priority to serving children for whom kindergarten or first grade is not available.

Based on comments received on paragraph (d) of the NPRM, we are eliminating the requirement to give priority and, instead, are making the availability of kindergarten or first grade to the child one of several criteria to consider when selecting children for enrollment in Head Start. If kindergarten or first grade is available to the child in the child's community, we encourage programs to give that child a lower priority for service. We recognize that for reasons that include those discussed in comments on paragraph (d), there will be situations when a child should remain in Head Start when kindergarten or first grade is available. For example, we recognize that, in some instances, children who are age-eligible for kindergarten do not have the option of going to kindergarten because of local circumstances that include readiness testing, and lack of transportation. Head Start programs, therefore, may provide services to the child who does not pass a kindergarten readiness test and would otherwise remain at home for the entire year. On the other hand, if a child can attend kindergarten or first grade, we believe the child should receive a lower priority for enrollment in Head Start than a child who cannot be enrolled in school. To do otherwise may deny another eligible child the opportunity to participate in Head Start.

Paragraph (c) of the NPRM added a new requirement that each grantee and delegate agency must make available at least 10 percent of the enrollment opportunities in its program to children with disabilities who meet the definition of children with disabilities in § 1305.2(a). Such children must also meet the Head Start eligibility requirements contained in § 1305.4. The Head Start Act requires that 10 percent of enrollment opportunities within each State be made available to children with disabilities. Paragraph (c) proposes to require each Head Start program to meet the 10 percent figure in order to assure that all programs are serving children with disabilities in all areas in the State.

There were several comments on this paragraph. Some supported requiring grantees and delegate agencies to provide at least 10 percent of their enrollment opportunities to children with disabilities, since that is already the practice with most programs. Others were concerned about the feasibility of achieving this requirement at the grantee level in light of the growth of early intervention programs for preschool children that are operated by public school systems. We agree that there is an increase in the number of programs serving preschool children with disabilities and that it may be more difficult to recruit children for Head Start services. In recent years, 13 percent of Head Start's enrollment has consisted of children with disabilities. Most programs have successfully achieved enrollment levels of at least 10 percent. We are retaining this requirement as it was written in the NPRM because we believe that there are many children with disabilities who would be best served in a Head Start program. In some instances, children are served by Head Start for some portion of each week and by another local agency for the remainder of the week. We continue to encourage this arrangement.

Paragraph (c) also states that an exception to the requirement can be granted by the responsible HHS official if a program made an attempt to comply but could not because income-eligible children with disabilities are being served by other agencies or when Head Start is not the most appropriate placement for them. There were several comments related to obtaining an exception. Most respondents were concerned about the growing competition for serving children with disabilities in early intervention programs. This could mean that many programs would be requesting an exception on a regular basis. In response to this, we are retaining the possibility of an exception to the requirement, but we are broadening the reason for an exception by eliminating the words "income eligible." This requires programs to make enrollment opportunities available to children with

disabilities, regardless of family income, before requesting an exception. We believe that this broader interpretation is more in keeping with the intent of the Head Start Act's requirement to provide enrollment opportunities for children with disabilities.

We are further clarifying that, when enrolling a child with disabilities in Head Start, programs must consider whether the type of program services provided by Head Start are the most appropriate placement for the child according to his or her Individual Education Plan (IEP).

Paragraph (d) of § 1305.6 of the NPRM added a new requirement that a program must not enroll any child who is eligible for kindergarten or first grade and for whom kindergarten or first grade is available in the child's community unless the program has first enrolled all interested and Head Start eligible children living in the program's service area for whom kindergarten or first grade is not available. A large number of respondents commented on this paragraph. A small number of respondents supported the requirement, stating that it would strengthen their position when school systems want children to return to Head Start even though they are eligible for public school. Most respondents disagreed with the requirement, wanting to retain the option of giving priority for enrollment to children when they are age-eligible for kindergarten, because they believe it to be in the child's best interest to remain in Head Start. Many respondents were particularly concerned that they be allowed to retain the option of serving children with disabilities who are of kindergarten age.

The National Head Start Association thought that this requirement would violate section 645(c) of the Head Start Act that allows programs to serve children through compulsory school attendance.

Some respondents indicated that, because kindergarten is not mandatory in many school districts, some school districts do not provide transportation, leaving many low-income families without a way to get their children to school. These children frequently stay home for the year they could be in kindergarten.

We have considered all of these comments and are eliminating this paragraph from the final regulation. We have, however, added language to paragraph (b) of this section that requires programs to consider the availability of kindergarten or first grade to the child when selecting children who are to receive Head Start services. We believe that children that do have kindergarten or first grade available to them should be given a lower priority for services than those that do not. We do, however, understand that there may be situations, such as those received in comments on this paragraph, when programs will decide that it is in the best interest for the child to remain in Head Start, even though this may preclude another child from receiving a Head Start experience.

Paragraph (e) incorporates an existing policy contained in the Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A.2.c.l., regarding the maintenance of waiting lists of Head Start eligible children and families. It requires that, at the beginning of each enrollment year and throughout each year, a Head Start program must develop and maintain a waiting list that ranks children and families according to the program's selection criteria to help assure that eligible children and families are immediately available for enrollment in the program when vacancies occur. No comments were received on this paragraph and no changes have been made.

Section 1305.7 Enrollment and Re-enrollment

This section contains requirements for the ongoing enrollment of children in a Head Start program.

Paragraph (a) is intended to assure continuity for the Head Start child between Head Start and kindergarten or first grade. As stated in the NPRM, it requires that all children who are enrolled in a Head Start program, except children enrolled in a migrant program or a Parent and Child Center, must be allowed to remain in the program until kindergarten or first grade is available in the child's community. Most of the comments received on this paragraph were positive, supporting the continuity of services to children once they are enrolled in Head Start. One respondent who disagreed with the requirement stated that there are times when meeting this requirement would be difficult. For example, when centers are moved from one community to another because of population shifts, programs would be required to continue serving children who could be returning to Head Start for a second year of services. We believe that, in this situation, parents could be offered the opportunity for services in another center, but programs should not have to make extraordinary arrangements for transportation or other services in order to continue serving some children.

Another respondent thought that this requirement would mean that programs first enrolling a child at age three would have to continue serving children for a second year when another child might have a greater need for Head Start services.

We believe that continuity is an important aspect of Head Start services, since one of the purposes of the program is to prepare children for entry into public school. We believe that once a child is enrolled, it is important for the child to continue to build on the gains achieved in Head Start. In order to maintain these gains, we think that all children should be enrolled with the understanding that they are to continue receiving Head Start services until they are eligible for public school. However, because of the comments that were received, we have added the option for an exception when there are compelling reasons for the child not to remain in Head Start. A compelling reason for not re-enrolling a child might be when the child is from a family whose income has risen and the program wishes to enroll a different child from a more needy family.

We have also added that, rather than simply being generally available, kindergarten or first grade must be available for an individual child in the child's community to emphasize the continuity of services once a child is enrolled in Head Start. This would allow programs the option of serving children who are age eligible for kindergarten but cannot attend because of local circumstances that include readiness testing or lack of transportation. In addition, we have dropped the proposed exemption for continuity of enrollment for children in Parent and Child Centers from paragraph (a) of this section. Since the NPRM was published, the most recent Head Start Act in section 640 added a requirement that agencies receiving funding for Parent and Child Centers are to provide continuous services to children through compulsory school age, to the maximum extent practicable.

