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Tuesday
March 6, 1990

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

DURHAM, NC

WHEN: March 20, at 9:30 a.m.
WHERE: Duke University, Von Cannon Hall, Bryan Center, Durham, NC.
RESERVATIONS: 919-684-3030.

SALT LAKE CITY, UT

WHEN: March 29, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT.
RESERVATIONS: Call the Utah Department of Administrative Services, 801-538-3010.

WASHINGTON, DC

WHEN: March 29, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV-90-101]

Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Yellow-Meated Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (without change) which exempts shipments of yellow-meated tomatoes from the container requirement in the Florida tomato handling regulation under marketing order No. 966. Allowing handlers to ship yellow-meated tomatoes in containers other than those currently authorized under the order will facilitate the movement of such tomatoes and should improve returns to producers of Florida tomatoes.

EFFECTIVE DATE: April 5, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966 [7 CFR part 966], both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

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

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

There are approximately 100 handlers of Florida tomatoes subject to regulation under the marketing order, and approximately 180 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers of Florida tomatoes may be classified as small entities.

An interim final rule was issued on December 11, 1989, and was published in the **Federal Register** on December 14, 1989 (54 FR 51297). The rule exempted shipments of yellow-meated tomatoes from the container requirement under the handling regulation. The interim rule provided that interested persons could file written comments through January 16, 1990. No comments were received.

Under the marketing order, tomatoes shipped to fresh markets are required to meet the handling requirements specified in 7 CFR 966.323 (as amended at 53 FR 3191, February 4, 1988). The current requirements include a minimum grade of U.S. No. 3 and a minimum size of 2 $^{8}/_{32}$ inches in diameter. Pack and container specifications are also in effect. In addition, all lots are required to be inspected and certified as meeting these grade, size, pack, and container requirements by an authorized representative of the Federal or Federal-State Inspection Service.

The Florida Tomato Committee (committee) met on September 7 and October 11, 1989, and unanimously recommended that shipments of yellow-meated tomatoes be exempt from the container requirement included in the handling regulation which specifies that tomatoes be packed in containers of 20 or 25 pounds net weight.

The yellow-meated tomato is a commodity just recently available from Florida. It is grown in relatively small volumes within the production area, and marketed as a specialty item. Like other tomato specialty items (e.g., greenhouse-grown tomatoes), yellow-meated tomatoes are typically harvested at a fully mature stage and are too fragile to withstand packing and shipping in the currently authorized 20- and 25-pound multi-layer cartons. Typically, tomatoes, such as greenhouse-grown and others that are exempt under § 966.323(d)(1) from the handling regulation, that are fully mature have been packed in smaller, single-layer containers. This has helped to reduce and eliminate damage that could occur during handling and shipping and thereby supply markets with the quality product desired. The committee therefore recommended that yellow-meated tomatoes be exempt from the requirement that they be packed in the larger containers. This action will facilitate the marketing of yellow-meated tomatoes, and should result in the development of new markets and the expansion of marketing opportunities for Florida tomato growers and handlers.

Although this rule exempts handlers from the requirement that they pack yellow-meated tomatoes in 20- or 25-pound containers, such tomatoes are still subject to all other provisions of the handling regulation, including the minimum grade and size requirements. The committee believes that, aside from the container specifications, the current handling requirements are appropriate for yellow-meated tomatoes. Requiring these tomatoes to meet the established grade, size, pack, and inspection requirements will ensure that the overall quality of tomatoes shipped from the production area will not be affected by this action.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements.

However, the Act does not authorize the imposition of container requirements on imports, when such requirements are in effect under a domestic marketing order. Therefore, no change is necessary in the tomato import regulation as a result of this action to exempt yellow-meated tomatoes from container requirements.

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

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

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and Recordkeeping Requirements, Tomatoes.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 966 which was published at 54 FR 51297 on December 14, 1989, is adopted as a final rule without change.

Dated: March 1, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-5050 Filed 3-5-90; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

REA Design Specifications for Digital Lightwave Transmission Systems; REA Form 397h

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR part 1772, Telephone Standards and Specifications, by adding REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h. REA Form 397h is a new specification that applies to the procurement of lightwave transmission systems which employ optical fibers as the transmission medium. This includes opto-electronic terminal equipment, such as digital multiplexers. The specification may be used in procuring a complete installed system, a major component of a system, or for incremental additions of equipment to already existing systems. This action permits REA telephone borrowers to utilize lightwave technology in bringing modern, cost-effective telecommunications to rural America. All REA telephone borrowers procuring lightwave equipment, their consulting firms, and manufacturers of lightwave transmission equipment are impacted by this action.

EFFECTIVE DATE: This regulation is effective March 6, 1990.

FOR FURTHER INFORMATION CONTACT: T. Lamar Moore, Chief, Transmission Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250-1500, telephone (202) 382-8665.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends 7 CFR part 1772, Telephone Standards and Specifications, by issuing REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h

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

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

This rule does not contain new or amended reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). Existing requirements were approved by the Office of Management and Budget under OMB approval number 0572-0062.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851. Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In these publications REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds.

REA is issuing REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h. There is a steadily increasing demand for digital lightwave transmission by REA telephone borrowers to expand and upgrade telecommunications service in rural America. This borrower demand has resulted in the need to provide a uniform and systematic means of specifying lightwave transmission needs and equipment. Form 397h is being issued as the means to accomplish this purpose. REA borrowers shall use the REA Form 397h with REA Special Equipment Contracts. Forms 397 and 398, to purchase lighwave transmission systems for their individual telecommunications system needs. Form 397h provides a uniform generic specification format with the flexibility to specify the particular needs of a borrower.

A notice of proposed rulemaking was published in the **Federal Register** on March 14, 1988, 53 FR 8219. One interested party commented on this proposal.

A summary of the comments is as follows:

1. The Purchaser's narrative should include any proposed plan for further expansion of the transmission system by utilizing various Wavelength Division Multiplexing methods for all or portions of fiber optic cable routes.

2. If the Bureau of Radiological Health is part of a larger Government Agency, this information should be included.

3. Names, rather than acronyms, should be provided for the optical terminal receivers.

REA's response to these comments is summarized as follows:

1. Since the ultimate capacity of a fiber optic system can be reached using several distinct methods including Wavelength Division Multiplexing, REA does not feel that it is appropriate to single out a particular method.

2. Although the Bureau of Radiological Health (BRH) is part of the Food and Drug Administration (FDA), the BRH is

normally referenced in the manufacturer's literature. Therefore, REA will reference the BRH.

3. REA feels that anyone completing this specification should already be familiar with these common acronyms. A note will be included in the application guide (TE&CM section 961) referring to a TE&CM section now being developed which contains a lightwave glossary.

List of Subjects in 7 CFR Part 1772

Communications, Communications equipment, Loan programs, communications, Telecommunications, telephone.

Therefore, REA amends 7 CFR part 1772 as follows:

PART 1772—[AMENDED]

1. The authority citation for 7 CFR part 1772 continues to read as follows:

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

§ 1772.98 [Amended]

2. The table in § 1772.98 is amended by adding an entry for § 1772.397h to read as follows:

Section	Issue date	Title
*	*	*
1772.397h	March 6, 1990	REA Design Specification for Digital Lightwave Transmission Systems, REA Form 397h.
*	*	*

3. Section 1772.397 is added as follows:

§ 1772.397 REA Special Equipment Specifications.

The following specifications, as applicable, are to be used with REA Forms 397 and 398 for procurement of special equipment. Questions concerning the specifications may be addressed to Director, Telecommunications Staff Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500. A limited number of copies of these specifications will be furnished by REA upon request. As these documents are produced by the Federal Government and are, therefore, in the public domain, additional copies may be duplicated by any user as desired. Requests for copies should be sent to the Director, Administrative Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500. (OMB #0572–0062).

(a)—(g) [Reserved].

(h) REA Form 397h, REA Design Specifications for Digital Lightwave Transmission Systems.

Dated: February 27, 1990.

Jack Van Mark,

Acting Administrator.

[FR Doc. 90–5055 Filed 3–5–90; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1040–90]

8 CFR Part 214

RIN 1115–AA44

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule provides minor technical changes to the final rule regarding temporary alien workers seeking classification under the Immigration and Nationality Act which was published in the **Federal Register** on Janaury 26, 1990 at 55 FR 2606, and amends 8 CFR 214.2(h)(4), to reflect the proper paragraph designations which resulted from that final rule.

EFFECTIVE DATE: March 6, 1990.

FOR FURTHER INFORMATION CONTACT: Flora T. Richardson, Senior Immigration Examiner, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: On January 26, 1990, the Immigration and Naturalization published a final rule in the **Federal Register** at 55 FR 2606. In that rule paragraphs (h)(1) through (h)(16) were redesignated as paragraphs (h)(2) through (h)(17). Although newly redesignated paragraphs (h)(2), (h)(3), and (h)(5) through (h)(17) were revised, paragraph (h)(4) was not. This rule amends paragraph (h)(4) to properly reflect the correct paragraph citations as a result of the redesignation, as well as providing minor editorial changes to the final rule.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule only provides minor editorial changes.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment Analysis in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, part 214 of chapter I of title 8, Code of Federal Regulations, is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187, and 8 CFR part 2.

§ 214.2 [Amended]

2. Section 214.2(h)(2)(i)(B) is amended by changing the phrase "the petitioner shall be filed" to "the petition shall be filed" in the third sentence.

3. Section 214.2(h)(2)(i)(C) is amended by changing the phrase "received training from" to "receive training from" in the first sentence.

4. Section 214.2(h)(2)(i)(F)(2) is amended by changing the word "condition" to "conditions" in the first sentence.

5. Section 214.2(h)(2)(v) is amended by changing the reference to "paragraph (b)(4)" to "paragraph (h)(4)" in the last sentence.

6. Section 214.2(h)(4)(i)(D) is amended by changing the reference to "paragraph (h)(3)(i)(A)" and "paragraph (h)(3)(v)" to "paragraph (h)(4)(i)(A)" and "paragraph (h)(4)(v)" respectively.

7. Section 214.2(h)(4)(ii) is amended by changing the reference to "paragraph (h)(3)" to "paragraph (h)(4)".

8. Section 214.2(h)(4)(vi)(B) is amended by changing the reference to "paragraph (h)(3)(vi)(A)" to "paragraph (h)(4)(vi)(A)".

9. Section 214.2(h)(4)(viii)(B) is amended by changing the reference to "paragraph (h)(10)" to "paragraph (h)(12)" and changing the reference to "paragraph (h)(3)(ix)(C)" to "paragraph (h)(4)(ix)(C)".

10. Section 214.2(h)(4)(ix) is amended by changing the reference to "paragraph (h)(3)(i)(D)" to "paragraph (h)(4)(i)(D)" and by changing the reference to "paragraph (h)(3)(vi)" to "paragraph (h)(4)(vi)".

11. Section 214.2(h)(8)(ii)(A) is amended by changing the reference to "paragraph (h)(8)(ii)" to "paragraph (h)(8)(iii)".

12. Section 214.2(h)(8)(ii)(B) is amended by changing the reference to "paragraph (h)(8)(ii)" to "paragraph (h)(8)(iii)".

13. Section 214.2(h)(8)(ii)(C) is amended by changing the reference to "paragraph (h)(8)(ii)" to "paragraph (h)(8)(iii)".

14. Section 214.2(h)(8)(iii)(C) is amended by changing the reference to "section 101(a)(15)(H)(ii)" "to section 101(a)(15)(H)(iii)".

Dated: March 1, 1990.

James A. Puleo,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 90-5062 Filed 3-5-90; 8:45 am]

BILLING CODE 4410-10-M-3

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 89-213]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of swine by adding Massachusetts to the list of validated brucellosis-free States. We have determined that Massachusetts meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on moving breeding swine from Massachusetts.

EFFECTIVE DATE: Interim rule effective March 6, 1990. Consideration will be given only to comments received on or before May 7, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-213. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Stewart, Chief Staff Officer, Swine Diseases Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) prescribe conditions for the interstate movement of cattle, bison, and swine. States, areas, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for animals are based upon the disease status of the herd, area, or State from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated brucellosis-free States, to include Massachusetts. Validated brucellosis-free status is based on a State having:

(1) The necessary authorities for classification as a validated brucellosis-free State for swine;

(2) No known focus of swine brucellosis at the time of validation and completion of one of several methods of surveillance; or no diagnosed case of swine brucellosis in the 12 month period preceding the classification, and a statistical analysis of the combined results of certain tests that indicate the testing is equivalent to either complete herd testing or slaughter surveillance during a one or two year period and chosen by the State; and

(3) Certification by the appropriate State animal health official, the Veterinarian in Charge and the Deputy Administrator.

After reviewing its brucellosis program records, we have concluded that Massachusetts meets the criteria for classification as a validated brucellosis-free State. We are therefore adding Massachusetts to the list of States in § 78.43. This action relieves certain restrictions on moving breeding swine from Massachusetts.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of breeding swine from Massachusetts.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Herd owners in Massachusetts will be affected by this action. It will allow breeding swine to be moved interstate from Massachusetts without being tested for brucellosis. Approximately 440 sows are tested annually for brucellosis in order to be eligible for interstate movement from Massachusetts at an average cost to the seller of $4.75 per test. Using these numbers, we estimate that removing the testing requirement would result in a potential annual savings of $2,090 for Massachusetts swine herd owners. Of the approximately 3,000 swine herd owners nationwide who regularly ship breeding swine interstate, 4 herd owners regularly ship breeding swine interstate from Massachusetts. Of these herd owners, 3 would be considered small entities.

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

Paperwork Reduction Act

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS.

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.43 [Amended].

2. Section 78.43 is amended by adding "Massachusetts," immediately after "Maryland,".

Done in Washington, DC, this 1st day of March 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–5053 Filed 3–5–90; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 92

[Docket No. 89-218]

Restrictions on the Importation of Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations by adding Portugal and the Yemen Arab Republic to the list of countries in which the Animal and Plant Health Inspection Service considers African horse sickness to exist. This action is necessary because veterinary authorities of these two countries have confirmed the existence of African horse sickness in their respective countries. The intended effect of this action is to prevent the introduction of African horse sickness, a fatal equine viral disease, into the United States.

EFFECTIVE DATES: Interim rule effective March 6, 1990. Consideration will be given only to comments received on or before May 7, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89–218. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holdiays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8144.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including African horse sickness (AHS), into the United States. African horse sickness is a fatal equine viral disease not found in the United States.

Section 92.11(d)(1)(ii) of the regulations lists the countries in which AHS is considered by Veterinary Services, to exist, and requires horses intended for importation from any of those countries, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and undergo a quarantine for at least 60 days at the New York Animal Import Center in Newburgh, New York.

In response to information received from the Governments of Portugal and the Yemen Arab Republic that there have been outbreaks of AHS in their respective countries, we are adding them to the list of countries in § 91.11(d)(1)(ii) in which AHS is considered to exist.

As a result of this action, horses intended for importation from Portugal and the Yemen Arab Republic must now enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, New York.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to prevent the introduction of AHS into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

We are continuing to allow U.S. importers to import horses from Portugal and the Yemen Arab Republic, although we are requiring these horses to enter through the port of New York and undergo a quarantine of at least 60 days at the New York Animal Import Center. While importers of horses from Portugal and the Yemen Arab Republic, who would pay costs for a 3-day quarantine under the current regulations, will incur additional costs because of the longer quarantine under the interim rule, we do not expect this to have a significant economic impact on a substantial number of small entities. There has been an average of 30,000 horses imported into the United States annually during the past five years. During this same period, there have been no horses imported into the United States from the Yemen Arab Republic and fewer than 10 horses from Portugal. We have no reason to anticipate any substantial

changes in the number of horses imported from these countries.

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

Paperwork Reduction Act

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.11, paragraph (d)(1)(ii) is amended by adding "Portugal," immediately before "Spain" and ", the Yemen Arab Republic," immediately after "Spain".

Done in Washington, DC, this 28th day of February 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–5054 Filed 3–5–90; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Part 600

RIN 3052-AB07

Organization and Functions; Service of Process; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under part 600, December 11, 1989 (54 FR 50735). The final regulations to part 600 establish the method to be used to serve legal process upon the agency, including identification of the agency official designated to accept service of process. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 6, 1990.

EFFECTIVE DATE: March 6, 1990.

FOR FURTHER INFORMATION CONTACT: Gary L. Bohlke, Associate General Counsel, Litigation and Enforcement Division, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: February 28, 1990.

Jeffrey P. Katz,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 90–4971 Filed 3–5–90; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Parts 612, 614, 615, and 618

RIN 3052-AB06

Personnel Administration, Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under parts 612, 614, 615, and 618, December 11, 1989 (54 FR 50736). The final regulations to parts 612, 614, 615, and 618 eliminate the requirement for Farm Credit institutions to submit to the FCA certain proposed policies, procedures, programs and actions for FCA's approval prior to implementation by the institution. These submissions by the institution are referred to collectively as "prior approvals." In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 6, 1990.

EFFECTIVE DATE: March 6, 1990.

FOR FURTHER INFORMATION CONTACT: John C. Moore, Jr., Deputy Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4401, TDD (703) 883–4444.

Authority: 12 U.S.C. 2252(a)(9) and (10).

Dated: February 28, 1990.

Jeffrey P. Katz,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 90–4972 Filed 3–5–90; 8:45 am]

BILLING CODE 6705-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Service on Self-Regulatory Organization Governing Boards or Committees by Persons With Disciplinary Histories

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted new Regulation 1.63 which prohibits persons with certain disciplinary histories from serving on any self-regulatory organization's ("SRO") disciplinary committees, arbitration panels or governing board, and which requires each SRO to implement rules to this effect. Regulation 1.63 also requires each SRO to provide notice to the public of any implementing rules and an explanation of their impact, as well as notice to the Commission of persons who have been or could be affected by the SRO's implementing rule.

DATES: Regulation 1.63 is effective April 5, 1990. Regulation 1.63 shall apply as to all persons who are not sitting members of SRO disciplinary committees, arbitration panels or governing boards on April 5, 1990. Regulation 1.63 shall apply as to all persons who are sitting members of SRO disciplinary

committees, arbitration panels or governing boards on May 7, 1990.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

Public reporting burden for this collection of information is estimated to average 1.00 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to the Office of Management and Budget, Paperwork Reduction Project (3038-0022), Washington, DC 20503.

II. Introduction

On September 6, 1989, the Commission published for public comment a proposed new Regulation 1.63 which would have prohibited persons with certain disciplinary histories from serving on any SRO's disciplinary committees, arbitration panels or governing board,[1] and required each SRO to implement rules in this regard.[2]

In proposing new Regulation 1.63, the Commission stated that the probity of the self-regulatory process was dependent upon the fairness of SRO committees which establish and enforce SRO rules. The Commission further stated that the actual and perceived integrity with which an SRO operates is largely determined by the character and experience of the persons who serve on the SRO's rulemaking and rule-enforcing committees. The Commission indicated its concern, for instance, that a person found to have violated an SRO's rules or to have acted dishonestly in other areas may be or may be perceived as being unwilling to formulate or enforce an SRO's rules in a fully principled manner and that the presence of such a person on an SRO disciplinary committee, arbitration panel or governing board could diminish public confidence in the ability of that SRO to effectively police its markets.[3]

III. Comments Received

The Commission received nine comments on proposed Regulation 1.63.[4] All of these supported the general objectives of the proposed rulemaking even though they raised certain questions and offered alternatives to certain specific aspects of the proposal.

The Commission has carefully reviewed the comments received, and as a result has adopted Regulation 1.63 with certain modifications and clarifications. Comments addressing specific Regulation provisions and an explanation of the Commission's revisions are discussed below in connection with a description of the applicable provision of the final Regulation.

IV. Final Regulation 1.63

As proposed, Regulation 1.63 would have prohibited a person with a disciplinary history of the type described therein from serving on any SRO's disciplinary committees, arbitration panels or governing board, and would have required each SRO to adopt rules to this effect. Several commenters, the BOTCC, CBT, CSC, NFA and NYFE, proposed alternative rules.

The CSC recommended that the Commission adopt a regulation which would impose an affirmative obligation on each SRO to establish its own rulemaking restricting persons with disciplinary histories from serving on SRO committees. SRO compliance with this requirement would be subject to the same Commission oversight as other SRO activities.

Similarly, the NFA suggested that each SRO be required to establish its own schedule of rules and violations, subject to Commission approval, which would bar an individual from serving on that SRO's board or committees for a three-year period. In addition, NFA recommended that each SRO be required to incorporate by reference the standards established by the other SROs by providing that any individual not fit to serve on one SRO's committees would not be fit to serve at any other SRO.

The BOTCC, CBT and NYCE also suggested that each SRO compose a list of those rule violations which were considered "serious" in nature and which would therefore preclude committee or governing board service at that SRO. The BOTCC, CBT and NYCE did not specify whether this list would be subject to Commission review and approval or left entirely to the discretion of each SRO.

The Commission is adopting a final Regulation 1.63 which is similar to its original proposal, but with certain modifications. The Commission believes that it is necessary to set objective standards as to the types of violations which should result in a bar from service on SRO committees in order to establish a standard of fitness for such service to be applied consistently at all SROs. The Commission is aware that each SRO needs to administer its affairs in a manner that best serves the effective operation of its markets. The Commission believes, however, that the integrity of the self-regulatory process requires common standards for SRO committee service just as there are common standards of fitness for registration of future industry professionals. While each SRO will be required to develop its own implementing rule, the objective standards of conduct employed by Regulation 1.63 ensure that a person who has been found to have committed acts which may call into question his willingness to comply with an SRO's rules will be barred from any position with any SRO committee in which he would be called upon to formulate an SRO's rules or judge others accused of rule violations.

A. Regulation 1.63(a)—Definitions

Paragraph (a) defines certain terms used in the final Regulation. The term "disciplinary offense" is defined to include certain categories of actions which the Commission believes could indicate a lack of personal honesty, integrity or ability to fairly formulate or enforce self-regulatory requirements.

As originally proposed, Commission Regulation 1.63(a) defined disciplinary offense to mean committing or having supervisory responsibility for any act which violated an SRO's rules with exclusions for minor recordkeeping and trade timing violations as well as decorum and attire violations. In

[1] For ease of reference, this document will sometimes refer to SRO disciplinary committees, arbitration panels and governing boards as "SRO committees."

[2] 54 FR 37001 (September 6, 1989).

[3] In general, to the extent SROs currently have rules in this regard, such rules indirectly prohibit committee participation by persons with disciplinary histories by barring expelled or suspended SRO members from committee service (*See, e.g.*, Chicago Board of Trade Rule 561.00 and Chicago Mercantile Exchange Rule 435).

[4] The commenters were: the Board of Trade Clearing Corporation ("BOTCC"); the Chicago Board of Trade ("CBT"); the Chicago Mercantile Exchange ("CME"); the Coffee, Sugar & Cocoa Exchange, Inc. ("CSC"); the Commodity Exchange, Inc. ("COMEX"); the National Futures Association ("NFA"); the National Grain Trade Council ("NGTC"); the New York Cotton Exchange ("NYCE"); and the New York Mercantile Exchange ("NYMEX").

defining what constituted minor recordkeeping and trade timing violations, the Commission proposed to exclude from the definition those recordkeeping or trade timing violations which incurred fines of less than $750 and resulted in no period of suspension. Each of the nine commenters believed that some aspect of this definition as originally proposed was too broad.

For example, NYMEX suggested that the definition of disciplinary offense be limited to SRO rule violations which involved "fraud or deceit." NYMEX contended that such a definition would address any person whose integrity could be questioned. In addition, all of the commenters contended that the $750 limit for excluded recordkeeping or trade timing violations was too low and would preclude persons who had not committed serious offenses from service in a self-regulatory governance or adjudicatory capacity. The CBT, CSC and NYCE suggested that such a limit could cause disciplinary committees to respond by setting lower fines with a resulting adverse effect on the deterrence of technical violations. Also, COMEX and CSC suggested that the proposed definition would apply to persons who agreed to a disciplinary sanction for violating a minor financial requirement, such as a failure to make timely payment of membership dues or assessments. Accordingly, COMEX and CSC suggested that the final Regulation not include sanctions resulting from a failure to meet such requirements.

In response to these comments, the Commission has revised the definition of disciplinary offense in the final Regulation. Regulation 1.63(a)(4) expands the exclusions from the definition to take account of suggestions made by the commenters. Specifically, Regulation 1.63(a)(4)(i) does not define certain SRO rule violations concerning decorum and attire,[5] financial requirements, and reporting and recordkeeping requirements [6] as disciplinary offenses which would result in imposition of the bar under Regulation 1.63 so long as those violations do not involve fraud, deceit or conversion or result in suspension or expulsion.

Final Regulation 1.63 has been clarified to confirm that disciplinary offenses may result only from proceedings or actions which have been brought by an SRO, the Commission, any federal or state agency, or other governmental body.[7] The Commission believes that any actions initiated by such authorities, even when they seek monetary damages for customers,[8] are of a different nature from actions brought by private individuals and can fairly be used as the basis for a bar from SRO committee service.

The definition of disciplinary offense also has been modified to include violations of the Act and the Commission's regulations. This approach is intended to simplify the final Regulation (*See* Final Commission Regulation 1.63(a)(4)(iii)).

In this regard, the CBT commented that SROs should not be required to preclude committee service for individuals who have committed a "minor violation" of the Act or the regulations. Accordingly, CBT recommended that the Commission adopt and publish a list of those provisions of the Act and the regulations the violation of which would constitute a basis for precluding service on SRO committees. The Commission believes that because any violations of the Act or the regulations that would result in a bar from SRO committee service would be evidenced through Commission enforcement actions or criminal prosecutions, such violations would be considered of sufficient gravity to warrant a restriction on SRO committee service.

As originally proposed, a disciplinary offense also included failures to exercise supervisory responsibility over persons who had committed SRO rule violations which were considered disciplinary offenses under the Regulation. The CBT and CME both stated that this provision was unworkable and argued that under the proposed Regulation a person's failure to exercise supervisory responsibility could be the basis for committee disqualification even if such a failure was not found in a formal proceeding. In response to these comments, the Commission is making clear that a person's failure to supervise[9] can only be the basis for committee disqualification if the failure is evidenced either by a finding of the Commission, an administrative law judge ("ALJ"), a court or an SRO or by a settlement.

As originally proposed, Commission Regulation 1.63(a)(6)'s definition for settlement agreement included any agreement consenting to the imposition of sanctions by either an SRO or the Commission. The Commission is revising this definition to include sanctions imposed by plea agreements resulting from criminal prosecutions involving violations of the Act.[10]

The remaining definitions established by final Commission Regulation 1.63(a) are unchanged from the Commission's original proposal.

B. Regulation 1.63(b)—SRO Rule Requirements

As originally proposed, Commission Regulation 1.63(b) would have required SROs to implement rules not only barring persons with certain disciplinary histories from serving on certain SRO committees but also from seeking election to such committees. The BOTCC and CME objected that this provision would be complicated to enforce while having little substantive effect in that such persons would still be ineligible to serve. The Commission concedes that it may be difficult for an SRO to monitor adequately for the wide variety of formal and informal activity

[5] For the purpose of Regulation 1.63(a), the exclusion for decorum and attire violations at exchanges generally refers to such actions as fighting, cursing, spitting, dress code and other similar violations.

[6] Based upon its review of customary disciplinary sanctions imposed by the various SROs, the Commission believes that any person who is fined more than $5,000 during a one-year period for a single reporting or recordkeeping violation or a series of such violations has engaged in conduct which demonstrates a lack of respect for SRO rules sufficient to warrant such person's bar from service on SRO committees. Therefore, Regulation 1.63(a)(4)(i)(A) excludes from the definition of disciplinary offense reporting or recordkeeping violations which receive cumulative fines from all of the SROs of $5,000 or less within any calendar year.

The reporting and recordkeeping exclusion is meant to include only those rule violations resulting from a failure to maintain or submit required records, and does not include any underlying SRO rule violations which may become evident due to improper records. For example, the failure to make a proper position limit filing resulting in a fine of less than $5,000 would not be a disciplinary offense, but a violation of a position limit requirement would be.

[7] Under this definition, a disciplinary offense could not arise out of a proceeding initiated by a private party in a court of law or in a reparation proceeding under section 14 of the Commodity Exchange Act ("Act"). The Commission believes that such proceedings primarily are intended to provide restitution to whoever commences the action and are not intended to be prosecutorial in nature.

[8] For example, section 6d of the Act allows a state official or agency to bring an action for monetary damages, among other relief, on behalf of the residents of its state.

[9] The NGTC also suggested that this provision be amended to cover only failures to exercise "direct" supervisory responsibility. The Commission does not believe that such a modification would clarify Regulation 1.63(a)(4)(iv). Many SROs in their disciplinary decisions do not distinguish between direct and any other level of supervisory responsibility.

[10] Under such plea agreements, respondents customarily plead guilty to some or all of the violations alleged, and submit to sentencing by the court. Consequently in order to include plea agreements within the definition for settlement agreement, Regulation 1.63(a)(6) has been revised to include any agreement consenting to the "imposition of sanctions by [an SRO], a court of competent jurisdiction or the Commission." (*See* Final Commission Regulation 1.63(a)(6)).

which could be considered seeking election to an SRO committee. Although the Commission has deleted this provision, individual SROs are, of course, free to determine that it is unseemly for persons who cannot be elected as a matter of requirement to be able to stand for election.

C. Regulation 1.63(b)(1)—Disqualification Upon Formal Findings

Final Regulation 1.63(b)(1) consolidates proposed Regulations 1.63(b) (1) and (5). Under SRO rules required to be implemented pursuant to final Regulation 1.63(b)(1), any person who is found by the Commission, an ALJ, a court or an SRO [11] to have committed a disciplinary offense [12] is prohibited from serving on any SRO's disciplinary committee,[13] arbitration panel [14] or governing board [15] for a period of three years after the final decision of the Commission, ALJ, court or SRO.[16]

The NYCE commented that the wide variety of SRO rules and methods whereby they are enforced militates against using a violation of one SRO's rules as a basis for being excluded from committee service at another SRO. NYCE alternatively suggested that in any situation where a disciplinary action by one SRO may lead to committee disqualification at another SRO, that other SRO should be able to review the original SRO's actions or allow the person involved to demonstrate by affirmative defense why the action of the original SRO should not preclude him from committee service.

Although there is a wide variety of rules at the different SROs, under final Regulation 1.63 types of acts which disqualify a person from committee service on one SRO should be the same acts which should have disqualified the person from committee service on other SROs if they had been committed there. Accordingly, this provision should not have any disparate impact on the members of a particular SRO.

The NYCE seems to object, in principle, to one SRO's rules being dependent upon the disciplinary decisions of another SRO. The Commission is using this approach in Regulation 1.63 for a number of reasons. Since the purpose of Regulation 1.63 is that SROs should not allow rule violators to make rules or sit in judgment of other rule violators, the Commission believes that there is no reason to distinguish among rule violators based upon which SRO disciplined them. There is no evidence to indicate that any one SRO disciplinary system produces inherently unfair or prejudicial decisions which should not be the basis for disqualification from committee service at other SROs.

D. Regulation 1.63(b)(2)—Disqualification Upon Settlement Agreements

As originally proposed, the three-year bar would have applied whether the sanction was the result of a proceeding or a settlement. The CSC commented that settlement agreements should not be the basis of disqualification from committee service. The CSC reasoned that settlement agreements are not necessarily indicative of a person's character or willingness to uphold fully the rules of an SRO. The CSC believed that, under the Regulation as it was originally proposed, SRO members would seek adjudications in the most routine of cases because an unfavorable outcome at the adjudication level would have no different effect than entering into a settlement.

The Commission believes that settlement agreements can fairly be made the basis for committee disqualification.[17] Regulation 1.63 may indeed affect the decision-making of an individual faced with the choice of disputing or settling a pending disciplinary charge. There is little reason to believe, however, that the Regulation would have any untoward impact on the SRO disciplinary process as a whole as there are other substantial factors involved in deciding whether to settle or to undertake a full-fledged contest of an SRO complaint.