Paragraph (b) requires that each Head Start grantee must maintain an enrollment level that is not less than the enrollment level indicated on its grant award. Paragraph (b) also includes two exceptions to this requirement: (1) When a program determines that a vacancy exists, up to 30 calendar days may elapse before the vacancy is filled; and (2) a center-based program may elect not to fill a vacancy when it would result in a child being enrolled less than 60 calendar days from the end of the program's enrollment year. Most of the comments received on this paragraph were positive. Respondents particularly supported the option of leaving

vacancies unfilled when they occur during the last 60 days of program services. There were a few respondents that disagreed with this option, stating that 60 days of Head Start services are often better than no Head Start services. Since leaving vacancies in the final days of a program is an option that programs may choose to exercise or not, we are leaving the wording of the final rule substantially the same.

Paragraph (c) reiterates the existing requirement contained in § 1305.6(b) which states that a child participating in the Head Start program remains income eligible through the initial enrollment year and the immediately succeeding enrollment year. Only two comments were received on this paragraph. One was positive and the other respondent thought that allowing two years of eligibility did not assure that Head Start would be serving children with the greatest need for services. We believe that programs, in selecting younger children, must select those who would benefit from more than one year of Head Start services. We have also given grantees the authority not to enroll a child for a second year if there are compelling reasons for this decision. Therefore, we have not changed the regulation.

Section 1305.8: Attendance

This section incorporates requirements for attendance in a Head Start program that are currently found in the Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A.3.

Paragraph (a) includes the current requirement that a Head Start program must analyze the causes of absenteeism when the monthly average daily attendance rate in a center-based program falls below 85 percent. Most of the comments received on this paragraph stated that 85 percent attendance was an unrealistic requirement. We believe that these comments reflect a misperception regarding average daily attendance, since it is not our intention to require that a daily attendance rate of 85% be maintained. Rather, we view 85 percent as a reasonable point of measurement below which Head Start programs must review patterns of attendance to identify causes of absenteeism and to determine if there are intervention strategies that should be taken with families of children who have been absent for unknown reasons. Head Start programs are to take such action when the monthly average daily attendance rate in a center-based program falls below 85 percent. The 85% rate itself has been incorporated into Head Start policy for many years and has been considered a reasonable level by which to measure attendance. We recognize that there will be instances where programs are serving families with severe problems, such as homelessness, when average daily attendance rates of less than 85 percent may be expected and unavoidable if such families are to be served. We believe that it continues to be an appropriate management strategy for programs to analyze attendance patterns in order to address attendance problems that could be corrected through appropriate family intervention strategies to encourage regular attendance. We have not changed the regulation.

Paragraph (b) requires that programs must take action when a child has been absent without a documented excuse for four consecutive days. Only a few comments were received on this paragraph. Some wanted to retain the requirement contained in current policy that programs follow-up after three consecutive days of absence. We disagree and think that four days is more appropriate. This makes the number of days of unexcused absences that can occur before follow-up action is required consistent with the Head Start Performance Standards, 45 CFR 1304.4–2(a)(8). Programs are not prohibited, however, from following up with families sooner than four consecutive absences, if it is appropriate.

Paragraph (c) includes the current requirement in the Enrollment and Attendance Policies, S–30–317–1–40, A.3., that, in circumstances where chronic absenteeism persists, and it is not feasible to include the child in another program option, the child's slot should be considered an enrollment vacancy. No comments were received on this paragraph and no changes have been made.

Section 1305.9 Policy on Fees

This section contains the current language of section 1305.8 except that it proposes to add a requirement that payments obtained voluntarily from the family of a child participating in the program are to be recorded as program income. A small number of respondents thought that Head Start programs should not be allowed to accept voluntary payments from families. Some respondents were unclear about what the word voluntary means and suggested that we define the term. We believe that the most important aspect of this section is that programs may not require parents to pay fees. This is clearly stated in this section and, therefore, no changes have been made.

Section 1305.10 Compliance

This section expands the existing policy found in the Enrollment and Attendance Policies in Head Start, S–30–317–1–20, 2., regarding adverse action for a grantee's continued failure to maintain funded enrollment. It states that a grantee's failure to comply with any requirement of this Part may result in a denial of refunding or termination in accordance with 45 CFR Part 1303, "Procedures for Appeals for Head Start Delegate Agencies, and for Opportunities to Show Cause and Hearings for Head Start Grantees". Adverse action against a grantee for failure to comply with any requirement of this Part would not occur before the grantee was made aware of non-compliance issues and provided an opportunity and appropriate technical assistance to remedy the problem area or areas. No comments were received on this section and no changes have been made.

In addition to the changes from the NPRM described in this section, minor technical changes were made for purposes of clarification.

REDESIGNATION TABLE

Section of the final rule	Superseded rule or policy or identification of new requirement
1305.1	1305.1
1305.2	1305.2 and Enrollment and Attendance Policies in Head Start, S–30–317–1–30
	New requirement
1305.3	New requirement
1305.4(a)	1305.3
	New requirement
1305.4(b)	1305.4
1305.4(c)	1305.7(a)
1305.4(d)	1305.7(b)
1305.4(e)	1305.7(c)
1305.5(a)	Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A.1.a., 1.b., and 1.c.
	New requirement
1305.5(b)	New requirement
1305.5(c)	New requirement
1305.6(a)	Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A.1.e.
1305.6(b)	1305.4 [Amended]
1305.6(c)	1305.5 [Amended]
1305.6(d)	Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A.2.c.1.
1305.7(a)	New requirement
1305.7(b)	Enrollment and Attendance Policies in Head Start, S–30–317–40, A.2.b.
	New Requirement
1305.7(c)	1305.6(b)
1305.8(a)	Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A.3.
1305.8(b)	Enrollment and Attendance Policies in Head Start, S–30–317–1–40,.A.3. [Amended]
1305.8(c)	Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A.3.

REDESIGNATION TABLE—Continued

Section of the final rule	Superseded rule or policy or identification of new requirement
1305.9	1305.8 [Amended]
1305.10	Enrollment and Attendance Policies in Head Start, S-30-317-1-20, 1. and 2. New Requirement

IV. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that these rules are not major rules within the Executive Order because they will not have an annual effect on the economy of $100 million or more; nor result in a major increase in costs or prices for consumers, any industries, and governmental agencies, or any geographic region; and, they will not have an adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

This final rule specifies procedures that will assure that decisions regarding Head Start recruitment, selection and enrollment of children are carefully planned and made at the local level; give all interested families an opportunity to be considered for enrollment; and help maintain full enrollment, allowing as many eligible children as possible to be served. Such procedures are necessary to address changing conditions that have affected the Head Start program over the past several years.

We expect any additional costs attributable to these provisions to be significantly less than $100 million. The main reason for this is that many grantees already meet most of the new requirements. For example, with respect to the community needs assessment requirement, Head Start grantees have always been required to complete a community needs assessment as part of the application for refunding. In the past, the grant application instructions have not included specific data requirements or explicit requirements for analyzing the data to determine key program decisions. The added specificity of this rule will assist grantees by focusing their community needs assessment efforts on specific data. Grantees will not be required to conduct demographic surveys or create new data bases, thereby minimizing costs.

The Department has always monitored grantee recruitment practices along with other program requirements. In addition, the Department has reviewed community needs assessment data during the grant review process. These efforts will not change as a result of this rule and the costs should remain stable for Federal government activities and for many of the grantees in complying with this rule as a whole, the intent of which is to assure that minimum and consistent standards in this important area are achieved nationally.