The CME commented that a reference in proposed Regulation 1.63(b)(2) to "charges identified in the settlement agreement" was unclear and instead recommended that it be amended to refer to "guilty findings of disciplinary offenses as indicated in settlement agreements." Upon review, however, the Commission has concluded that the operative language of most settlement agreements between SROs and persons subject to their jurisdiction does not include findings. For instance, most SRO settlement agreements refer to a set of charges, while the respondent agrees to sanctions and neither admits nor denies the allegations. Accordingly, the Commission has revised final Regulation 1.63(b)(2) to refer to "any of the findings or, in the absence of such findings, any of the acts charged" in order to identify the conduct which is the basis for the settlement agreement.[18]

E. Regulation 1.63(b)(3)—Disqualification Upon Outstanding Sanctions

Final Commission Regulation 1.63(b)(3) requires each SRO to bar a person from SRO committee service for as long as such person either is subject to a contract market trading suspension, an SRO membership suspension or expulsion or the terms of any probation, or owes any portion of a fine imposed

[11] For the purposes of Regulation 1.63, "SRO" is defined to include designated contract markets, registered futures associations and futures clearing organizations (*See* Final Commission Regulation 1.63(a)(1)).

[12] *See infra* section IV.A. for a description of disciplinary offenses under Regulation 1.63.

[13] Commission Regulation 1.63(a)(2)'s definition for "disciplinary committee" includes bodies which commence disciplinary proceedings, impose sanctions, or hear appeals thereof. Therefore, the definition covers, among other committees, probable cause committees, floor committees, disciplinary committees and boards of directors (who sit in appellate review of disciplinary actions). This definition thus should ensure that persons found to have acted in contravention of an SRO's rules or to have acted dishonestly in other areas would not be in a position to serve on any disciplinary committee in judgment of others accused of violating an SRO's rules.

[14] Commission Regulation 1.63(a)(3) defines "arbitration panel" to mean "any person or panel empowered by [an SRO] to arbitrate disputes involving [the SRO's] members or their customers." The definition thus is intended to include any body empowered to arbitrate any type of dispute under the SRO's rules.

[15] For the purposes of this Regulation, an SRO's governing board is the body whose final decisions, excepting Commission disapproval, alter the rules of the SRO. Governing boards, then, are the only class of SRO bodies affected by Regulation 1.63 whose functions include the formulation and establishment of SRO rules. The Commission realizes, of course, that there are other permanent and temporary SRO bodies which have responsibilities and duties similar to those of governing boards. The Commission believes, however, that since final decisions by an SRO governing board are the decisions which establish the SRO's rules, the application of Regulation 1.63 to governing boards is sufficient.

[16] Under Commission Regulation 1.63(b)(1), a disciplinary decision which is no longer subject to any appeal under the SRO's appeal and review process constitutes a final SRO decision of a disciplinary offense (*See* Final Commission Regulation 1.63(a)(5)(i)). Therefore, any bar period would be in effect from the point in time of the SRO's final decision and would continue to run even if the respondent decided to appeal the SRO decision to the Commission. Of course, if the Commission or a court overturned or stayed the SRO decision, the bar would be lifted.

Similarly, a decision of the Commission, an ALJ or a court immediately precludes a person from SRO committee service unless it is either stayed or overturned (*See* Final Commission Regulation 1.63(a)(5)(ii)).

[17] Notably, the preponderance of sanctions imposed by SROs are as a result of settlement agreements.

[18] Notably, the CME is one of the few SROs which includes findings in its settlement agreements. The Commission believes that this terminology most accurately reflects the existing SRO practices in formulating settlement agreements.

pursuant to a finding [19] or a settlement agreement concerning a "disciplinary offense." In the absence of such a provision the Regulation would anomalously allow a person to serve on an SRO committee while he is still subject to a disciplinary sanction of longer than three years duration (*See* Final Commission Regulations 1.63(b) (1) and (2)). The final Regulation also will preclude persons from committee service for as long as they are on probation or have an unpaid fine that had been imposed pursuant to some finding or settlement.

F. Regulation 1.63(b)(4)—Disqualification Upon Other Agreements

Final Commission Regulation 1.63(b)(4) similarly requires each SRO to bar a person from SRO committee service for as long as such person is subject to an agreement with the Commission or any SRO not to apply for registration or membership with any SRO. As such it is intended to cover that unique set of circumstances where a person agrees with the Commission or an SRO not to apply for registration with the Commission or membership in any SRO, but the agreement does not indicate any disciplinary offense has been committed. This situation usually arises when a person with SRO membership commits a rule violation, ceases to be a member and, in lieu of being charged with the rule violation by the SRO, agrees with the SRO not to reapply for SRO membership for a specific length of time.

G. Regulation 1.63(b)(5)—Disqualification Upon Registration Revocation or Suspension or Upon Certain Underlying Conditions

In adopting Regulation 1.63(b)(5), the Commission has consolidated previously proposed Regulations 1.63(b) (7) and (8). Under SRO rules adopted pursuant to the Commission's final Regulation 1.63(b)(5), a person whose Commission registration in any capacity is revoked or suspended for any reason will be barred from serving on any SRO's rule-making or rule-enforcing committee for three years or the length of the revocation or suspension, whichever is longer.[20] The Commission believes that this result is appropriate in that the bases for registration revocations and suspensions are activities which Congress has determined indicate that a person is not fit to be entrusted with fiduciary responsibilities.[21]

Based upon a suggestion from the NFA in its comment letter regarding proposed Regulation 1.63, the Commission also has decided that Regulation 1.63(b)(5) should disqualify from SRO committee service any person who is subject to certain of the underlying conditions which are the bases for a refusal to register, regardless of such person's registration status. Specifically, Regulation 1.63(b)(5) would bar from service any person who has within the prior three years been convicted of any of the felonies listed in section 8a(2)(D) (ii) through (iv) of the Act.[22] Therefore, this provision ensures that Regulation 1.63(b)(5) will cover not only persons who are subject to registration revocations or suspensions, but also non-registrants who have engaged in certain types of egregious conduct which indicate that such persons are unfit to be entrusted with fiduciary responsibilities.[23]

H. Regulation 1.63(b)(6)—Disqualification Upon Securities SRO Disqualification

Upon the recommendation of the NFA, the Commission is adopting a final Regulation 1.63(b)(6) which would require futures SROs to preclude from committee service any individual who has been deemed unfit to serve on a securities industry SRO committee.[24]

I. Regulation 1.63(c)—Direct Violation of Regulation 1.63

As adopted, Regulation 1.63(c) enables the Commission to enforce the requirements of the Regulation directly, if necessary.[25] This provision is being adopted as proposed. The Commission believes that a reservation of enforcement power for itself is appropriate given the importance of upholding the integrity of the self-regulatory process. Of course, each SRO continues to have a responsibility under section 5a(8) of the Act and Commission Regulation 1.51, or section 17(q) of the Act in the case of NFA, to enforce any of its own rules implemented pursuant to Regulation 1.63(b).

J. Regulation 1.63(d)—Publication and Submission Requirements

In order to facilitate each SRO's ability to enforce effectively any rules implemented pursuant to Regulation 1.63(b), proposed Regulation 1.63(d) would have required each SRO to establish, maintain and make available to the general public a notice of all those rules of the SRO which if violated would

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[19] Such finding can be indicated by the final decision of an SRO, an ALJ, a court of competent jurisdiction or the Commission (*See* Final Commission Regulation 1.63(a)(5)).

[20] Notably, floor traders are not now required to register but would be so required under separate bills currently being considered by the House and Senate. H.R. 2869, 101st Cong., 1st Sess. (1989) and S. 1729, 101st Cong., 1st Sess. (1989). Therefore, the scope of futures professionals covered by Regulation 1.63(b)(5) probably will expand considerably in the near future.

[21] The activities proscribed by section 8a(2) of the Act include but are not limited to: (1) Having been enjoined by a Commission order or settlement from acting as a futures commission merchant, introducing broker, associated person, commodity trading advisor, commodity pool operator, etc. (Section 8a(2)(C)); (2) having been convicted of a felony involving commodity transactions, embezzlement, fraud, theft, misappropriation, etc. (Section 8a(2)(D)); and, (3) having been found by a competent tribunal to have been involved in various securities law violations (section 8a(2)(E)).

The activities proscribed by section 8a(3) of the Act include but are not limited to: (1) Having been found by a competent tribunal to have violated the Act, a Commission regulation or any of various securities laws (sections 8a(3) (A) and (B)); (2) having been convicted of any felony (section 8a(3)(D)); (3) having been convicted of a misdemeanor involving futures or securities transactions (section 8a(3)(E)); (4) willfully filing false information with the Commission (section 8a(3)(G)); (5) being subject to an order denying or suspending membership from some contract market, registered futures association, or SRO (including national securities exchanges, registered securities associations or clearing agencies, and the Municipal Securities Rulemaking Board) (section 8a(3)(J) and appendix A to part 3 of the Commission's Regulations—Interpretative Statement with Respect to section 8a(2) (C) and (E) and section 8a(3) (J) and (M) ("Interpretative Statement")); and, (6) being subject to an order revoking a state real estate or insurance license (section 8a(3)(M) and Interpretative Statement).

[22] Section 8a(2)(D) (ii) through (iv) includes any felony that: (ii) Arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (iv) involves the violation of section 152, 1341, 1342, or 1343, or chapter 25, 47, 95, or 96 of title 18, United States Code.

[23] The Commission anticipates that this provision should affect three particular groups of people who otherwise could be selected to serve on an SRO committee: (1) Members of the general public, (2) floor traders who are not currently subject to any registration requirement (*See infra* footnote 20), and (3) registrants who have been convicted but who have not yet had their registrations revoked, suspended or otherwise affected by NFA or Commission actions.

[24] For these purposes, final Regulation 1.63(b)(6) incorporates the definition of SRO used in section 3(a)(26) of the Securities Exchange Act of 1934. That provision defines SROs to include "any national securities exchange, registered securities association, * * * registered clearing agency or * * * the Municipal Securities Rulemaking Board."

[25] Regulation 1.63(c) incorporates by reference the conditions listed in Regulations 1.63(b) (1) through (6). *See infra* sections IV.B. through H. for a description of those relevant conditions.

constitute a disciplinary offense under Regulation 1.63.

The CME, NYMEX and NYCE each objected to this provision on the grounds that it was cumbersome and unnecessary. CME in particular pointed out that since virtually any SRO rule violation could be considered a disciplinary offense under the proposed Regulation,[26] the publication requirement would have been tantamount to mandating a republication of each SRO's entire rule book.

The Commission believes that although these comments have merit, each SRO should have some procedure whereby a person can determine what SRO rule violations will disqualify him from future SRO committee service. Consequently, final Regulation 1.63(d) requires each SRO to post in a public place and make available to the general public any rule implementing Regulation 1.63 along with a listing of all those rules of the SRO which if violated would not constitute a disciplinary offense under subparagraph (a)(4)(i) of the Regulation.[27]

In order to facilitate the Commission's review of SRO rules submitted pursuant to the requirements of Regulation 1.63(b), Regulation 1.63(d) also will require each SRO to include in its implementation submission a similar, comprehensive listing of all those rule violations which would not constitute a disciplinary offense under subparagraph (a)(4)(i) of the Regulation.[28]

K. Regulation 1.63(e)—Annual Notice Requirement

As originally proposed Regulation 1.63(e) would have required, among other things, that each SRO certify to the Commission on an annual basis that the SRO had complied with the requirements of Regulation 1.63. The CME commented that it did not believe that SRO certification was necessary. The CME contended that the Commission would be able to determine SRO compliance with Regulation 1.63 during routine rule enforcement reviews and audits. The Commission agrees with the CME and has deleted this provision from the final version of Regulation 1.63(e). However, the Commission reminds each SRO that they are required under section 5a(8) of the Act and Commission Regulation 1.51, or section 17(q) of the Act in the case of NFA, to take whatever steps may be necessary to ensure that persons selected to the SRO's disciplinary committees, arbitration panels or governing board are in compliance with any SRO rules implemented pursuant to Regulation 1.63(b).

As adopted, Regulation 1.63(e) will still require each SRO to submit to the Commission annually a list of any persons who have been removed from the SRO's committees during the previous year in accordance with Regulation 1.63. The Commission believes that its receipt of this information will facilitate its ability to oversee each SRO's compliance with Regulation 1.63.

L. Regulation 1.63(f)—Ongoing Notice Requirement

Final Regulation 1.63(f) requires each SRO to inform the Commission of any disciplinary action taken by that SRO which would make the disciplined person ineligible to serve on the SRO's disciplinary committees, arbitration panels or governing board, as well as the length of such ineligibility. This information would be appended by the SRO to any notice it is required to file with the Commission regarding the subject disciplinary action.[29] The Commission believes that this information will improve each SRO's ability to comply with Regulation 1.63 and the Commission's ability to monitor such compliance.

V. Miscellaneous Comments Regarding Regulation 1.63

The Commission's original proposed rulemaking precipitated a number of miscellaneous suggestions which will be addressed in this section.

A. Exemptions from Regulation 1.63

CSC and NYMEX suggested that proposed Regulation 1.63 be revised to allow SROs to waive their implementing disqualification rules on those occasions when a member demonstrated a satisfactory basis for such a waiver. The Commission believes that it would not be appropriate to allow SROs to establish any such exemptive provisions. Regulation 1.63 has been designed to disqualify persons from committee membership only when they commit acts which would tend to impeach their willingness to formulate or enforce SRO rules in a fully principled manner. The Commission, therefore, believes that any exemptions from these standards could only vitiate the Regulation's purpose and complicate its application by individual SROs.

B. Removal from SRO Committees in Extraordinary Circumstances

NFA suggested that Regulation 1.63 specifically authorize each SRO to provide for the removal of a committee member upon a super-majority vote of the SRO's board whenever the board deems removal as being in the best interests of the SRO. While such a provision would address the possibility that Regulation 1.63 might not encompass the entire range of circumstances that could warrant disqualification from SRO committee service, the Commission believes that SROs may remove committee members for cause in appropriate circumstances if provided for by applicable rules.

C. Disqualification of an Individual upon the Sanctioning of his Firm

When the Commission originally proposed Regulation 1.63 it invited comment on whether there were any circumstances under which sanctions imposed on a firm should bar individuals associated with that firm from serving on an SRO committee. The CBT, CME, CSC, COMEX and NFA each argued that only persons who are sanctioned directly should be disqualified from SRO committee service. NFA specifically pointed out that persons who are sufficiently culpable of some offense to be barred from service, invariably will be named individually as respondents by the disciplining SRO. Accordingly, the Commission has concluded that Regulation 1.63 should only disqualify from SRO committee service natural persons who themselves commit disciplinary offenses. Individual SROs may wish to address in their own rules whether this should uniformly be the case. The Commission will, however, closely monitor each SRO's compliance with Regulation 1.63 to ensure that persons, rather than their associated firms, are being appropriately charged in SRO disciplinary proceedings.

VI. Implementation Procedures

In the original **Federal Register** release accompanying proposed Regulation 1.63, the Commission solicited comment as to the implementation schedule for the

[26] *See infra* section IV.A. for a description of proposed Regulation 1.63(a)(4)'s original definition of disciplinary offense.

[27] Subparagraph (a)(4)(i) of Regulation 1.63 encompasses those SRO rule violations which are considered "disciplinary offenses" even if the violations do not involve either fraud, deceit or conversion, or incur an SRO suspension or expulsion. *See infra* section IV.A. for a description of disciplinary offenses under Regulation 1.63.

[28] Both the posting and submission requirements of Regulation 1.63(d) may be satisfied by citing the rule numbers of those SRO rule violations which would not be considered a disciplinary offense under Regulation 1.63(a)(4)(i).

[29] Section 17(h)(1) of the Act and Commission Regulation 9.11 require NFA and contract markets, respectively, to submit notice of disciplinary actions to the Commission.

Regulation. In response, the CSC, COMEX, NYMEX and NYCE each argued that Regulation 1.63 should not have any retroactive effect. They contended that retroactive implementation would disrupt SRO committee procedures and be fundamentally unfair to sitting committee members who did not know the full range of implications facing them when they earlier decided to settle or not contest disciplinary charges. The CBT, however, commented that it would not object to immediate and full implementation of Regulation 1.63, including giving it retroactive effect.

The Commission has decided that Regulation 1.63 will be implemented as follows: (1) It will become effective as to all persons who are not sitting members of SRO disciplinary committees, arbitration panels or governing boards 30 days after the publication of this final rule, and (2) it will become effective as to all persons who are sitting members of SRO disciplinary committees, arbitration panels and governing boards 60 days after the publication of this final rule.

The Commission believes that this schedule is fair and reasonable and designed to minimize whatever impact there will be on the SROs' committee systems.

VII. Conclusion

The Commission believes that final Regulation 1.63 will ensure that persons violating SRO rules, with certain limited exceptions described above, will not serve on SRO disciplinary committees, arbitration panels or governing boards for a substantial minimum period of time. In its design of Regulation 1.63, the Commission has attempted to enhance the integrity of the self-regulatory process without unduly hindering the ability of the SROs to conduct their business through a committee system. The Commission believes that Regulation 1.63 and implementing SRO rules will establish a baseline level of conduct for persons serving on those SRO committees charged with the responsiblity of making or enforcing rules at the SRO.

VIII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C 604 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). Furthermore, the Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals affecting clearing organizations and registered futures associations, if adopted, would not have had a significant economic impact on a substantial number of small entities. 51 FR 44866 (December 12, 1986). Therefore, the Chairman hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501*et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. At that time, the Commission anticipated no increase in burden. The Office of Management and Budget ("OMB") approved the collection of information associated with this rule on November 13, 1989 and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response.	79.83.
Number of respondents	349.
Frequency of response	Annually.

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, Room 3220 NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Registered futures associations, Members of contract market.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17 and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission is proposing to amend title 17, chapter I, part 1 of the Code of Federal Regulations by adopting new Regulation 1.63 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 USC 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.63 is proposed to be added to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) *Definitions.* For purposes of this section:

(1) "Self-regulatory organization" means a "self-regulatory organization" as defined in Commission regulation 1.3(ee) (§ 1.3(ee)), and includes a "clearing organization" as defined in Commission regulation 1.3(d) (§ 1.3(d)), except as defined in paragraph (b)(6) of this section.

(2) *Disciplinary committee* means any person or panel empowered by a self-regulatory organization to bring disciplinary proceedings, to impose sanctions or to hear appeals thereof.

(3) *Arbitration panel* means any person or panel empowered by a self-regulatory organization to arbitrate disputes involving such organization's members or their customers.

(4) *Disciplinary offense* means:

(i) Any violation of the rules of a self-regulatory organization except those rules related to:

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping unless resulting in fines aggregating more than $5,000 within any calendar year;

(ii) Any rule violation described in paragraphs (a)(4)(i)(A) through (a)(4)(i)(C) of this section which involves fraud, deceit or conversion or result in a suspension or expulsion;

(iii) Any violation of the Act or the regulations promulgated thereunder; or,

(iv) Any failure to exercise supervisory responsibility with respect to acts described in paragraphs (a)(4)(i) through (a)(4)(iii) of this section when such failure is itself a violation of either the rules of the self-regulatory organization, the Act or the regulations promulgated thereunder.

A disciplinary offense must arise out of a proceeding or action which is brought by a self-regulatory organization, the Commission, any Federal or state agency, or other governmental body.

(5) *Final decision* means:

(i) A decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) Any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(6) *Settlement agreement* means any agreement consenting to the imposition of sanctions by a self-regulatory organization, a court of competent jurisdiction or the Commission.

(b) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission regulation 1.41 (§ 1.41) or, in the case of a registered futures association, pursuant to section 17(j) of the Act, that render a person ineligible to serve on its disciplinary committees, arbitration panels or governing board who:

(1) Was found within the prior three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense;

(2) Entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(3) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(i) A finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,

(ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

(4) Currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(5) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D) (ii) through (iv) of the Act;

(6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(c) No person may serve on a disciplinary committee, arbitration panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in paragraphs (b)(1) through (b)(6) of this section.

(d) Any rule submitted pursuant to paragraph (b) of this section must include a listing of all those rules of the self-regulatory organization which if violated would not constitute a disciplinary offense under paragraph (a)(4)(i) of this section and, upon its effective date, such rule and accompanying list shall be posted in a public place and otherwise made available to the public.

(e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels or governing board pursuant to the requirements of this regulation during the prior year.

(f) Whenever a self-regulatory organization finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that self-regulatory organization's disciplinary committees, arbitration panels or governing board, the self-regulatory organization shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either section 17(h)(1) of the Act or Commission regulation 9.11 (§ 9.11).

Issued in Washington, DC on February 27, 1990, by the Commission.

Jean A. Webb,

Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

RIN 1545-AM56

[T.D. 8287]

Treatment of Certain Losses Attributable to Periods After October 31 of a Taxable Year of a Regulated Investment Company; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document provides a correction to temporary regulations relating to the treatment by a regulated investment company of a net capital loss, a net long-term capital loss, or a net foreign currency loss attributable to periods after October 31 of a taxable year.

FOR FURTHER INFORMATION CONTACT: Lauren G. Shaw of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:FI&P:2) or telephone 202-566-3828 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 8287) that are the subject of this correction were amended by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988.

Need for Correction

As published, the temporary regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations which were the subject of FR Doc. 90-2221, is corrected as follows:

Paragraph 1. On Page 3218, column 1, line 13 of S 1.852-11T (h) Example 12(i), the language "currency gain for the post-October period of" is corrected to read "currency loss for the post-October period of".

Dale D. Goode,

Federal Register Liaison Officer.

[FR Doc. 90-4958 Filed 3-5-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 251

RIN 0596-AB10

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the administrative appeal procedures at 36 CFR part 217 to require publication of legal notice of decisions subject to appeal and to clarify various appeal procedures which have given rise to questions since adoption of the current rules. Additionally, the rule makes several technical amendments to the Forest Service administrative appeal procedures at 36 CFR part 251, subpart C, to remove ambiguities and inconsistencies in the appeal procedures which have been brought to the agency's attention since the final rule became effective on February 22, 1989 (54 FR 3342, January 23, 1989). The intended effect is to assure that interested or affected parties receive constructive notice of a decision, to provide clear evidence of timely notice, and to improve efficiency and achieve consistency in administering the appeals process. In order to achieve uniformity in processing appeals and to avoid further complications resulting from the identified problems that this rule addresses, it is necessary to make this rule effective quickly. However, the Agency invites public comment on the interim rule, which will be considered in promulgating a final rule.

DATES: This amendment is effective April 5, 1990.

Comments on this rule must be in writing and postmarked by April 20, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this interim rule in the Office of the Staff Assistant for Operations, National Forest System, Room 4211, South Agriculture Building, 12th and Independence Avenue SW., Washington, DC, between the hours of 8 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead (382-9346) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kathryn Hauser, WO Appeals and Litigation Coordinator, National Forest System, (202) 382-9346.

SUPPLEMENTARY INFORMATION: On January 23, 1989, at 54 FR 3342, part VI, the Secretary of Agriculture gave notice of adoption of two new rules that provide a process for appeal of Forest Service decisions related to management of the National Forest System. The rules at 36 CFR part 251, subpart C, provide appeal procedures applicable to holders of or certain applicants for land use and occupancy authorizations. The rules at 36 CFR part 217 provide a revised process for appeal of National Forest System plan and project decisions. These new rules replaced the administrative appeal procedures at 36 CFR 211.18. Experience under the new rules indicates a need to revise 36 CFR part 217 with regard to requirements for giving notice of decisions and for proper filing of a notice of appeal. Certain technical amendments to 36 CFR part 251, subpart C are also needed. The nature of the amendments and their intended effect is discussed by topic or affected section of the rules.

Amendments to 36 CFR Part 217

1. *Legal Notice of Decisions.* The rule currently specifies at § 217.5 that the Deciding Officer shall promptly mail the appropriate decision document to those who have, in writing, requested it and to those who are known to have participated in the decisionmaking process. Additionally, at § 217.5(c), the Deciding Officer has the discretion to publish a legal notice of the decision in a newspaper of general circulation.

Initially, the Forest Service proposed that notice of decisions be given by publishing a legal notice in a newspaper of general circulation or in the **Federal Register**, rather than by mail (53 FR 17310). Under the proposed rule, the review period would have begun with the date of publication of the notice. Although the agency's intent was to bring clarity, uniformity, and legal certainty to how and when notice of decisions would be given, those responding to the **Federal Register** notice viewed the legal notice proposal as an attempt to maintain secrecy, to rush implementation of controversial projects, and to reduce the ability of the general public to appeal decisions. Respondents misinterpreted the proposal. While it was the agency's intent that the legal notice be in addition to mailing requirements, this was not stated in the proposal; thus, many respondents indicated that the proposal was not an effective way to notify the public of decisions and preferred direct notice by mail. Because of these reactions, the final rule retained the current requirement for mailing notices of decisions to persons known to have participated in decisionmaking and to those requesting it in writing and made legal notice discretionary.

However, inadvertent failure by Deciding Officers to identify interested or potentially affected individuals or organizations and then to notify them of a decision continues to be a problem. Moreover, delay between when a decision is signed (currently the start of the appeal period) and when a potential appellant either hears about or receives mailed notice of the decision often reduces, to the detriment of the potential appellant, the time available to file an appeal. Additionally, reliance on mail delivery makes it difficult to establish when notice is actually given. Therefore, this interim rule revises § 217.5(c) to make publication of legal notice in a newspaper of general circulation, or the **Federal Register** when the Chief is making an initial decision, a requirement rather than an option. The rule also requires that the published notice specify the date the appeal period begins, which will be the day following publication. Because most people interested in, or affected by, a Chief's decision do not reside in the Washington, DC area (where the Chief is headquartered), notice through publication in a newspaper of general circulation in the Washington area would not provide adequate public notice. Therefore, notice of all initial decisions made by the Chief that are subject to review (§ 217.3(a)(1)) shall be published in the **Federal Register**. This amendment eliminates the need for the current requirement in § 217.5 that a notice be published in the **Federal Register** for decisions considered to have effects of national concern. Accordingly, the interim rule removes this provision.

It needs to be emphasized that the mandatory legal notice requirement is in addition to the requirement that already exists that the Deciding Officer promptly mail the appropriate decision document to those who have, in writing, requested it and to those who are known to have participated in the decisionmaking process. It also should be noted that it is not the decision itself that Deciding Officers are required to publish. The cost of publishing the decisions would be prohibitive. Rather, what must be published is a legal notice which identifies the decision by title or subject matter, the date of the decision, the name and title of the official making the decision, and how to obtain copies of the decision. As previously noted, the

legal notice must also specify that the date the appeal period begins is the day following publication of the notice.

In addition, § 217.5, is amended to require Deciding Officers to publish, at least twice yearly in the **Federal Register**—at the beginning of the Fiscal Year (October) and at mid-year (April)—a notice identifying which newspaper will be used for their legal notices of appealable decisions. Initially, this notice must appear within 30 days of the date of publication of this interim rule. The rule allows Deciding Officers to place notices in more than one newspaper. However, because of varying publication dates of small newspapers in rural areas where National Forest lands are located, the rule provides that the paper identified in the semiannual **Federal Register** notice shall be the source used to establish the appeal filing period and evidence of legal notice.

These revisions to the notice requirements respond to both public and agency concerns for ensuring timely notice of decisions. These revisions benefit those who wish to appeal decisions by providing an additional and reliable source of notice and by maximizing the time available for filing a notice of appeal. They also establish a uniform, Service-wide mechanism that provides convincing evidence that the agency has given timely and constructive notice of decisions to the public as required by the National Environmental Policy Act, the National Forest Management Act, and their implementing regulations, policies, and procedures. These revisions reflect the agency's continuing commitment to improve its handling of administrative appeals and to be responsive to public comments regarding the appeals process. To this end, the agency remains open to suggestions on improving the appeals process, including the manner of giving notice of decisions subject to appeal.

These changes in notice requirements require a corollary amendment to § 217.2 to add a definition of "legal notice." The change in the date that the appeal period begins requires conforming amendments to § 217.8(a) to replace the reference to filing appeals within 45 or 90 days of the "date of decision" to require filing of appeals within 45 or 90 days of the "date specified in the published legal notice."

2. *Dismissal Without a Decision.* The current rule (§ 217.8(a)) requires an appellant to file a timely Notice of Appeal with both the Deciding Officer and Reviewing Officer, a feature new to the appeal process. This filing requirement was added to expedite appeals by enabling Deciding Officers, upon receipt, to begin assembling the decision documentation required by 36 CFR 217.15(a). The rule limits the Deciding Officer to 30 days following receipt of the appeal to accomplish this task.

Since the effective date of the final rule, a question has arisen as to how the Forest Service should respond when an appellant fails to file the Notice of Appeal with both officers. If an appellant files a timely Notice of Appeal with the Deciding Officer, but fails to file a timely Notice of Appeal with the Reviewing Officer, the Reviewing Officer does not know about the appeal and so cannot initiate requisite procedures to process it in a timely fashion. Conversely, if an appellant files a timely Notice of Appeal with the Reviewing Officer, but fails to also file with the Deciding Officer, the Deciding Officer does not know to begin preparing the decision documentation, and, by being deprived of the time necessary to compile the documentation, may be unable to comply with the timeframes mandated in the rule. In either case, valuable time is lost and confusion is created when both officers do not receive a notice of appeal. As a result, the agency cannot administer the appeals process in a timely, efficient, and orderly manner.

Currently, untimely appeals are dismissable, but failure to file with both the Deciding Officer and Reviewing Officer is not a basis for dismissal. Because of the impact of simultaneous filing on timely processing of appeals within the timeframes specified in the regulation, the requirement to file Notices of Appeal with both the Reviewing Officer and the Deciding Officer is itself as important as timely filing, and failure to meet this requirement is appropriate grounds for dismissal. For these reasons, § 217.11(a) is revised to specifically state that failure to file an appeal with both Officers shall be grounds for dismissal without a decision on the merits. A corresponding cross-reference is added to § 217.8 Appeal Process Sequence to alert potential appellants early in the rule to the consequence of failing to simultaneously provide copies to the Reviewing Officer and the Deciding Officer.

3. *Evidence of Timely Filing.* Under the new notice requirements, there will be an interval of time between signing a decision and publication of a legal notice of that decision. Therefore, it is possible that a potential appellant could learn of a decision prior to publication of the legal notice and could file an appeal before the specified filing period. Because premature filing of appeals could cloud the determination of various timeframes under the rule, § 217.8(c) is amended to state that appeals received prior to the start of the appeal period shall be accepted, but time frames are tied to the date specified in the legal notice.

4. *Notice of Appeal.* Section 217.9 specifies the required content of a Notice of Appeal, an improvement over 36 CFR 211.18 which had ambiguous requirements. In adopting this provision, the Department did not anticipate receiving lengthy, cumbersome, or unclear Notices of Appeal. However, just the opposite has happened.

Since March 1989, the Forest Service has recived a number of appeal documents well in excess of 200 pages. The agency requires two copies of a notice of appeal—one each for the reviewing and deciding levels—in order to conduct a review and establish the appeal record. Both the Deciding and Reviewing Officers have a need to make additional copies of the Notice of Appeal available to Staff specialists assisting them in assembling and reviewing the record. Because the burden of reproducing additional copies of lengthy notices of appeal has been assumed by the agency, delays in processing appeals have occurred as well as an increase in duplicating costs. Accordingly, § 217.9(b) is amended to require that appellants submit two copies of a Notice of Appeal to each Officer when the Notice is more than 10 pages in length. This duplicating requirement is an appropriate responsibility for an appellant who files lengthy appeals to assume. It will not inconvenience individual appellants who may not have easy access to copier services. Agency experience shows that almost all appeals filed by individuals are less than 10 pages, while those filed by organized groups and entities—who do have ready access to copier services—often exceed 10 pages. By reducing the administrative time required to handle and process a notice of appeal, this requirement for additional copies will facilitate timely response by Deciding and Reviewing Officers to appeals, which benefits the appellant.

The agency also is encountering increasing failure by persons interested in Forest Service decisions to identify the nature of documents submitted regarding appealable decisions. To illustrate, on a recent decision two letters were received in the Chief's Office, about a month apart. The Chief acknowledged the first letter as a Notice of Appeal. However, by return mail the

correspondent informed the Chief that they did not wish their letter to be considered an appeal, but rather as informal comments on the Final Environmental Impact Statement (FEIS). When a second letter was received, containing comments similar to those of the first correspondent, the agency considered it as informal comment on the FEIS. However, after not receiving any communication from the Chief, the correspondent called and learned that, contrary to their intention, the agency had considered the letter as comments on the FEIS, not an appeal. The word "appeal" was not used in either letter. This confusion could have been avoided if the correspondents had clearly identified whether or not the letters were notices of appeal. Therefore, in an effort to eliminate uncertainty or mishandling of written comments on decisions, § 217.9(b) is amended to require that an appellant state that a submission is a Notice of Appeal pursuant to 36 CFR part 217.