When grantees design their program and recruitment systems, they are currently required to consider community needs. Most grantees comply with this requirement. We do not have data that allows us to estimate the number that will need major changes in their recruitment practices. However, since carrying out recruitment and enrollment activities is an existing requirement for grantees, we do not believe the new requirements will result in significant added costs in this area nationally. Some of the specific rules some grantees follow in recruiting and enrolling children may change but not their overall level of effort.

Costs associated with implementing this rule will be mainly administrative and minimal given the fact that the changes required will not affect the entire grantee population and the fact that the changes required are "best practices" that many grantees have been successfully using in their programs. Thus, the Department concluded that these regulations are not major rules within the meaning of the Executive Order because they do not meet the threshold criteria.

We believe the benefits derived from this rule will far outweigh any costs incurred. The benefits include a more focused and uniform process for Head Start recruitment, enrollment and selection activities, thereby, resulting in the provision of services to as many eligible children as possible who are most in need of Head Start services.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we prepare an analysis describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities. While this regulation would affect small entities, it is not substantial. In many instances small entities already meet most of the requirements, since many are restatements of current policy and since they are considered best practice. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (the Act), Public Law 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule. The final rule contains information collection requirements in section 1305.3 concerning community needs assessment. We estimate that this requirement will take each grantee 40 hours to complete annually. As one-third of the grantees (447) will be doing the needs assessment each year, the total number of hours annually will be 17,800. The requirement for the update reports in years two and three have minimal burden hours because we anticipate only a very small number of grantees will have any significant changes in their communities to report. In accordance with section 3504(h) of the Act, the Department has submitted § 1305.3 of the final rule to OMB for its review and approval.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 308), Washington, DC 20503, Attention Desk Officer for the Administration for Children and Families.

List of Subjects in 45 CFR Part 1305

Head Start Enrollment, Education of Disadvantaged, Grant Programs/Social Programs, Disabilities, Preschool Education.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: May 21, 1992.

Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: June 29, 1992.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, title 45, chapter XIII, subchapter B, part 1305 of the Code of Federal Regulations is amended as follows:

Part 1305 is revised to read as follows:

PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT AND ATTENDANCE IN HEAD START

Sec.

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

§ 1305.1 Purpose and scope.

This part prescribes requirements for determining community needs and recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children in Head Start programs and explains the policy concerning the charging of fees by Head Start programs.

§ 1305.2 Definitions.

(a) *Children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities, and who, by reason thereof, need special education and related services. The term children with disabilities for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and measures by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, and who, by reason thereof, need special education and related services.

(b) *Enrollment* means the official acceptance of a family by a Head Start program and the completion of all procedures necessary for a child and family to begin receiving services.

(c) *Enrollment opportunities* mean vacancies that exist at the beginning of the enrollment year, or during the year because of children who leave the program, that must be filled for a program to achieve and maintain its funded enrollment.

(d) *Enrollment year* means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

(e) *Family* means all persons living in the same household who are:

(1) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program, and (2) related to the parent(s) or guardian(s) by blood, marriage, or adoption.

(f) *Funded enrollment* means the number of children which the Head Start grantee is to serve, as indicated on the grant award.

(g) *Head Start eligible* means a child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the requirements of section 645(a) (2) of the Head Start Act. Up to ten percent of the children enrolled may be from families that exceed the low-income guidelines.

(h) *Head Start program* means a Head Start grantee or its delegate agency(ies).

(i) *Income* means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, social security benefits, unemployment compensation, and public assistance benefits.

(j) *Income guidelines* means the official poverty line specified in section 652 of the Head Start Act.

(k) *Low-income family* means a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purpose of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines.

(l) *Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who change their residence by moving from one geographic location to another, either intrastate or interstate, within the past twelve months, for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

(m) *Recruitment* means the systematic ways in which a Head Start program identifies families whose children are eligible for Head Start services, informs them of the services available, and encourages them to apply for enrollment in the program.

(n) *Recruitment area* means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

(o) *Responsible HHS official* means the official of the U.S. Department of Health and Human Services having authority to make Head Start grant awards, or his or her designee.

(p) *Selection* means the systematic process used to review all applications for Head Start services and to identify those children and families that are to be enrolled in the program.

(q) *Service area* means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

(r) *Vacancy* means an unfilled enrollment opportunity for a child and family in the Head Start program.

§ 1305.3 Determining community needs.

(a) Each grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally recognized Indian reservation. A grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and does not overlap with that of other Head Start grantees.

(b) Each Head Start grantee must conduct a community needs assessment within its service area once every three years. The community needs assessment must include the collection and analysis of the following information about the grantee's Head Start service area:

(1) The demographic make-up of Head Start eligible children and families, including their estimated number, geographic location, and racial and ethnic composition;

(2) Other child development and child care programs that are serving Head Start eligible children, including publicly funded State and local preschool programs, and the approximate number of Head Start eligible children served by each;

(3) The estimated number of children with disabilities four years old or

younger, including types of disabilities and relevant services and resources provided to these children by community agencies;

(4) Data regarding the education, health, nutrition and social service needs of Head Start eligible children and their families;

(5) The education, health, nutrition and social service needs of Head Start eligible children and their families as defined by families of Head Start eligible children and by institutions in the community that serve young children;

(6) Resources in the community that could be used to address the needs of Head Start eligible children and their families, including assessments of their availability and accessibility.

(c) The Head Start grantee must use information from the community needs assessment to:

(1) Help determine the grantee's philosophy, and its long-range and short-range program objectives;

(2) Determine the type of component services that are most needed and the program option or options that will be implemented;

(3) Determine the recruitment area that will be served by the grantee, if limitations in the amount of resources make it impossible to serve the entire service area.

(4) If there are delegate agencies, determine the recruitment area that will be served by the grantee and the recruitment area that will be served by each delegate agency.

(5) Determine appropriate locations for centers and the areas to be served by home-based programs; and

(6) Set criteria that define the types of children and families who will be given priority for recruitment and selection.

(d) In each of the two years following completion of the community needs assessment, the grantee must conduct a review to determine whether there have been significant changes in the information described in paragraph (b) of this section. If so, the community needs assessment must be updated and the decisions described in paragraph (c) of this section must be reconsidered.

(e) The recruitment area must include the entire service area, unless the resources available to the Head Start grantee are inadequate to serve the entire service area.

(f) In determining the recruitment area when it does not include the entire service area, the grantee must:

(1) Select an area or areas that are among those having the greatest need for Head Start services as determined by the community needs assessment; and

(2) Include as many Head Start eligible children as possible within the recruitment area, so that:

(i) The greatest number of Head Start eligible children can be recruited and have an opportunity to be considered for selection and enrollment in the Head Start program, and

(ii), the Head Start program can enroll the children and families with the greatest need for its services.

§ 1305.4 Age of children and family income eligibility.

(a) To be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located, except in cases where the Head Start program's approved grant provides specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant families and Parent and Child Center programs.

(b) At least 90 percent of the children who are enrolled in each Head Start program must be from low-income families. Up to ten percent of the children who are enrolled may be children from families that exceed the low-income guidelines but who meet criteria the program has established for selecting such children and who would benefit from Head Start services.

(c) The family income must be verified by the Head Start program before determining that a child is eligible to participate in the program.

(d) Verification must include examination of any of the following: Individual Income Tax Form 1040, W–2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance.

(e) A signed statement by an employee of the Head Start program, identifying which of these documents was examined and stating that the child is eligible to participate in the program, must be maintained to indicate that income verification has been made.

§ 1305.5 Recruitment of children.