5. *Implementation and Stays of Decisions.* It is the Department's position that constructive notice has not been given unless the public has had the opportunity to learn about a decision prior to its implementation. Therefore, it is necessary to ensure that decisions are not implemented until legal notice of the decision is published. Moreover, the stated purpose of the appeal process is to "* * * provide a process by which a person or organization interested in the management of the National Forest System may obtain review of an intended action by a higher level official." (36 CFR 217.1(a)) It is incumbent on the agency to provide a reasonable period of time between publication of the legal notice and implementation of the decision to reduce the possibility of an appeal being mooted through implementation of the decision before someone could file an appeal and request for stay. Therefore, a period of 7 calendar days is provided. Accordingly, § 271.10 is revised to reflect this policy. This change necessitates a corollary change in the heading of this section; therefore, it has been changed to "Implementation and Stays of Decisions."

6. *Discretionary Review.* This interim rule also removes discretionary review of certain dismissal decisions. The current rule requires the Reviewing Officer to dismiss an appeal and close the appeal record without decision on the merits when an appellant withdraws an appeal (§ 217.11(6)) or when the Deciding Officer withdraws the appealed decision (§ 217.11(7)). Further, the rule subjects both of these dismissals to discretionary review. One of the stated objectives of the new appeal rule was to streamline the process and eliminate burdensome paperwork. To provide discretionary review of dismissals of these types of decisions serves no useful purpose. Thus, paragraph (b) of § 217.11 is revised to exclude these types of dismissal decisions from discretionary review. This change is consistent with established agency policy under the previous appeal rule, 36 CFR 211.18.

Section 217.17 provides one level of appeal with a discretionary second-level review by the next higher administrative level, except that, for decisions made at the District Ranger level, a two-level appeal process is provided. Additionally, this section provides for discretionary review of stay decisions rendered by Forest Supervisors and dismissal decisions rendered by Forest Supervisors, Regional Foresters, and the Chief. Some confusion has arisen with regard to § 217.17(b), which directs that within one day following the date of a Forest Supervisor's stay decision, a dismissal decision, or an appeal decision rendered by a Reviewing Officer, the appeal decision and decision documentation will be forwarded to the next higher administrative level. This could be construed as a contradiction to § 217.7(c), which specifies that a second-level appeal decision will not receive futher review. Therefore, to eliminate potential confusion, paragraph (b) of § 217.17 is revised to clearly state which appeal decisions are subject to discretionary review.

7. *Extension of Time.* Section 217.12 currently allows Reviewing Officers, on their own initiative, or at the Deciding Officer's request to extend the time periods for review for a specified period to allow for conduct of meaningful negotiations. Currently, if time is extended for negotiations, all specified time periods are put "on hold." If negotiations do not lead to an appeal being resolved, the review process will be continued for a duration of the unexpired timelines. This had led to debate and confusion within and outside the agency about whether timelines for intervention and Deciding Officer's decision documentation transmittal are or should be affected by extensions permitted under the rule. To end the confusion, § 217.12 is amended to specify that Reviewing Officers shall not extend the time periods for review prior to the end of the time period allowed for intervention. A conforming amendment is also made to § 217.15 stating that the 30 days provided for the Deciding Officer to transmit the record to the Reviewing Officer is not extendable under any circumstance.

Amendments to 36 CFR Part 251, Subpart C

8. *Section 251.92.* Consistent with the stated intent of having the two appeal rules consistent as appropriate, § 251.92(c) is revised in the same manner as 36 CFR 217.11 to remove discretionary review of certain dismissal decisions.

9. *Section 251.95.* This section gives the Reviewing Officer the authority to ask any party to an appeal for additional information as deemed necessary to decide the appeal, except in discretionary reviews. This could be construed as a contradiction when reading paragraph (c)(2) to § 251.87(c)(2) which states, in part, that a second level appeal of a District Ranger's initial decision "* * * shall be conducted on the existing record and no additional information shall be added to the file." Therefore, to avoid confusion, paragraph (c) is being revised to clarify that the Reviewing Officer cannot ask for or accept additional information in second level appeals of District Rangers decisions.

10. *Section 251.100.* Consistent with the stated intent of having the two appeal rules consistent as appropriate, § 251.100(b) is revised in the same manner as 36 CFR 217.17 to clearly state which appeal decisions are subject to discretionary review.

Public Comment

There is a compelling and immediate need to treat appeals uniformly and to minimize the confusion that has been generated by having two new, different rules apply to appeals. Moreover, the constructive notice of decisions provided by this rulemaking will be of immediate benefit to potential appellants and intervenors by guaranteeing that notice is available to anyone interested in decisions affecting national forest plans and projects. Delaying implementation of this rule to allow for comment on a proposed rule would deprive appellants and intervenors of the benefits of the notice and intervention mechanisms of this rulemaking. Therefore, good cause exists to make this rule effective without benefit of prior public comment. However, comments are invited on the interim rule and will be considered in adoption of a final rule.

Regulatory Impact

This interim rule has been reviewed under USDA procedures and Executive

Order 12291 of Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule governs administrative proceedings and, as such would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4, 7 CFR 1b.3(a)(1)).

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and therefore imposes no paperwork burden on the public.

List of Subjects

36 CFR Part 217

Administrative practice and procedure, National forests.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—right-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, chapter II of title 36 of the Code of Federal Regulations is amended as follows:

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS [AMENDED]

1. The authority citation for part 217 continues to read:

Authority: 16 U.S.C. 551, 472.

2. Amend § 217.2 by adding in proper alphabetical sequence a definition of "legal notice" to read as follows:

§ 217.2 Definitions.

* * * * *

"Legal notice". A notice of a decision appealable under this part published in the **Federal Register** or in the legal notices section of a newspaper of general circulation as required by § 217.5 of this part.

* * * * *

3. In § 217.5, revise paragraphs (b) and (c), and add new paragraph (d) to read as follows:

§ 217.5 Giving notice of decision subject to appeal.

(a) * * *

(b) The Deciding Officer shall also give notice of decisions appealable under this part as follows:

(1) For all initial decisions of the Chief, notice shall be published in the **Federal Register.**

(2) For all other decisions, legal notice of the decision shall be published in a newspaper of general circulation identified pursuant to the requirements of paragraph (d) of this section. Deciding Officers may, at their discretion, also publish notice of their decisions in additional newspapers. Where a Deciding Officer elects to publish such additional notices, they shall be published after an initial legal notice has been published in the principal newspaper identified in the biannual **Federal Register** notice provided for in paragraph (d) of this section. Any such additional newspaper notices shall indicate the date that the appeal period ends, which shall be calculated based on the date of publication of the initial notice in the principal newspaper identified in the biannual **Federal Register** notice.

(c) All notices published pursuant to this section shall include a concise description of the decision made by title or subject matter, the date of the decision, the name and title of the official making the decision, and information on how to obtain a copy of the decision, and shall specify that the appeal period begins the day following the notice's publication as provided for in § 217.8(b)(1).

(d) Initially within 30 days of March 6, 1990, and thereafter at least twice annually, in April and in October, each responsible Forest Service officer shall, through **Federal Register** notice, advise the public of the principal newspaper to be utilized for publishing legal notices required by this section. The **Federal Register** notice shall also list all additional newspapers which the Deciding Officer expects to use for purposes of providing additional notice pursuant to paragraph (b) of this section.

4. In § 217.8, revise paragraph (a), the first sentence of paragraph (b)(1), and the last sentence of paragraph (c) to read as follows:

§ 217.8 Appeal process sequence.

(a) *Filing procedures.* To appeal a decision under this part, a person or organization must:

(1) File a written notice of appeal with the next higher line officer in accordance with the provisions of § 217.9 of this part and simultaneously send a copy of the notice of the appeal to the Deciding Officer. As provided in § 217.11, failure to comply with the simultaneous filing requirement of this section shall result in dismissal of the appeal without a decision on the merits.

(2) File the notice of appeal within 45 days of the date specified in the published legal notice for project decisions or non-significant amendments to land and resource management plans documented in a Decision Memo, Decision Notice, or Record of Decision, or programmatic decisions documented in a Decision Notice.

(3) File the notice of appeal within 90 days of the date specified in the published legal notice for land and resource management plan approvals, significant amendments, or revisions, and for other programmatic decisions documented in a Record of Decision.

(b) *Computation of time periods.* (1) The day after the published notices required in § 217.5(b) is the first day of the appeal period provided for in paragraphs (a)(2) and (a)(3) of this section. * * *

(c) * * * Notices of appeal that are filed before the filing period specified in the published legal notice shall be accepted, but premature filing does not affect timeframes specified in this rule.

* * * * *

5. In § 217.9, redesignate paragraphs (b)(1)–(b)(6) as paragraphs (b)(2)–(b)(7), and add new paragraphs (b)(1) and (c) to read as follows:

§ 271.9 Content of a notice of appeal.

* * * * *

(b) * * *

(1) State that the document is a Notice of Appeal filed pursuant to 36 CFR part 217;

* * * * *

(c) When a Notice of Appeal is more than 10 pages in length, appellants must file two copies of a Notice of Appeal with the Reviewing Officer and simultaneously send two copies to the Deciding Officer.

6. In § 217.10 revise the section heading, redesignate paragraphs (a)–(h)

as (b)–(i), and add a new paragraph (a) to read as follows:

§ 217.10 Implementation and stays of decisions.

(a) Implementation of any decision subject to appeal pursuant to this part shall not occur for 7 calendar days following publication of the legal notice of the decision as required in this part.

* * * * *

7. In § 217.11, add a new paragraph (a)(7) and revise paragraph (c) to read as follows:

§ 217.11 Dismissal without review.

(a) * * *

(7) The appellant fails to file the notice of appeal with the Reviewing Officer and simultaneously send a copy to the Deciding Officer as required in § 217.8(a).

(b)* * *

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 217.7(d) of this part, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer.

8. In paragraph (a) of § 217.12, revise the last sentence and add a new sentence to read as follows:

§ 217.12 Resolution of issues.

(a) * * * At the request of the Deciding Officer, or on their own initiative, Reviewing Officers may extend the time periods for review to allow for conduct of meaningful negotiations after the Deciding Officer has transmitted the decision documentation and after the time period for intervention has elapsed. In granting an extension, the Reviewing Officer must establish a specific time period for the conduct of negotiations.

* * * * *

9. In § 217.15, add a new sentence at the end of paragraph (a) to read as follows:

§ 217.15 Appeal record.

(a) * * * The 30-day time period is not extendable under any circumstances.

10. In § 217.17 revise paragraph (b) to read as follows:

§ 217.17 Discretionary review.

* * * * *

(b) As provided for in §§ 217.7 (d) and (e), 217.10(h), and 217.11, stay decisions rendered by a Forest Supervisor, certain dismissal decisions rendered by Forest Service line officers, and first-level appeal decisions rendered by Regional Foresters and the Chief (§ 217.16) are subject to discretionary review at the next highest administrative level. Within one day following the date of any decision subject to such discretionary review, the Reviewing Officer shall forward a copy of the decision and the decision documents (§ 217.2) upon which the appeal was predicated to the next higher officer.

* * * * *

PART 251—LAND USES

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

11. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 472, 551.

12. In § 251.92, revise paragraph (c) to read as follows:

§ 251.92 Dismissal.

* * * * *

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 251.87(d) of this part, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer.

13. In § 251.95, revise the first sentence of paragraph (c) to read as follows:

§ 251.95 Authority of reviewing officer.

* * * * *

(c) *Requests for additional information.* Except in discretionary review conducted pursuant to § 251.100 and second level appeals of decisions made by the District Ranger pursuant to § 251.87(c) of this subpart, the Reviewing Officer may ask any party to an appeal for additional information as deemed necessary to decide the appeal.

* * *

14. In § 251.100 revise paragraph (b) to read as follows:

§ 251.100 Discretionary review.

* * * * *

(b) As provided for in §§ 251.87 (d) and (e), 251.91(k), and 251.92, stay decisions rendered by a Forest Supervisor, certain dismissal decisions rendered by Forest Service line officers, and first-level appeal decisions rendered by Regional Foresters and the Chief (§ 251.99), are subject to discretionary review at the next highest administrative level. Within one day following the date of a decision subject to such discretionary review, the Reviewing Officer shall forward a copy of the decision and the initial decision upon which the appeal is predicated to the next higher officer.

* * * * *

Dated: February 24, 1990.

Clayton Yeutter,

Secretary.

[FR Doc. 90–5007 Filed 3–5–90; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL 3723–8]

New York; Final Authorization of State Hazardous Waste Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: New York has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New York's application and has made a decision, subject to public review and comment, that New York's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New York's hazardous waste program revisions. New York's application for program revision is available for public review and comment.

DATES: Final authorization for New York shall be effective May 7, 1990, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New York's program revision application must be received by the close of business April 5, 1990.

ADDRESSES: Copies of New York's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

New York State Department of Environmental Conservation, 50 Wolf Road, Room 204, Albany, New York 12233–0001; Phone (518) 457–3273

U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC, 20460; Phone (202) 382–5926

U.S. EPA Region II Library, Room 402, 26 Federal Plaza, New York, New York 10278; Phone (212) 264–2881.

Written comments should be sent to Mr. Conrad Simon, Director, Air and Waste Management Division, U.S. EPA, Region II, 26 Federal Plaza, Room 1011, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth E. Hamilton, Hazardous Waste Programs Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 1107,

New York, New York 10278, 212/264-0548.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resources Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

B. New York

New York initially received final authorization on May 29, 1986. New York received final authorization for revisions to its program on July 3, 1989. On August 11, 1989, New York submitted a program revision application for additional program approvals. Today, New York is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed New York's application, and has made an immediate final decision that New York's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New York. The public may submit written comments on EPA's immediate final decision up until April 5, 1990. Copies of New York's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

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

New York is applying for final authorization of the following Federal hazardous waste requirements:

Federal requirement	State authority
Listing of Spent Pickle Liquor (51 FR 19320; 5/28/86), as amended (51 FR 33612; 9/22/86) RCRA Section 3001(b) (42 USC section 6921(b)).	Environmental Conservation Law (ECL) section 27-0903.
40 CFR 261.32	6 New York Code of Rules and Regulations (NYCRR) section 371.4(C).
Regulation of the Hazardous Components of Radioactive Mixed Waste (51 FR 24504; 7/3/86) RCRA sections 1006, 3001(b) (42 USC sections 6905 & 6921(b)).	ECL section 27-0903, 6 NYCRR section 371.1(c).
Liability Coverage—Corporate Guarantee (51 FR 25350; 7/11/86 and 52 FR 44314; 11/18/87) RCRA sections 2002, 3004, 3005, (42 USC sections 6912, 6924, 6925).	ECL sections 27-0703, 27-0911 & 27-0917.
40 CFR 264.147, 264.151, 265.147	6 NYCRR sections 373-2.8 (h), (j), 373-3.8(h).
Hazardous Waste Tank System (51 FR 25422; 7/14/86 and 51 FR 29430; 8/15/86) RCRA sections 1006, 2002, 3001-3007, 3010, 3014, 3017, 3018, 3019, 7004 (42 USC sections 6905, 6912, 6921-6927, 6930, 6935, 6938, 6939 & 6974).	ECL sections 23-2305, 27-0703, 3010, 27-0705, 27-0903, 27-0907, 27-0909, 27-0911, 27-0913, 27-0915.
40 CFR parts 260, 261, 262, 264, 265, 270	6 NYCRR sections 370.2(b), 371.1(e), 372.2(a), 373.1.1(d), 373-1.3(g), 373-1.5 (a) & (c), 373-2.2(g), 373-2.5(c), 373-2.7(a), 373-2.8(a), 373-2.10, 373-3.2 (d and f), 373-3.5(c), 373-3.7(a), 373-3.8(a) & 373-3.10.
Definition of Solid Waste Technical Corrections (52 FR 21306; 6/5/87), RCRA sections 3001, 3004 (42 USC sections 6921, 6924).	ECL section 27-0903.
40 CFR sections 261.33, 266.20(a) (2) and (3)	6 NYCRR sections 371.4(d), 374.3(a)(1) (ii) and (iii).
List (Phase 1) of Hazardous Constituents for Ground Water Monitoring (52 FR 25942; 7/9/87), RCRA sections 1006, 2002(a), 3001, 3004, 3005. (42 USC sections 6905, 6912(a), 6921, 6924, 6925.	ECL sections 27-0703, 27-0705, 27-0911, 27-0913.
40 CFR 264.98, 264.99 Appendix IX of part 264 and 40 CFR 270.14	6 NYCRR 373-1.5(a), 373-2.6 (i) & (j), appendix 33 of 373.
Identification and Listing of Hazardous Waste:	
● Container and inner liner residue	
● Technical Corrections to Appendix VIII	
52 FR 26012; 7/10/87; as amended (53 FR 13382; 4/22/88) RCRA section 3001(b) (42 USC section 6921(b))..	ECL section 27-0903.
● 40 CFR 261.33	● 6 NYCRR section 371.4(d).
● 40 CFR part 261, appendix VIII	● 6 NYCRR part 371 appendix 23.