(a) In order to reach those most in need of Head Start services, each Head Start grantee and delegate agency must develop and implement a recruitment process that is designed to actively inform all families with Head Start eligible children within the recruitment area of the availability of services and encourage them to apply for admission to the program. This process may include canvassing the local community, use of news releases and advertising, and use of family referrals and referrals from other public and private agencies.

(b) During the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all information needed for selection is completed.

(c) Each program, except migrant programs, must obtain a number of applications during the recruitment process that occurs prior to the beginning of the enrollment year that is greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year in order to select those with the greatest need for Head Start services.

§ 1305.6 Selection process.

(a) Each Head Start program must have a formal process for establishing selection criteria and for selecting children and families that considers all eligible applicants for Head Start services. The selection criteria must be based on those contained in paragraphs (b) and (c) of this section.

(b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in § 1305.3(c)(6).

(c) At least 10 percent of the total number of enrollment opportunities in each grantee and each delegate agency during an enrollment year must be made available to children with disabilities who meet the definition for children with disabilities in § 1305.2(a). An exception to this requirement will be granted only if the responsible HHS official determines, based on such supporting evidence as he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP), with services provided directly by Head Start or in conjunction with other providers.

(d) Each Head Start program must develop at the beginning of each

enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria to assure that eligible children enter the program as vacancies occur.

§ 1305.7 Enrollment and re-enrollment.

(a) Each child enrolled in a Head Start program, except those enrolled in a migrant program, must be allowed to remain in Head Start until kindergarten or first grade is available for the child in the child's community, except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(b) A Head Start grantee must maintain its funded enrollment level. When a program determines that a vacancy exists, no more than 30 calendar days may elapse before the vacancy is filled. A program may elect not to fill a vacancy when 60 calendar days or less remain in the program's enrollment year.

(c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year.

§ 1305.8 Attendance.

(a) When the monthly average daily attendance rate in a center-based program falls below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis must include a study of the pattern of absences for each child, including the reasons for absences as well as the number of absences that occur on consecutive days.

(b) If the absences are a result of illness or if they are well documented absences for other reasons, no special action is required. If, however, the absences result from other factors, including temporary family problems that affect a child's regular attendance, the program must initiate appropriate family support procedures for all children with four or more consecutive unexcused absences. These procedures must include home visits or other direct contact with the child's parents. Contacts with the family must emphasize the benefits of regular attendance, while at the same time remaining sensitive to any special family circumstances influencing attendance patterns. All contacts with the child's family as well as special family support service activities provided by program staff must be documented.

(c) In circumstances where chronic absenteeism persists and it does not seem feasible to include the child in either the same or a different program option, the child's slot must be considered an enrollment vacancy.

§ 1305.9 Policy on fees.

A Head Start program must not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all of the costs of the child's participation, the Head Start program may accept the voluntary payments and record the payments as program income.

Under no circumstances shall a Head Start program solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

§ 1305.10 Compliance.

A grantee's failure to comply with the requirements of this Part may result in a denial of refunding or termination in accordance with 45 CFR part 1303.

[FR Doc. 92-24578 Filed 10-8-92; 8:45 am]

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federal register

Friday
October 9, 1992

Part V

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report seven deferrals of budget authority, totaling $930.9 million.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development and the Departments of Agriculture, Defense, Health and Human Services, and State. The details of these deferrals are contained in the attached report.

George Bush,

The White House, October 1, 1992.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D93–1	Economic support fund	492,736
	Agency for International Development	
	Demobilization and transition	
D93–2	fund	13,750
	Department of Agriculture:	
	Forest Service:	
D93–3	Cooperative work	364,582
D93–4	Expenses, brush disposal	40,241
	Department of Defense, Civil:	
D93–5	Wildlife conservation	2,175
	Department of Health and Human Services:	
	Social Security Administration:	
	Limitation on administrative	
D93–6	expenses	7,267
	Department of State:	
	Bureau of Refugee Programs:	
	United States emergency refugee and	
D93–7	migration fund	10,123
	Total, deferrals	930,875

Deferral No. 93–1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	New budget authority..... $ _____
BUREAU: International Security Assistance	Other budgetary resources..... $ 492,736,396
Appropriation title and symbol: Economic support fund 1/ 112/31037 11X1037	Total budgetary resources..... $ 492,736,396
	Amount to be deferred: Part of year..... $ 492,736,396 Entire year..... _____
OMB identification code: 11–1037–0–1–152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [X] Multi–year: September 30, 1993 (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11X1037	11–1037–0–1–152	30,495,496
Economic support fund.....	112/31037	11–1037–0–1–152	462,240,900
			492,736,396

JUSTIFICATION: This account provides economic and counternarcotics assistance to selected countries in support of U.S. efforts to promote stability and U.S. security interests in strategic regions of the world. This account also includes contributions to the International Fund for Ireland. This action defers funds pending approval of specific loans and grants to eligible countries. This interagency review process will ensure that each approved transaction is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–1A).

Deferral No. 93–2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	New budget authority.....
BUREAU: Agency for International Development	Other budgetary resources..... $ 13,750,000
Appropriation title and symbol: Demobilization and transition fund 11X1500	Total budgetary resources..... $ 13,750,000 **Amount to be deferred:** Part of year..... $ 13,750,000 Entire year.....
OMB identification code: 11–1500–0–1–152 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi–year: _____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: This account was established to facilitate cease–fire monitoring, demobilization, and transition to peace in El Salvador. Funds were transferred into this account pursuant to P.L. 101–513, Section 531(f) (2). These funds are available solely to support costs of demobilization, retraining, relocation, and reemployment in civilian pursuits of former combatants in the conflict in El Salvador. Funds are available for obligation and expenditure only upon notification by the President to the Congress that the Government of El Salvador and representatives of the Farabundo Marti National Liberation Front (FMLN) have reached a permanent settlement of the conflict, including a final agreement on a cease– fire. This action is taken pursuant to the Antideficiency Act (31 U.S. C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–9).

Deferral No. 93-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 242,572,000 (16 U.S.C. 576b)
BUREAU: Forest Service	Other budgetary resources..... $ 483,617,206
Appropriation title and symbol: Cooperative Work 1/ 12X8028	Total budgetary resources..... $ 726,189,206
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 364,582,206
OMB identification code: 12-8028-0-7-999	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Under the Cooperative work account, funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where timber operators have not completed all of the contract obligations during the year funds are deposited. As a result, restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92-3).

Deferral No. 93–4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Agriculture	New budget authority..... $ 27,278,000 (16 U.S.C. 490)
BUREAU: Forest Service	Other budgetary resources..... $ 81,975,029
Appropriation title and symbol: Expenses, brush disposal 1/ 12X5206	Total budgetary resources..... $ 109,253,029 **Amount to be deferred:** Part of year..... $ _____ Entire year..... $ 40,241,029
OMB identification code: 12–9922–0–2–302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi–year: _____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Purchasers of National Forest timber are required to deposit to the Forest Service the established cost for disposing of brush and other debris resulting from timber cutting operations authorized by 16 U.S.C. 490. The deposits becoming available in the current year are estimated, and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year–to–year program, which will require $69 million in 1993. The current fiscal year reserve of $40 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–10).

Deferral No. 93–5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Defense – Civil	New budget authority.....$ 2,525,000 (16 U.S.C. 670F)
BUREAU: Wildlife Conservation Military Reservations 1/	Other budgetary resources...$ 1,975,000
Appropriation title and symbol: Wildlife Conservation, Army 21X5095; Wildlife Conservation, Navy 17X5095; Wildlife Conservation, Air Force 57X5095	Total budgetary resources....$ 4,500,000
	Amount to be deferred: Part of year..... ; Entire year.....$ 2,175,000
OMB identification code: 97–5095–0–2–303	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual; [ ] Multi–year: (expiration date); [X] No–Year	**Type of budget authority:** [X] Appropriation; [ ] Contract authority; [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Wildlife Conservation, Army.....	21X5095	97–5095–0–2–303	$ 1,600,000
Wildlife Conservation, Navy.....	17X5095	97–5095–0–2–303	$ 175,000
Wildlife Conservation, Air Force....	57X5095	97–5095–0–2–303	$ 400,000
			$ 2,175,000

JUSTIFICATION: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major

1/ These accounts were the subject of a similar deferral in FY 1992 (D92–4).

D93–5

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No. 93–6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Health and Human Services	**New budget authority**.....
BUREAU: Social Security Administration	**Other budgetary resources**..... $ 14,517,051
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources**..... 14,517,051
	Amount to be deferred: Part of year..... Entire year..... $ 7,267,051
OMB identification code: 20–8007–0–7–651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi–year: (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: This account contains the no–year funds appropriated to the Social Security Administration (SSA) for construction and renovation of SSA facilities, and for Information Technology Systems (ITS). It has been determined that obligational authority for construction projects in the amount of this deferral is not currently needed. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–5).

Deferral No. 93–7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of State	New budget authority..... $ _____
BUREAU: Bureau of Refugee Programs	Other budgetary resources..... $ 10,126,000
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... $ 10,126,000 **Amount to be deferred:** Part of year..... $ 10,123,000 Entire year..... _____
OMB identification code: 11–0040–0–1–151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi–year: _____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94–141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96–212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–6A).

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Part VI

Department of Labor

Employment Standards Administration
Wage and Hour Division

29 CFR Part 541

Fair Labor Standard Act: Computer-related Occupations; Exemption from Minimum Wage and Overtime Compensation Requirements; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Part 541

RIN 1215-AA65

Defining and Delimiting the Terms "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including any Employee Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman"

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final regulations for certain workers employed in computer-related occupations under 29 CFR part 541. These rules implement the provisions of Public Law 101-583, enacted November 15, 1990, which requires the issuance of regulations to permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers to qualify for exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA). Regulations in 29 CFR part 541, contain the criteria for exemption under section 13(a)(1) of the Act from the minimum wage and overtime compensation requirements of the Act for executive, administrative, professional and outside sales personnel.

DATES: These rules are effective November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 219-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

There are no reporting or recordkeeping requirements contained in these regulations.

II. Background

Section 13(a)(1) of the FLSA exempts any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary). The existing regulations, 29 CFR part 541, provide that, in order to be exempt as a bona fide executive, administrative or professional employee, an individual must meet certain tests with respect to job duties and responsibilities and must be compensated on a salary basis at no less than a specified amount.

Section 2 of Public Law 101-583, enacted November 15, 1990, provides that not later than 90 days after the date of enactment of the Act, the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of the Act (29 U.S.C. 206).

Pursuant to Public Law 101-583, an interim final rule was published in the **Federal Register** on February 27, 1991 (56 FR 8250), with a comment period that closed April 29, 1991. This rule added a new § 541.5c to 29 CFR part 541 to exempt workers in the computer field who met the new duties tests specified in the regulations and whose regular rate of pay, regardless of whether paid on a salary basis or on an hourly basis, was in excess of 6½ times the FLSA minimum wage. The interim final rule did not alter the exemption criteria for salaried workers in computer-related occupations who earn an amount equal to or less than 6½ times the minimum wage. Such workers continued to be eligible for exemption if the existing requirements in 29 CFR part 541 (i.e., duties and responsibilities) were met, typically in either an executive or administrative capacity. However, such salaried workers were not exempt by virtue of their employment in the specified computer-related occupations. Likewise, such workers paid on an hourly basis at rates of pay equal to or less than 6½ times the minimum wage continued to be ineligible for exemption for failure to meet the "salary basis" requirement generally applicable to all other exempt categories in the private sector.

Sixty-eight comments were received during the comment period on the interim final rule from employers, trade associations, law firms, and individuals. The major commenters and the issues they raised are discussed below, as are the significant changes that have been made in the final regulatory text in response to the comments received.

III. Discussion of Major Comments Received

National Association of Computer Consultant Businesses, the law firm of Epstein, Becker & Green, the law firm of Blackwell, Sanders, Matheny, Weary & Lombardi, Total System Services, Association of Data Processing Service Organizations (ADAPSO), Professional Services Council, CDI Corporation, and the Texas Employment Commission all commented that the interim final rule was inconsistent with the intent of Public Law 101-583. These commenters, for the most part, argue that the statutory language specifically requires the Secretary of Labor to permit salaried workers employed in the specified computer-related occupations to qualify as exempt executive, administrative, or professional employees, regardless of whether their pay exceeds 6½ times the minimum wage, and that the exemption must also be made available to such workers who are compensated on an hourly basis provided that they receive more than 6½ times the minimum wage.

L.J. Gonzer Associates, Additional Technical Support, Inc., and the law firm of Devin & Drohan generally viewed the interim final rule as too narrow and suggested that the term "other similarly skilled professional workers" should not be limited to computer-related occupations, as provided by the statute, but expanded to additional areas not within the scope of Public Law 101-583 such as to hardware engineers, other engineers, or all other categories of "professional" employees whether or not in the computer field. Similarly, the National Technical Services Association, without endorsing or objecting to the interim final rule, posed several questions about other highly-skilled workers not included in the statute who perform tasks that are facilitated by the use of computers, e.g., an engineer conducting flight systems analysis, and requested that the status of these and similar workers be clarified.

The American Engineering Association commented that Public Law 101-583 was prejudicial, repressive, and targets a very small percentage of the nation's technical workforce, and urged the Department, through hearings, to seek repeal by those who initiated the legislation.

The Department of Personnel of Washington County Courthouse (WI) and the Dalkon Shield Claimants Trust objected to the requirement of 6½ times the minimum wage as being too high.

In addition, another 53 comments were received from individuals working as computer systems analyst/programmers or engineers who ordinarily obtain employment in their fields through service firms, some of whom referred to themselves as "job shoppers".[1] For the most part, these individuals are accustomed to compensation on an hourly basis with premium pay for overtime, and they expressed general opposition to the enactment of Public Law 101–583.

The Department also has included in the record correspondence from members of the House Committee on Education and Labor who were the principal House sponsors of the amendment, Representatives Austin Murphy (Chairman, Labor Standards Subcommittee) and William Goodling (Ranking Minority Member), who contended that the interim final rule was inconsistent with the language of the statutory amendment, as well as to the underlying Congressional intent. They stated that the two sentences of the amendment should be read separately. The first, which states that certain highly-skilled computer professionals should qualify for exemption, contains no reference to any particular wage or salary requirement. The second sentence, they contend, then adds an additional requirement for those computer professionals who are compensated on an hourly basis. Similar views were also expressed by Senator John F. Kerry, a sponsor of the amendment in the Senate, in recent correspondence.