New York is not authorized nor are they seeking to be authorized to operate the Federal Program on Indian Lands. This authorization shall remain with EPA.

C. Decision

I conclude that New York's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New York is granted final authorization to operate its hazardous waste program as revised. New York now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. New York also has primary enforcement responsibilities for the program revisions, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the

applicability of certain Federal regulations in favor of New York's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

Authority: sec. 2002(a), 3006 and 7004(b), Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: January 29, 1990.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 90-4813 Filed 3-5-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6770

[CA-940-00-4214-10; CACA 26064]

Partial Revocation of the Secretarial Order Dated January 14, 1927; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order dated January 14, 1927, insofar as it affects 50 acres of lands withdrawn for Powersite Classification No. 163. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 50 acres to surface entry. The lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 5, 1990.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, BLM California State Office, Room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated January 14, 1927, which withdrew land for Powersite Classification No. 163 is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 22 N., R. 13 E.,
Sec. 8, N½SE¼NE¼ and W½W½NW¼SE¼;
Sec. 9, W½NW¼NW¼.

The areas described aggregate 50 acres in Plumas County.

2. At 10 a.m. on April 5, 1990 the lands described in paragraph 1 shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, any segregation of record, and the requirements of applicable law.

Dated: February 27, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-5010 Filed 3-5-90; 8:45 am]

BILLING CODE 4310-40-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13 and 80

[General Docket No. 88-37; FCC 90-36]

Ship Radio Officer Qualifying Service Endorsements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order denies requests for reconsideration of the Commission's Rules that permits service on radiotelephone equipped ships and U.S. Government owned ships to be credited as service toward the ship radio officer qualifying endorsement. This action was initiated by a petition for reconsideration filed by the Radio Officers Union and the American Radio Association.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, General Docket No. 88-37, adopted January 22, 1990, and released February 15, 1990. The complete text of this Memorandum Opinion and Order, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Memorandum Opinion and Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In the Report and Order in this proceeding, 53 FR 46454, November 17, 1988, 3 FCC Rcd 6361 (1988), the Commission amended part 13 (Commercial Radio Operators) and part 80 (Stations in the Maritime Services) of the Rules, 47 CFR parts 13 and 80, related to the requirements for the ship radio officer qualifying service endorsement. The endorsement requires six months previous service in the aggregate on board a ship or ships of the United States.

2. The Report and Order, among other things, simplified the standards and documentation required that is used to measure the six months service time and permitted time served on any U.S. ship required by part II of title III of the Communications Act or a U.S. owned ship to count toward service time.

3. The Radio Officers Union and the American Radio Association (ROU/ARA) petitioned the Commission to reconsider the provision that permits service on radiotelephone ships to count toward the six months service endorsement. The ROU/ARA argue that the qualifying service must be on a ship equipped with a radiotelegraph station. The ROU/ARA also asked for reconsideration of the provision that permits service on a U.S. owned ship to count toward the six month endorsement. They argued that training of personnel aboard Navy ship and those aboard U.S. Merchant ships is sufficiently different to preclude the use of such personnel to maintain the safety watch required by the Communications Act.

4. The Commission noted that the intent of the requirement to have a six month service endorsement is to ensure that otherwise qualified radio officers are familiar with shipboard operations and concluded that experience on radiotelephone ships meets that requirement. The Commission further concluded that individuals with communications experience on U.S. Government ships have demonstrated the ability to function at sea.

5. The Commission affirmed the requirements for obtaining the six months qualifying service endorsement as adopted in the Report nd Order in

this proceeding and Denied the Petition for Reconsideration filed by the ROU/ARA. This action is taken pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 1.429(i) of the Commission's Rules, 47 CFR 1.429(i).

List of Subjects

47 CFR Part 13

Commercial radio operators licenses, Radio.

47 CFR Part 80

Maritime services, Maritime mobile stations, Communications equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-4960 Filed 3-5-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 22

[Gen Docket No. 87-390; FCC 90-76]

Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Memorandum Opinion and Order* grants, in part, the Cellular Telecommunications Industry Association's (CTIA) petition for reconsideration of rule changes that were made in the *Report and Order* (53 FR 52174, December 27, in 1989) this proceeding. In the *Report and Order*, the Commission amended the rules for the cellular radio service to facilitate the introduction of advanced cellular technologies and to permit the operation of auxiliary common carrier services on cellular frequencies. The rule changes adopted herein relax and clarify the filing requirements associated with provision of fixed cellular services under § 22.308 of the rules and Basic Exchange Telecommunications Radio Service (BETRS) under § 22.930 of the rules. These changes are expected to expedite the provision of BETRS.

EFFECTIVE DATE: April 5, 1990.

FOR FURTHER INFORMATION CONTACT: Rodney T. Small, Office of Engineering and Technology, (202) 653-8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in General Docket No. 87-390, FCC 90-76, adopted February 15, 1990 and released February 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In the *Report and Order* in this proceeding (53 FR 52174; December 27, 1988), the Commission amended Parts 2 and 22 of the Rules to permit cellular radio service operators to introduce advanced technologies and provide auxiliary common carrier services in the 824-849/869-894 MHz cellular frequency bands. In response to the *Report and Order*, CTIA filed a petition requesting revision of two rule sections to relax the filing requirements that pertain to fixed cellular service and BETRS.

2. First, CTIA submits that the filing requirements for subscriber radios used for BETRS under § 22.930 need clarification. It states that the notification process specified for base stations in § 22.930(g) could be interpreted to apply to each BETRS radio that is used by a subscriber, including conventional cellular radios used for BETRS service. The Commission agrees that this would be unnecessarily burdensome. The filing requirements of § 22.930(g) were not intended to apply to conventional cellular radios used for BETRS. The Commission notes that the information required in § 22.930 is needed for advanced technology or auxiliary base stations that operate at high power (up to 500 watts) and not for conventional subscriber radios that operate at low power (7 Watts). Thus, we are amending § 22.930 to exclude conventional mobile radios that are used with BETRS from the filing requirements that apply to base stations. BETRS radios will, however, be treated the same as mobile radios used for providing advanced cellular or auxiliary services and, thus, will be subject to § 22.930(f).

3. Second, CTIA asks that § 22.911(e), "Permissible communications," be amended to allow for blanket notification when a cellular licensee wishes to offer a fixed-incidental service under § 22.308. In examining CTIA's request to amend § 22.911(e), we note that prior to the adoption of the *Report and Order*, cellular licensees had been offering basic exchange telephone services on an incidental basis under § 22.308. The Commission added paragraph (e) to § 22.911 to make clear that cellular licensees continue to have the option of operating fixed cellular services under § 22.308 and that they also have the option of operating BETRS under the cellular service option. However, comments in response to CTIA's petition have brought to our attention the ambiguity that exists in distinguishing between BETRS and "other fixed cellular services," and the concern that § 22.911(e) could be interpreted to state certain fixed services may be offered without obtaining state authorization. It therefore appears that as paragraph (e) confuses rather than clarifies the situation, it is not serving its intended purpose. In view of the fact that BETRS may be offered on an incidental basis pursuant to § 22.308 or as a cellular service option pursuant to § 22.930, we find that the distinction in paragraph (e) is unnecessary and, therefore, are deleting paragraph (e).

4. As for the commenters' concerns regarding the states' right to regulate specific intrastate common carrier services, we have pointed out throughout this proceeding that we have no intention of preempting state regulation as it pertains to cellular licensees that choose to offer fixed services. We believe that the opposing parties' concerns stem from the fact that § 22.911(e) specifies that state authorization is required, where applicable, for the provision of BETRS but is silent as to whether state authorization is required for other fixed cellular services. We note that § 22.308, "Incidental communication services," is also silent concerning state authority to regulate fixed cellular services. In general we do not codify the states' right to regulate specific common carrier services in our rules. Accordingly, we do not find it is necessary for § 22.911(e) or § 22.930 to specify that state regulation is required for the provision of fixed cellular services. Thus, our removing paragraph (e) of § 22.911 will also remedy this concern.

5. In view of our decision to eliminate § 22.911(e), CTIA's request to amend that rule to permit blanket notifications is moot. In this regard, we observe that the Commission previously has stated that blanket notifications are permitted under § 22.308. (*Report and Order*, CC Docket No. 80-57, 95 FCC 2d 769 (1983)).

Ordering Clause

6. Authority for this rule making is contained in 47 U.S.C. sections 154(i), 303(c), 303(f), 303(g) and 303(r).

7. Accordingly, *it is ordered*, That CTIA's petition is granted as discussed above and §§ 22.911 and 22.930 of the Commission's Rules are amended as specified below, effective April 5, 1990.

8. *It is further ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Part 22

Public Mobile Service, Communications common carriers.

9. Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

10. The authority citation in part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

11. Section 22.911 is amended by removing paragraph (a).

12. In § 22.930, the introductory paragraph, paragraph (f), and paragraph (g) are revised to read as follows:

§ 22.930 Special provisions for alternative cellular technologies and auxiliary services.

Provided that interference to other cellular systems is not created, and service to roamers whose mobile equipment conforms to OST 53 is offered, cellular licensees may employ alternative cellular technologies and auxiliary common carrier services in the frequency bands 824–849 MHz and 869–894 MHz, except on the cellular control channels. The only fixed service permitted under this section is Basic Exchange Telecommunications Radio Service. These special provisions will be referred to as the cellular service option. The cellular service option may be exercised subject to the following requirements:

* * * * *

(f) For mobile stations and subscriber stations used to provide Basic Exchange Telecommunications Radio Service, the information in paragraph (b) of this section must include: the number to be placed in service, the manufacturer's name, the FCC identification number, and the specific frequencies of operation. In addition, information shall include emission, bandwidth and frequency tolerance data demonstrating compliance with the rules.

(g) For base stations providing services under this section, the information in paragraph (b) of this section must include: the manufacturer's name, the FCC identification number, the model number, the rated output power, the specified frequencies of operation, the frequency tolerance, the modulation type, the emission profile, and the antenna location, elevation, orientation, and pattern. In addition, information shall include calculations at eight equally spaced intervals around the service contour where calculations verify compliance with the aggregate field strength limit.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–4959 Filed 3–1–90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 656

[Docket No. 900246-0059]

Declaration of a Moratorium on Striped Bass Fishing in New Jersey

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce, and Fish and Wildlife Service (FWS), Interior.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce and the Secretary of the Interior (Secretaries), pursuant to the Atlantic Striped Bass Conservation Act, hereby declare a moratorium on striped bass fishing in the coastal waters of New Jersey, effective March 1, 1990. The moratorium is declared based on the determination that New Jersey is not in compliance with the provisions of the Interstate Fisheries Management Plan for Striped Bass (Plan). New Jersey has no minimum size-limit and no bag limited for striped bass; the Plan requires a 28-inch minimum size-limit and a daily one fish bag limit. The intent of the moratorium is to provide protection to the Atlantic coast striped bass stocks.

EFFECTIVE DATE: The moratorium is effective 0001 hours local time on March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NOAA/NMFS, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 427–2334, or Gary Edwards, Assistant Director—Fisheries, FWS, Interior Building, 18th and C Streets, NW., Washington, DC 20240, telephone (202) 343–6934.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Striped Bass Conservation Act (Act), 16 U.S.C. 1851 note, as amended, was enacted in response to the depleted condition of the Atlantic coastal migratory stock of striped bass, also known as rockfish. The major purpose of the Act is to support and encourage the development, implementation, and enforcement of effective interstate action for the conservation and management of Atlantic striped bass.

Section 4(a)(1) of the Act requires the Atlantic States Marine Fisheries Commission (Commission) to determine whether each coastal State has adopted all regulatory measures necessary to implement fully the Plan in its coastal waters. Further, section 4(a)(2) requires the Commission to notify the Secretaries immediately of each negative determination made under section 4(a)(1). Section 4(b) of the Act specifies that, after notification by the Commission that a coastal State has not taken the actions described in section 4(a)(1), the Secretaries shall determine jointly, within 30 days, whether that State is in compliance. If that State is found not to be in compliance, the Secretaries shall declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and the State in question.

Activities Pursuant to the Act

Based on all available information, including State of New Jersey and Commission comments, the Secretaries jointly determined that the State of New Jersey was not in compliance with the Plan (55 FR 6302; February 22, 1990). This determination was based on the absence, since January 1, 1990, of a minimum size-limit and a daily bag limit in New Jersey for striped bass; the Plan requires a 28-inch (71.12 cm) total length minimum size-limit and a one fish per angler per day bag limit. The absence of these regulations in New Jersey waters was determined to have the potential to damage severely the striped bass stocks, and to impair efforts to restore the stocks. The Secretaries received a letter from the New Jersey Division of Fish, Game, and Wildlife dated January 26, 1990, which indicated that New Jersey would be able to enact appropriate legislation by February 28, 1990. The letter also requested that the Secretaries delay declaration of a moratorium until that date. The Secretaries subsequently informed the Governor of New Jersey by letter dated February 6, 1990, that declaration of a Federal moratorium would be delayed until March 1, 1990, pending action by New Jersey on or before February 28, 1990.

Striped Bass Fishing Moratorium

As section 4(b) of the Act requires, after thay have determined that a coastal State is not in compliance with the Plan, the Secretaries hereby jointly declare a moratorium on striped bass fishing in the coastal waters of the State of New Jersey effective at 0001 hours

local time on March 1, 1990. The Secretaries notified the Governor of New Jersey by letter dated March 1, 1990, of the declaration of the moratorium on striped bass fishing in New Jersey waters.

The Secretaries will enforce the provisions of the moratorium as provided in 50 CFR part 656 through assessment of civil penalties and by seizure and forfeiture of illegal catch or vessels, as appropriate. Section 5(a) of the Act provides for the moratorium to be terminated by operation of law upon the day that the Secretaries receive notification from the Commission that New Jersey has taken appropriate remedial action by implementing regulations that are compatible with the Plan. The Secretaries will promptly notify the Governor of New Jersey of receipt of such notification and shall publish such notice in the **Federal Register.**

Classification

The Secretaries have determined that this rule is consistent with the Atlantic Striped Bass Conservation Act and other applicable law.

Under section 4(b) of the Act, once the Secretaries have determined that a coastal State is not in compliance with the Plan, they must "declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State." The Secretaries lack the discretion not to declare this moratorium under 5 U.S.C. 553(b)(B); thus, advance notice and opportunity to comment on whether the moratorium should be declared are unnecessary. Furthermore, a striped bass fishery in New Jersey without a minimum size limit and daily bag or possession limit could have an immediate adverse impact on the stocks. Hence, the Secretaries also find for good cause under 5 U.S.C. 553(b)(B) and (d) that it is impracticable and contrary to the public interest to provide an opportunity for prior public comment or a 30-day waiting period before the effective date of the moratorium.

The Secretaries have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of New Jersey. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Act does not permit review of this declaration for consistency with the requirements of section 2 of Executive Order 12291.

The Act imposes a statutory deadline on making a joint determination of noncompliance, and mandates that the Secretaries declare a moratorium following the determination. These mandates take precedence over the requirements of the National Environmental Policy Act.