In issuing the interim final rule, the Department concluded that Congress intended that the exemption was applicable to highly-skilled computer workers paid more than the equivalent of 6½ times the minimum wage, regardless of how paid. The Department has carefully considered the comments received and made a further review of the statutory provision and its legislative history. In light of the fact that the legislative history is not free from doubt,[2] and that the language of the provision itself is more conducive to the reading suggested by the commenters, the Department has concluded that the new exemption for certain highly-skilled computer professionals is not limited to employees whose pay exceeds 6½ times the minimum wage. Rather, that limitation is imposed only upon those computer professional employees who are paid on an hourly basis.

Thus, this final regulation provides that the statutory exemption for highly-skilled computer-related occupations is not limited to those employees whose pay exceeds 6½ times the minimum wage, regardless of whether paid on a salary or on an hourly basis, as was provided by the interim final rule. In addition, consistent with the statutory characterization of these employees as professionals, the Department has deleted § 541.5c in the interim final rule and is adopting new exemption criteria in § 541.3 to permit the specified computer-related occupations to qualify for exemption as professional employees. The exemption in § 541.3 for these occupations is defined more fully in subpart B—Interpretations, under a new § 541.303. Section 541.302(h) of existing subpart B (renumbered herein as § 541.301), which discussed why computer programmers and systems analysts were not included in the learned professions prior to Public Law 101–583, is deleted, and § 541.312 is revised to permit an exception from the "paid on a salary basis" requirements of § 541.118 for those computer professional employees who are paid on an hourly basis at a rate in excess of 6½ times the minimum wage.

In addition to the substantive comments on the scope of Public Law 101–583 discussed above, commenters also submitted technical suggestions, some of which have been adopted. While the basic requirements for exemption as contained in § 541.5c of the interim final rule are retained in the new § 541.303, the final rule makes the following clarifying changes:

—The exemption is expressly limited to employees in computer systems analysis, programming, software engineering, or related work in software functions;
—A list of the more common job titles in use in the industry is added for illustration purposes;
—Editorial changes are made in the primary duties test for exemption;
—The exemption is not dependent on any particular academic requirements, but rather on proficiency in the theoretical and practical application of a body of highly-specialized knowledge in computer systems analysis, programming, and software engineering;
—The exemption excludes employees who operate computers or who are engaged in the manufacture, repair, or maintenance of computer hardware; and
—Employees within the scope of the exemption may also qualify for exemption under § 541.1 or § 541.2, if applicable.

Executive Order 12291

This final rule in not a "major rule" within the meaning of Executive Order 12291, in that it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Analysis

The Department has determined that the final regulation will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the proposal merely incorporates a narrow, technical modification imposed by statute. Therefore, no regulatory flexibility analysis is required. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Document Preparation

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Wages.

Accordingly, part 541 of title 29 of the Code of Federal Regulations is amended as set forth below.

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[1] Of these comments, one was co-signed by 55 individuals.

[2] Sponsors of the legislation and others making floor statements during the debate suggested that the exception was narrowly crafted and intended to apply only to those employees who are paid in excess of 6½ times the minimum wage. On the other hand, Senator Kerry, one of the Senate sponsors, was of the view that the legislation called for a revamping of outdated regulations that failed to recognize certain computer industry employees as professionals.

Signed at Washington, DC on this 2d day of October 1992.

Lynn Martin,

Secretary of Labor.

Judith A. Sotherlund,

Deputy Assistant Secretary for Employment Standards.

Karen R. Keesling,

Acting Administrator, Wage and Hour Division.

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

The authority citation for part 541 continues to read as follows:

Authority: 29 U.S.C. 213; Public Law 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 Comp., p. 1004); Secretary's Order No. 13–71 (36 **Federal Register** 8755).

2. Section 541.3 of subpart A is amended by deleting the semicolon and the word "and" and substituting a comma and the word "or" at the end of paragraph (a)(3); by adding a new paragraph (a)(4); and by revising paragraph (e) to read as follows:

§ 541.3 Professional.

(a) * * *

(4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field, as provided in § 541.303; and

* * * * *

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week ($150 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week (or $200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further*, That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6½ times the minimum wage provided by section 6 of the Act.

§ 541.5C [Removed]

3. Section 541.5c is removed.

§ 541.302 [Amended]

4. In subpart B of part 541, § 541.302 is amended by removing paragraph (h).

§§ 541.301, 541.302, and 541.303 [Redesignated as 541.300, 541.301 and 541.302]

5. In subpart B of part 541, existing §§ 541.301, 541.302, and 541.303 are redesignated as 541.300, 541.301, and 541.302, respectively, and a new § 541.303 is added to read as follows:

§ 541.303 Computer Related Occupations Under Public Law 101–583.

(a) Pursuant to Public Law 101–583, enacted November 15, 1990, § 541.3(a)(4) provides that computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer software field are eligible for exemption as professionals under section 13(a)(1) of the Act. Employees who qualify for this exemption are highly-skilled in computer systems analysis, programming, or related work in software functions. Employees who perform these types of work have varied job titles. Included among the more common job titles are computer programmer, systems analyst, computer systems analyst, computer programmer analyst, applications programmer, applications systems analyst, applications systems analyst/programmer, software engineer, software specialist, systems engineer, and systems specialist. These job titles are illustrative only and the list is not intended to be all-inclusive. Further, because of the wide variety of job titles applied to computer systems analysis and programming work, job titles alone are not determinative of the applicability of this exemption.

(b) To be considered for exemption under § 541.3(a)(4), an employee's primary duty must consist of one or more of the following:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on a related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) a combination of the aforementioned duties, the performance of which requires the same level of skills.

(c) The exemption provided by § 541.3(a)(4) applies only to highly-skilled employees who have achieved a level of proficiency in the theoretical and practical application of a body of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and does not include trainees or employees in entry level positions learning to become proficient in such areas or to employees in these computer-related occupations who have not attained a level of skill and expertise which allows them to work independently and generally without close supervision. The level of expertise and skill required to qualify for this exemption is generally attained through combinations of education and experience in the field. While such employees commonly have a bachelor's or higher degree, no particular academic degree is required for this exemption, nor are there any requirements for licensure or certification, as is required for the exemption for the learned profession.

(d) The exemption does not include employees engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware

and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs, e.g., engineers, drafters, and others skilled in computer-aided design software like CAD/CAM, but who are not in computer systems analysis and programming occupations, are also excluded from this exemption.

(e) Employees in computer software occupations within the scope of this exemption, as well as those employee's not within its scope, may also have managerial and administrative duties which may qualify the employees not within its scope, may also have managerial and administrative duties which may qualify the employees for exemption under § 541.1 or § 541.2 (see §§ 541.205(c)(7) and 541.207(c)(7) of this subpart).

6. In subpart B of part 541, § 541.312 is revised to read as follows:

§ 541.312 Salary basis.

The salary basis of payment is explained in § 541.118 in connection with the definition of "executive." Pursuant to Public Law 101–583, enacted November 15, 1990, payment "on a salary basis" is not a requirement for exemption in the case of those employees in computer-related occupations, as defined in § 541.3(a)(4) and § 541.303, who otherwise meet the requirements of § 541.3 and who are paid on an hourly basis if their hourly rate of pay exceeds 6½ times the minimum wage provided by section 6 of the Act.