This rule does not contain a collection-of-information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule implements a nondiscretionary determination by the Secretaries and thus is not subject to the provisions of Executive Order 12612.

List of Subjects in 50 CFR Part 656

Fishing, Fisheries.

Dated: February 28, 1990.

John A. Knauss,

Under Secretary for Oceans and Atmosphere, Department of Commerce.

Constance B. Harriman,

Assistant Secretary of the Interior for Fish and Wildlife and Parks, Department of the Interior.

For the reasons set out in the preamble, 50 CFR chapter VI is amended by adding part 656 to read as follows:

PART 656—ATLANTIC STRIPED BASS FISHERY

Sec.

656.1 Purpose and scope.
656.2 Definitions.
656.3 Prohibitions.
656.4 Enforcement.
656.5 Penalties.

Authority: 16 U.S.C. 1851 note.

§ 656.1 Purpose and scope.

The regulations in this part implement section 4(b) of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note, as amended), and govern fishing for striped bass in the coastal waters of the State of New Jersey during the moratorium period.

§ 656.2 Definitions.

The terms used in this part have the following meanings:

Act means the Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis,* which ordinarily migrate seaward of the coastal waters.

Authorized officer (or *officer authorized*) means: (a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service or the Fish and Wildlife Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretaries to enforce the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Coastal waters means: (a) All waters, whether salt or fresh, of the coastal State shoreward of the baseline from which the territorial sea of the United States is measured; and

(b) The waters of the coastal State seaward from the baseline referred to in paragraph (a) of this definition to the inner boundary of the EEZ.

Commission means the Atlantic States Marine Fisheries Commission.

EEZ means the exclusive economic zone of the United States, from 3 to 200 nautical miles offshore of the United States, beginning at the seaward boundary of the territorial sea of the coastal States.

Fishing means: (a) The catching, taking, or harvesting of Atlantic striped bass, except when incidental to harvesting that occurs in the course of commercial or recreational fish catching activities directed at a species other than Atlantic striped bass;

(b) The attempted catching, taking, or harvesting of Atlantic striped bass; or

(c) Any operation at sea in support of, or in preparation for, any activity described in paragraphs (a) or (b) of this definition.

(d) The term does not include any scientific research authorized by the Federal Government or by any State Government.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Moratorium area means the coastal waters of the State of New Jersey.

Moratorium period means the time beginning at 0001 hours local time on March 1, 1990, and ending by operation of law the day that the Secretaries receive notification from the Commission that New Jersey has taken appropriate remedial action with respect to the cause of the declaration of the moratorium period.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Plan means the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Striped Bass.

Secretaries means the Secretary of Commerce and the Secretary of the Interior.

§ 656.3 Prohibitions.

Section 5(a) of the Act provides that it is unlawful, during the moratorium period, for any person to do any of the following:

(a) Engage in fishing within the moratorium area;

(b) Land, or attempt to land Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (a) of this section;

(c) Land Atlantic striped bass within the boundaries of the State of New Jersey; or

(d) Fail to return to the water immediately any Atlantic striped bass caught within the moratorium area incidental to harvesting that occurs in the course of commercial or recreational fishing activities, regardless of the condition of the striped bass when caught.

§ 656.4 Enforcement.

Any officer authorized by the Secretary of Commerce or the Secretary of the Interior, the U.S. Coast Guard, or any Federal or State agency that has entered into an agreement with the Secretaries under section 5(e) of the Act shall enforce the provisions of the Act.

§ 656.6 Penalties.

(a) Any person who is found by either of the Secretaries to have committed an act prohibited by section 5(b) of the Act, after notice and the opportunity for a hearing as provided in section 5(c) of the Act, shall be liable to the United States for a civil penalty of up to $1,000 for each such violation. Each day of continuing violation shall constitute a separate offense.

(b) Subsections (b) through (f) of section 308 of the Magnuson Act (16 U.S.C. 1858(b)-(f); relating to review of civil penalties, action upon failure to pay assessment, compromise, and subpoenas) shall apply to penalties assessed under the Act to the same extent and in the same manner as if those penalties were assessed under section 308(a) of the Magnuson Act.

(c) Any vessel (including its gear, equipment, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or as the result of, the commission of any act that is unlawful under section (5)(b) of the Act shall be subject to forfeiture to the United States. All or part of the vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States under a civil proceeding described in paragraph (d) of this section. The Act provides that the district courts of the United States have jurisdiction over such proceedings.

(d) Subsections (c) through (e) of section 310 of the Magnuson Act (16 U.S.C. 1860(c)-(e); relating to judgment, procedure, and rebuttable presumptions) apply with respect to proceedings for forfeiture commenced under section (5)(d) of the Act to the same extent and in the same manner as if the proceeding were commenced under section 310(a) of the Magnuson Act.

(e) With respect to seizures of property and civil penalties assessed by the Secretary of Commerce under section 5 of the Act, the provisions of 15 CFR part 904 (Civil Procedures) apply. With respect to seizures of property and civil penalties assessed by the Secretary of the Interior under section 5 of the Act, the provisions of 50 CFR part 11 (Civil Procedures) apply.

[FR Doc. 90-4993 Filed 3-1-90; 9:33 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS, (Regional Director), has determined that the total allowable catch (TAC) specified for pollock in the Shelikof Strait District in the Western/Central Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting further directed fishing for pollock in the Shelikof Strait District from 12:00 noon, Alaska Standard Time (AST), on February 28, 1990, through 11:59 am, Alaska Daylight Time (ADT), on April 1, 1990.

EFFECTIVE DATE: This notice is effective from 12:00 noon on February 28, 1990, AST until 11:59 am ADT, April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Paragraph 672.20(a) of the regulations establishes an optimum yield range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catch (TAC) for each target groundfish species and species group is specified annually. For 1990, TACs were established for each of the target groundfish species and species groups and apportioned among the regulatory areas and districts.

An overall TAC for pollock equal to 70,000 mt has been specified for the combined Western/Central Regulatory area for the 1990 fishing year (January 31, 1990; 55 FR 3223). For purposes of managing pollock, the Secretary adjusted the TAC under authority of § 672.22 of the regulations such that 25 percent of the TAC (17,500 mt), is apportioned to the Western/Central Gulf Area in each quarter of the fishing year. In the first quarter, 6,250 mt are apportioned to the Shelikof Strait District and 11,250 mt are apportioned to the remainder of the combined Western/Central Regulatory area. The 11,250 mt apportioned to the combined Western/Central Regulatory area has been reached already and further directed fishing for pollock in this area was prohibited on January 26, 1990. Notice of this closure was published on February 1, 1990 (55 FR 3408).

The amount apportioned to the Shelikof Strait has now been reached. Therefore, pursuant to § 672.20(c)(2), the Secretary is prohibiting further directed fishing for pollock in the Shelikof Strait District effective 12:00 noon, AST, February 28, 1990. Pollock taken incidental to other directed fisheries after February 28 and before 11:59 a.m., ADT, April 1, 1990, may be retained. When directed fishing for pollock in the combined Western/Central Regulatory Area reopens on April 1, 1990, directed fishing will also be allowed in the Shelikof Strait District. In the second and subsequent quarters of the fishing year, the pollock harvest will be directed at a total of 17,500 mt for all of the Western/Central Regulatory Area.

Classification

This action is taken under 50 CFR 672.20 and 672.22 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

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

Fisheries, reporting and recordkeeping requirements.

Dated: February 28, 1990.

David S. Crestin,

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

[FR Doc. 90-4969 Filed 2-28-90; 4:47 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 44
Tuesday, March 6, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[FV-90-123]

Melons Grown in South Texas; Proposed Rule to Establish an Interest Charge on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish an interest charge on delinquent handler assessments. This action would encourage South Texas melon handlers to pay their assessments in a timely manner so that the South Texas Melon Committee would be assured that there are adequate funds available to cover expenses incurred under the marketing order.

DATES: Comments must be received by April 5, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 156 and Marketing Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 35 handlers of South Texas melons subject to regulation under the marketing order and approximately 70 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas melons may be classified as small entities.

The South Texas Melon Committee (committee), which is responsible for local administration of the marketing order, met on November 7, 1989, and recommended that an interest charge be established for delinquent handler assessments. Under § 979.40 of the marketing order, the committee is authorized to incur expenses that are reasonable and necessary to operate the program. Section 979.42 provides that handlers be assessed on all assessable melons on a pro-rata basis to cover such costs. Further, § 979.42 authorizes the committee, with the approval of the Secretary, to establish an interest charge on assessments that are not paid within a time period prescribed by the committee.

The timely payment of assessments is important to the efficient functioning of the committee. The committee incurs expenses on a continuous basis and must be assured of a positive cash flow in order to meet its financial obligations, such as salaries and rent.

At its meeting on November 7, 1989, the committee recommended that handlers whose assessments become in arrears be subject to an interest charge of 18 percent per year or 1½ percent per month on the balance owed. In order to give handlers ample time to make payment before being subject to this charge, assessments would not be considered subject to interest charges until 30 days after billing by the committee office. Interest would begin to accrue immediately following this 30-day grace period.

Eighteen percent per year or one and one-half percent per month is deemed an appropriate rate of interest. It is high enough to encourage timely payment of assessments and is within the interest range customarily charged by banks on commercial accounts.

Therefore, it is proposed that a new § 979.112 be added to the rules and regulations under the South Texas melon Marketing Order which would specify that a late charge of 18 percent per year or 1½ percent per month will be charged on assessments not received within 30 days after billing by the committee.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS.

1. The authority citation for 7 CFR part 979 continues to read as follows:

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

2. Part 979 is amended by adding a new section 979.112 to read as follows:

§ 979.112 Late payments.

Pursuant to § 979.42(f), late payments of assessments shall be subject to an interest charge of 1½ percent per month on the balance due. Assessments shall be deemed late 30 days after the billing date.

Dated: March 1, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–5051 Filed 3–5–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1032

[DA-90-011]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Southern Illinois-Eastern Missouri Federal milk marketing order for the months of March and April 1990. The proposed suspension would remove the limits on the amount of milk that may be moved directly from dairy farms to nonpool plants and still be priced under the order. The action was requested by Morning Glory Farms (AMPI), a cooperative association that represents producers who supply the market. AMPI contends that the action is necessary to give market suppliers of raw milk sufficient time to adjust to significant marketing changes. Specifically, AMPI contends that the sale of a major fluid milk processing plant has resulted in a realignment of raw milk supplies. Absent a suspension, AMPI contends that a significant quantity of milk that was previously associated with the market will not be eligible for pricing under the order. The loss of a market, AMPI contends, will result in an economic hardship for producers who have historically supplied fluid milk needs.

DATES: March 13, 1990.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area is being considered for the months of March and April 1990.

In § 1032.13(d)(2), the words "and January through April".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would suspend certain provisions of the order for the months of March and April 1990. The action would remove the limits on the amount of milk that can be shipped directly from farms to nonpool plants and still be priced under the order.

The order provides limits to the proportion of milk receipts that cooperative associations can move directly from farms to nonpool plants. The amount of milk moved in this manner (diverted) that is in excess of the specified limits is not eligible to be priced under the order. Such diversions are limited to 35 percent of a cooperative's receipts of milk during each of the months of September-November and January-April, and 45 percent during December and August. There are no diversion limits during May-July. The proposed action would remove the diversion limitations during March and April 1990.

The action was requested by Morning Glory Farms, a region of Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market. AMPI contends that the action is necessary because of recent changes that have taken place in the market. Specifically, AMPI indicates that a major fluid milk handler ceased processing in the market. As a result, AMPI contends that supplies of raw milk have been realigned. Because of the shift in supplies of raw milk, AMPI contends that a significant proportion of milk that was previously associated with the market will not be eligible for pricing under the order. Consequently, AMPI concludes that a suspension action is necessary to prevent the economic hardship to producers that would result from the loss of a market and the pricing of their milk under the order. AMPI contends that a suspension to remove the diversion limitations will provide market suppliers of raw milk with sufficient time to adjust to the marketing changes.

AMPI requested that the suspension be considered for the months of February through April 1990. However, the requested action was not received in time to complete the necessary procedures to consider including February in the suspension period. Thus, the proposed action is being considered for the months of March and April 1990.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

The authority citation for 7 CFR part 1032 continues to read as follows:

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

Signed at Washington, DC, on March 1, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90–5052 Filed 3–5–90; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1475

Livestock Emergency Assistance Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This Proposed rule would amend the regulations set forth at 7 CFR part 1475, which set forth the regulations for the livestock emergency programs authorized by the Agriculture Act of 1949 (the 1949 Act) and the Commodity Credit Corporation (CCC) Charter Act. This proposed rule would provide a simplified method of: (1) Computing feed needs for eligible livestock; (2) determining feed on hand; (3) determining owner eligibility; and (4) administering assistance for the 1990 and subsequent crop years to eligible owners of livestock who suffer substantial loss of feed normally produced on their holdings and do not have adequate supplies of feed due to certain natural disasters.

DATES: Comments must be received on or before March 27, 1990 in order to be asssured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Emergency Operations and Livestock Programs Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. Written comments must be received by March 27, 1990 to be assured consideration. All written submissions made pursuant to this rule will be made available for public inspection in Room 4091 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harry D. Millner, Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 475–3605. A Preliminary Regulatory Impact Analysis and Outlays Analysis has been prepared, and is available to the public from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulations 1512–1 and Executive Order 12291 and has been classsified "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because 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 matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that this action is not expected to have any significant impact on the quality of human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

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 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Information collection requirements contained in this regulation (7 CFR part 1475) have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act, and OMB Control Number 0560–0029 has been assigned to 7 CFR part 1475.

Discussion of Proposed Changes:

The regulations at 7 CFR part 1475 currently set forth the provisions which are used to administer the emergency livestock feed programs. These programs are authorized by the CCC Charter Act, and the 1949 Act.

Sections 605, 606, and 607 of the 1949 Act provide that the Secretary of Agriculture shall make one or more of certain specified programs available to eligible livestock owners if a livestock emergency exists in a State, county or area. Over the past several years the emergency livestock feed programs have come under increased criticism from livestock producers, livestock association representatives, Congressional staffs, as well as State and county Agricultural Stabilization and Conservation Service (ASCS) office employees, concerning the complexity of administering these programs. As a result of a review of these programs and comments received, it has been determined that such programs could be simplified with respect to the method of: (1) Computing feed needs for eligible livestock; (2) Determining feed on hand; (3) Determining the degree of owner eligibility; and (4) The administration of these programs for the 1990 and subsequent crop years to eligible owners of livestock who suffer substantial loss of feed normally produced on their farms and do not have adequate supplies of feed due to certain natural disasters. This proposed rule would simplify the programs and would more efficiently address the emergency feed needs of affected livestock owners.

Section 602 of the 1949 Act sets forth the provisions which define the types of owners, livestock and feed which are subject to the 1949 Act. To be eligible for assistance a person must be actively engaged in farming and receive a substantial amount of total income from the production of grain and livestock. The term "livestock" means cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, and fish used for food that are:

(a) Part of a foundation herd (including producing dairy cattle) or offspring, or

(b) Are purchased as part of a normal operation.

Previous regulations at 7 CFR 1475.3 defined an "animal unit" as a unit of measurement determined by the CCC necessary for the maintenance of an adult female bovine animal used for beef purposes. Animal units for other types and classes of livestock were established in a specified relationship to the adult female bovine animal.

At the time this concept was first established, it was done in order to provide the producer with a basis for determining feed needs for the different types of livestock in relation to that of the adult female bovine animal for beef purposes. This also provided for a rather simple method of determining the producer's feed needs in that the number of animal units was multiplied times the pounds of feed grain equivalent (FGE) needed per day to maintain an adult female bovine animal for beef purposes. While the use of animal units were an acceptable unit of measure at the time they were established, they are no longer considered to be appropriate because the animal unit concept does not accurately reflect the feed needs of an animal.

Therefore, this proposed rule provides that categories for each type of eligible livestock will be established on a specified weight class basis. Each type of livestock will be grouped by average weight and an appropriate amount of energy requirements will be determined for each class of livestock by type. Consideration in this rule will also take into account, energy requirements where

applicable, for fetal development and lactation. This will mean that rather than report the different types of livestock by age, the producer will report the different types of livestock by weight class. This will more accurately establish the amount of feed necessary to maintain a particular type and weight of livestock because of the differences in weight of different livestock breeds as opposed to age.