[FR Doc. 92–24639 Filed 10–8–92; 8:45 am]
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Reader Aids

Federal Register

Vol. 57, No. 197

Friday, October 9, 1992

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

Passed over the President's veto

S. 12/P.L. 102–385

Cable Television Consumer Protection and Competition Act of 1992. (Oct. 5, 1992; 106 Stat. 1460; 45 pages) Price: $1.50

H.R. 2194/P.L. 102–386

To amend the Solid Waste Disposal Act to clarify provisions concerning the application of certain requirements and sanctions to Federal facilities. (Oct. 6, 1992; 106 Stat. 1505; 14 pages) Price: $1.00

H.J. Res. 560/P.L. 102–387

Waiving certain enrollment requirements with respect to any appropriations bill for the remainder of the One Hundred Second Congress. (Oct. 6, 1992; 106 Stat. 1519; 1 page) Price: $1.00

H.R. 5518/P.L. 102–388

Department of Transportation and Related Agencies Appropriations Act, 1993. (Oct 6, 1992; 106 Stat. 1520; 51 pages) Price: $1.50

H.R. 5679/P.L. 102–389

Departments of Veterans Affairs and Housing and

Urban Development, and Independent Agencies Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1571; 49 pages) Price: $1.50

H.R. 3654/P.L. 102-390

To provide for the minting of commemorative coins to support the 1996 Atlanta Centennial Olympic Games and the programs of the United States Olympic Committee, to reauthorize and reform the United States Mint, and for other purposes. (Oct. 6, 1992; 106 Stat. 1620; 13 pages) Price: $1.00

H.R. 5368/P.L. 102-391

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1633; 70 pages) Price: $2.25

H.R. 5427/P.L. 102-392

Legislative Branch Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1703; 26 pages) Price: $1.00

H.R. 5488/P.L. 102-393

Treasury, Postal Service, and General Government Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1729; 63 pages) Price: $2.00

H.R. 5677/P.L. 102-394

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1792; 36 pages) Price: $1.25

H.R. 5678/P.L. 102-395

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1828; 48 pages) Price: $1.50

H.R. 5504/P.L. 102-396

Department of Defense Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1876; 73 pages) Price: $2.25

S. 1766/P.L. 102-397

To add to the area in which the Capitol Police have law enforcement authority, and for other purposes. (Oct. 6, 1992; 106 Stat. 1949; 4 pages) Price: $1.00

S.J. Res. 23/P.L. 102-398

To consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920. (Oct. 6, 1992; 106 Stat. 1953; 1 page) Price: $1.00

H.R. 5058/P.L. 102-399

To authorize appropriations for the American Folklife Center for fiscal year 1993. (Oct. 7, 1992; 106 Stat. 1954; 1 page) Price: $1.00

H.R. 5399/P.L. 102-400

United States Commission on Civil Rights Authorization Act of 1992. (Oct. 7, 1992; 106 Stat. 1955; 1 page) Price: $1.00

H.R. 5630/P.L. 102-401

Head Start Improvement Act of 1992. (Oct. 7, 1992; 106 Stat. 1956; 5 pages) Price: $1.00

Last List October 8, 1992

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Free **Electronic Bulletin Board** Service for Public Law Numbers and the **Federal Register** Table of Contents is available on 202-275-1538 or 275-0920.

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102d Congress, 2nd Session, 1992

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 2nd Session, 1992.

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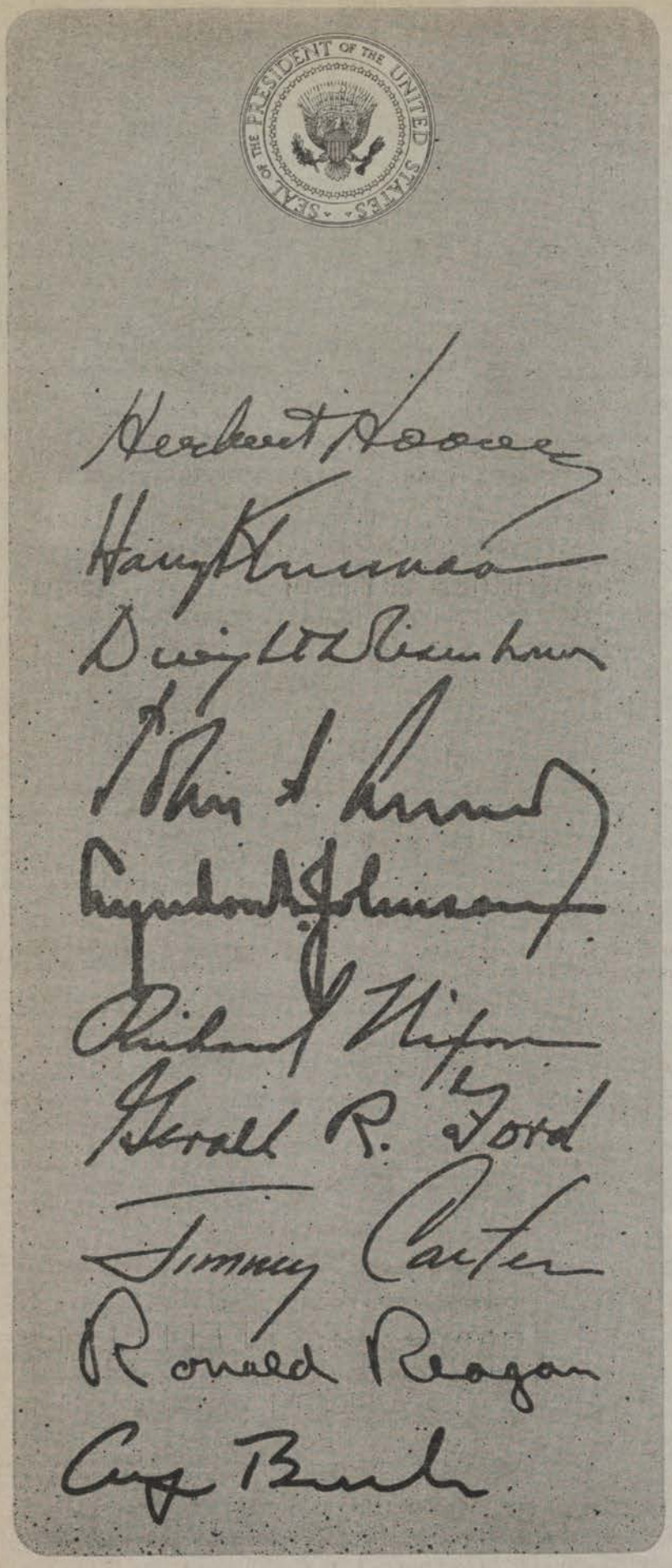

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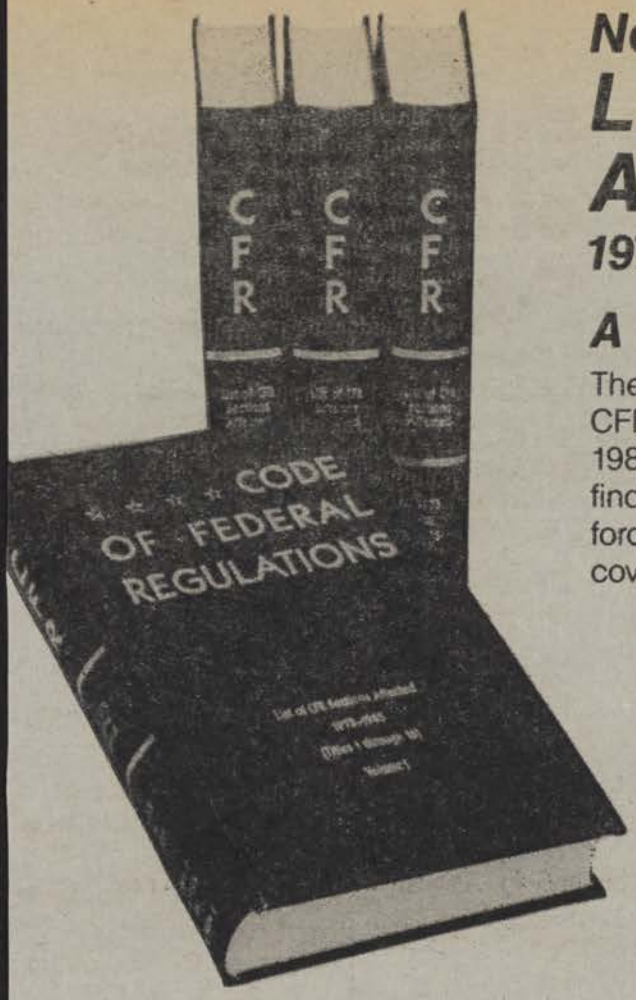

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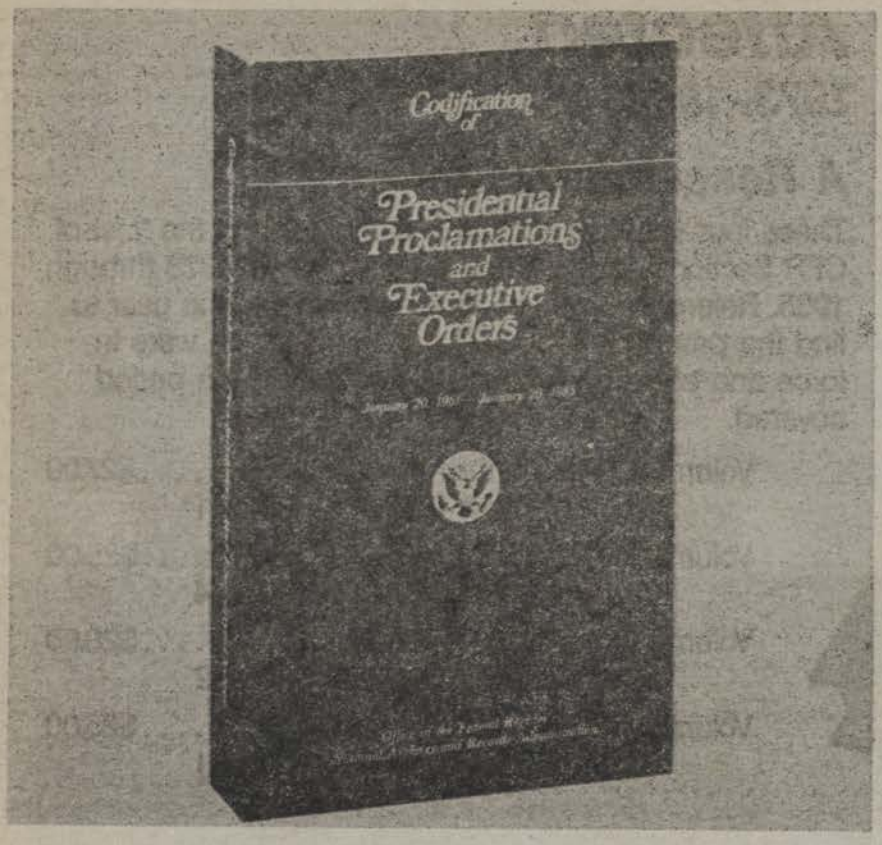

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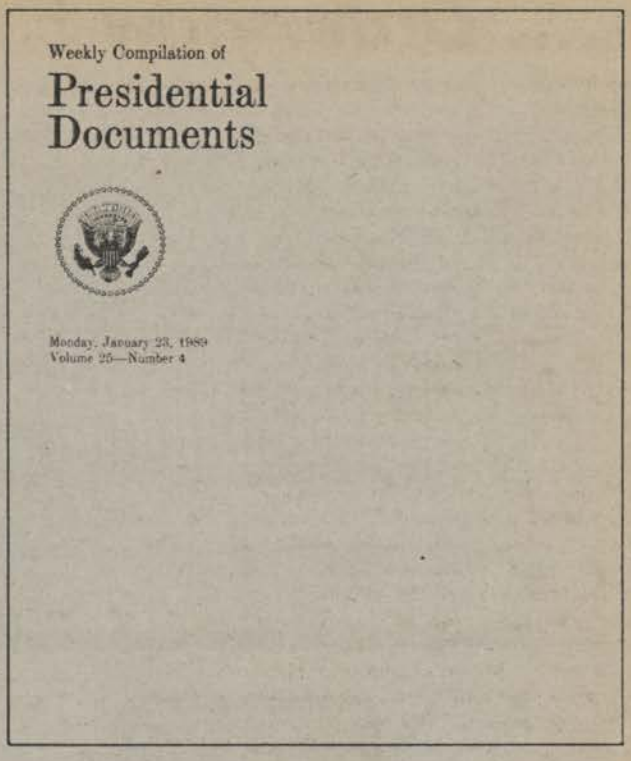

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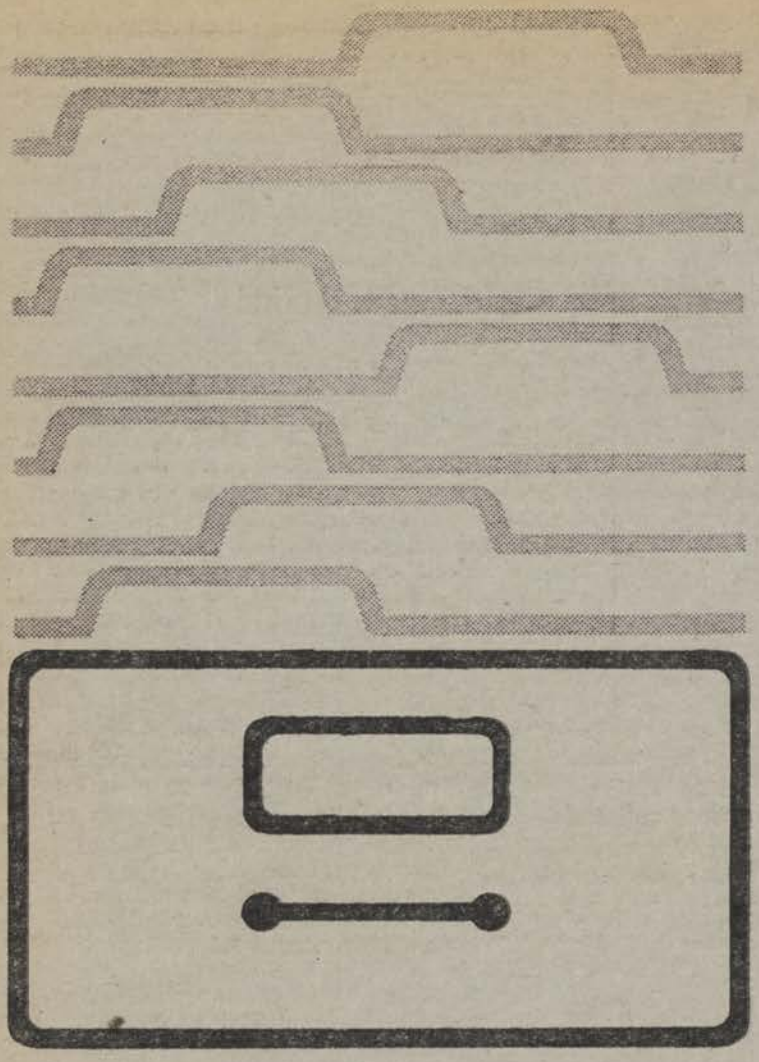

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