The FGE of all feeds were determined by dividing the Total Digestive Nutrients (TDN) by the TDN for grain sorghum. It has been determined that while TDN is an appropriate means for determining feed needs for livestock, the use of Net Energy requirements provides a better estimate on the daily needs for maintenance of livestock. Therefore, this proposed rule provides for energy requirements to be computed for specified weight classes for each type of eligible livestock rather than TDN needed per animal unit.

This proposed rule also takes into consideration the energy requirements used in determining the amount of feed needs per day per animal. The current concept of 10 pounds of FGE per day per animal unit will no longer be taken into consideration when computing an owner's eligibility for the emergency livestock feed programs. The 10 pounds of FGE concept was derived using research data from Frank B. Morrison's *Feed and Feeding*, which indicated that this was the amount of feed needed to maintain an adult female bovine for beef purposes. This proposed rule provides that the net energy needed to maintain each type of eligible livestock will be established, according to applicable energy requirements for each specific type and weight class of animal used in this proposed rule. The energy requirements used in this proposed rule also provides for environmental factors, pregnancy, and lactation which the previous concept did not. The energy requirements is equated to the amount of corn required to provide that amount of energy and will then be converted to a monetary value to determine the cost of feeding livestock. Current regulations at 7 CFR 1475.6 provide that feed on hand owned by the owner of eligible livestock on the date of application shall include any prior crop year and current crop year production of feed still on hand. It has been determined that prior years' production of feed on hand on the date the owner requests livestock assistance shall not be considered as feed on hand. This determination is based on the fact that owners should not be adversely affected for a management decision to store production of feed for future uses from one year to the next in anticipation of the possibility of a reduction in feed production because of natural disasters or other acts not controlled by the owner. This provision also has the effect of treating all eligible livestock producers equitably, that is livestock producers with identical operations would be eligible for the same amount of benefits under the emergency livestock feed programs. While this proposal may make more livestock producers eligible for assistance, we do not believe that it will substantially increase the number of applications for livestock feed program benefits. It has also been determined that owners shall have the option in determining their eligibility of including or excluding livestock that normally graze and use roughage pasture and forage from feed on hand or receiving a loss. This proposal will provide that those producers with sufficient pasture or forage crops for their grazing livestock to exclude them from the application. This option can be beneficial to the government or livestock producer, depending upon the circumstances in each individual case. If the producer chooses to exclude grazing livestock and pasture and forage from the application, it will reduce the reporting requirements for the producer and will reduce necessary inputs in determining eligibility by the county ASCS office. Likewise, it may increase a producer's benefits if the producer has a large amoung of pasture or forage with no loss but is short on proper livestock feeds for the nongrazing livestock such as swine, poultry, or fish.

The 1949 Act provides that if assistance under the emergency livestock feed programs is made available through the furnishing of feed grain, at the option of the livestock owner, feed grain stored on the farm of the owner that has been pledged as collateral by the owner for a price support loan may be used for such purposes. With respect to 1990 and subsequent crop year disasters, owners have the option to purchase their own feed grain that has been pledged as collateral for a farm stored price support loan, for the purpose of feed for livestock under the emergency livestock feed programs. Such grain which is acquired by the livestock owner under these provisions may be used in the same manner as any other assistance provided under these regulations.

The proposed rule would amend 7 CFR 1475.1006 to provide that for those programs which require that an eligible livestock owner must have suffered a substantial loss of production of feed, in determining whether a substantial loss of production of feed exists, the normal production of feed which is produced and feed production harvested by the owner shall be converted to a monetary value based on the 5-year average of the crop obtained from the National Agriculture Statistics Service (NASS). The amount of the loss of production because of a natural disaster would be determined by comparing the monetary value of normal feed production produced on the owner's holdings to the monetary value of the actual feed production harvested on the owner's holdings. A loss of pasture production would be based on the monetary loss of production of such pasture.

This proposed rule changes the procedure for computing eligibility for the emergency livestock feed programs as follows:

(a) Normal production and quantity of production loss shall be determined according to current applicable regulations at 7 CFR part 1475.

(b) A monetary value per ton, bushel or hundredweight, as applicable, shall be established on a county-by-county basis for each type of livestock feed grown or fed by the owners in each county. This monetary value will be the same for each owner within the county who files for the emergency livestock feed programs.

(c) To determine monetary value of feed production loss, a comparison will be made of the value of normal production based on the 5-year average for the crop determined by NASS and production of feed actually harvested.

(d) The owner must have suffered a substantial loss in feed production which results in a substantial monetary value loss on feed normally produced by the owner to be eligible to participate in the emergency livestock feed programs.

(e) The same monetary value per ton, bushel or hundredweight, as applicable, used to determine the value for feed production harvested shall be used to determine a monetary value for feed on hand.

(f) The energy requirements for the average weight classes of each type of eligible livestock will be determined by CCC in cooperation with the National Extension Service and State land grant colleges.

(g) The feed cost of energy requirements per day per eligible weight class of each type of eligible livestock will be determined by CCC.

(h) The amount of assistance to the owner shall be based on the energy requirements per day for each weight class and type of eligible livestock, and the cost of corn established by CCC at

the beginning of the emergency livestock feed program crop year, times the number of days in the feeding period, times the number of eligible animals.

(i) Assistance will be based on a percentage of the lesser of the monetary value of feed production loss, or the monetary value needed to provide the calculated feed needs of eligible livestock.

The changes proposed in this proposed rule will provide a more accurate assessment of the actual monetary assistance required to feed these livestock for the duration of the emergency. The 1949 Act provides, in part, that each qualifying livestock producer shall be eligible for emergency feed assistance in quantities sufficient to meet such feed deficiency with respect to the producer's livestock normally fed with feed produced by the producer.

The proposed procedure provides that the feed lost and feed needed to maintain the livestock be converted to a monetary value. The producer is then entitled to benefits equal to a percentage of the lower of the monetary value of feed actually lost or needed to feed livestock.

This proposed method for computing a livestock producer's eligibility has several advantages over the current method of determining eligibility. Currently, to determine normal production and current year crop loss, all non-grain crops are converted to FGE using the TDN for grain sorghum as the base. This method is not widely understood by livestock producers in general and does not conform to today's standards in the field of animal nutrition. Also, the conversion of all grain crops on a pound-for-pound basis is not equitable to all livestock producers. The proposed method of converting all crops to a dollar value puts all crops on an equitable monetary basis.

In establishing the feed needs for a producer's livestock, currently we use the concept of 10 pounds FGE per animal unit per day. This proposed concept will provide value of feed cost or feed needed to maintain the livestock. This proposal thus provides that all livestock producer's within a county will receive the identical cost of feed crops produced by the producer on the farm needed to feed their livestock. Current procedure provides that the feed cost and feed needs be converted to FGE's. The producers under this procedure are therefore limited to total pounds of FGE eligibility. From this point on producer's benefits received are determined by the type of feed purchased by the producer. The only limiting factor being the lower of 50 percent of the cost or 5 cents per pound FGE. Thus, under the current concept only those producers who are paying the same amount per pound FGE for their livestock feed are receiving the same benefits. A producer who purchases the type of livestock feed normally produced on the farm receives less benefits than the producer who purchases higher priced eligible livestock feed.

This proposed change would treat all livestock producers the same and will reduce government expenditures.

The proposal that an eligible livestock feed producer be entitled to receive a percentage of the eligible benefits as soon as the contract is approved also provides several benefits to the producer and to the county ASCS office.

Currently, under the Emergency Feed Program (EFP), the producer cannot receive any payments under the program until sales receipts for the purchased feed are brought into the county ASCS office and approved. This usually results in the livestock producer making a great number of trips into the office to turn in receipts for purchased feed and sometimes a further trip to receive the cost-share assistance payment for purchased feed.

The current procedure also requires that the county ASCS office record all sales receipts including type of feed purchased and cost. The pounds of livestock feed purchased is converted to pounds of FGE and the dollars expended are totaled. The county ASCS office must then determine the producer's benefits which are equal to 50 percent of the cost not to exceed 5 cents per pound FGE. In many cases, this process is the most time consuming aspect of participating in the livestock feed program for both the producer and the county ASCS office.

The proposed changes provide that once the producer's eligibility is determined, an advance payment will be made. Except for reporting of changes in livestock and available feed, which is also done under the current procedure, the livestock producer would not be required to return to the county ASCS office until the terms of the contract are completed. This greatly reduces the number of trips required to the county ASCS office by the producer and the amount of time required by the county ASCS office to determine whether the producer has met the terms of the contract. The county ASCS office, under this proposal, will be required to process a maximum of three checks. After the producer brings in the sales receipts at the end of the crop year, the county ASCS office will only need to total the monetary amount of the feed purchased by the livestock producer, determine the total benefits due the producer and make appropriate monetary adjustments.

The proposed rule would provide that, with the exception of the Prickly Pear Cactus Burning Program and the Crash Grain Donation Program, CCC will enter into a contract with livestock owners who are determined eligible to receive payments or benefits, to receive a percentage of such payments or benefits before the necessary feed is purchased, provided they meet certain requirements and execute such contract. Generally, an owner will be eligible to participate in the emergency livestock feed programs and receive benefits under the programs only if all owners on all units associated with the application for assistance execute the contract to participate in the programs.

Each owner shall be signatory to the contract. Each contract must be approved and signed by a representative of CCC prior to owners receiving benefits under the programs. If a contract is approved and signed by a representative of CCC, then CCC will make available to the owner an amount of assistance which represents the amount of benefits under the programs that the owner may be entitled to.

Any owner who knowingly violates the terms of the programs or contract thereof, under the terms of the emergency livestock feed programs, will be subject to loss of benefits and other action as provided for in 7 CFR part 1475.

List of Subjects in 7 CFR Part 1475

Assistance grant programs–Agriculture, Livestock.

Proposed Rule

Accordingly, chapter XIV of title 7 of the Code of Federal Regulations is amended by revising part 1475 to read as follows:

PART 1475—EMERGENCY LIVESTOCK ASSISTANCE

Subpart—General Provisions

Sec.
1475.1 General statement.
1475.2 Administration.
1475.3 Definitions.
1475.4 Program availability.
1475.5 Owner eligibility.
1475.6 Application for assistance.
1475.7 Adjustment of total benefits available.
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1475.9 Payments.
1475.10 Termination and suspension of program.
1475.11 Maintenance of books and records.
1475.12 Liens and claims of creditors; setoffs.
1475.13 Assignments of payments.
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Sec.
1475.15 Appeals.
1475.16 Misrepresentation, scheme or device.
1475.17 Refunds to CCC; joint and several liability.
1475.18 Cumulative liability.
1475.19 Estates, trusts, and minors.
1475.20 Death, incompetence, or disappearance.
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Subpart—Livestock Preservation Donation Program

1475.101 General statement.
1475.102 Eligibility.
1475.103 Assistance.
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Subpart—Emergency Feed Assistance Program

1475.201 General statement.
1475.202 Sale of CCC-owned grain.

Subpart—Emergency Feed Program

1475.301 General statement.
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Subpart—Crash Feed Grain Donation Program

1475.401 General statement.
1475.402 Assistance.
1475.403 Feeding period.

Subpart—Prickly Pear Cactus Burning Program

1475.501 General statement.
1475.502 Definitions.
1475.503 Eligibility.
1475.504 Assistance.

Authority: 15 U.S.C. 714b and 714c, 7 U.S.C. 1427 and 1471–1471j.

Subpart—General Provisions

§ 1475.1 General statement.

The regulations in this part set forth the terms and conditions of the programs which may be made available to eligible owners for 1990 and subsequent livestock feed crop year disasters. The objective of these programs is to provide emergency feed assistance to eligible livestock owners, in a State, county, or area approved by the Executive Vice President, CCC, where because of disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster, a livestock emergency exists. These programs, except the Crash Feed Grain Donation Program, also provide feed assistance to eligible livestock owners for the preservation and maintenance of livestock in any county contiguous to a county where a livestock feed emergency has been determined to exist at any time during an 8-month period beginning on the date that such an emergency has been determined to exist in the other county. The program or programs which are made available in the event of the occurrence of a livestock feed emergency shall be determined by the Executive Vice President, CCC. With the exception of the Prickly Pear Cactus Burning Program and Crash Feed Grain Donation Program contained at § 1475.401 through § 1475.504 of this part, in order to receive assistance under this part a person must enter into a contract with CCC in order to receive such assistance from CCC.

§ 1475.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1475.3 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons and things, words imparting the plural include the singular, words imparting the masculine gender include the feminine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

Actively engaged means that the person must receive 10 percent or more of the person's total gross annual income from the production of grain or livestock.

Approving official means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance and contract made in accordance with this part.

Area means any part of a State or county including Indian reservations.

ASCS means the Agricultural Stabilization and Conservation Service.

Average weight classes means the weight class by type of livestock and an appropriate amount of energy required to provide the daily maintenance needs for livestock as follows:

Kind/Type	Weight of Animal	Daily Energy Requirement	Allowance/Day in lbs. of Corn
(1) Beef Cattle:		Mcals	
Beef	Less than 400	3.0 NE_m	3.5
Beef	400–799	5.2 NE_m	6.5
Beef	800–1099	7.0 NE_m	8.5
Beef	1100+	10.8 NE_m	12.5
Beef, cow		13.6 NE_m	15.7
Beef, bull	1000+	10.8 NE_m	13.0
(2) Dairy Cattle:			
Dairy	Less than 400	3.0 NE_m	3.5
Dairy	400–799	5.2 NE_m	6.5
Dairy	800–1099	7.0 NE_m	8.5
Dairy	1100+	10.8 NE_m	12.5
Dairy, cow	900–1099	20.4 NE_l	27.0
Dairy, cow	1100–1299	23.0 NE_l	31.1
Dairy, cow	1300–1499	24.5 NE_l	33 0

Kind/Type	Weight of Animal	Daily Energy Requirement	Allowance/Day in lbs. of Corn
Dairy, cow	1500+	27.7 NE_l	34.5
Dairy, bull	1000+	12.0 NE_m	14.5
(3) Equine:		Mcals	
Equine	Less than 450	6.2 DE	4.4
Equine	450-649	8.9 DE	6.3
Equine	650-874	11.6 DE	8.2
Equine	875+	17.3 DE	11.6
(4) Swine:		Kcals	
Swine	Less than 45	780 DE	.5
Swine	45-124	1630 DE	1.1
Swine	125-234	2867 DE	1.9
Swine, sow	235+	9854 DE	6.5
Swine, boar	235+	5446 DE	3.7
(5) Sheep:		Kcals	
Sheep	Less than 44	315 NE_m	.4
Sheep	44-82	718 NE_m	.9
Sheep	83-149	973 NE_m	1.1
Sheep, ewe	150+	1420 NE_m	1.8
Sheep, ram	150+	1556 NE_m	1.7
(6) Goats:		Mcals	
Goats	Less than 44	.70 DE_m	.5
Goats	44-82	1.59 DE_m	1.1
Goats	83-124	2.16 DE_m	1.5
Goats, doe	125+	5.3 DE_m	3.5
Goats, buck	125+	3.01 DE_m	2.1
(7) Poultry		Kcals	
Poultry	Less than 3.0	150 ME	.1
Poultry	3.0-7.9	375 ME	.2
Poultry	8.0+	638 ME	.45

Consideration has been given for fetal development and lactation, as applicable, in meeting daily energy requirements for maintenance. Average weight classes and energy requirements shall not be established for fish used for commercial food production but a feed allowance shall be computed in accordance with § 1475.6 of this subpart.

Beef cow means a bovine animal kept for breeding and that is pregnant of lactating.

CCC means the Commodity Credit Corporation.

Commercial feedlot means an establishment that is primarily engaged in the fattening of beef cattle, goats, swine, and lambs in a confined area for a period of at least 30 days, on a fee or contract basis for profit.

Contract means the emergency livestock feed program contract, appendix and addendum thereto when executed by the livestock owner and approved by a representative of the CCC.

Contracting entity means the owner or owners who enter into a emergency livestock feed program contract for payment, to purchase necessary grain or roughage under one or more of the programs of this part and are party to the same contract.

County means a county or similar geographic area as determined by CCC.

Crop year means a period determined by CCC which begins when normal grazing of new pasture growth becomes available in the spring and ends 12 months later.

DASCO means the Deputy Administrator, or Assistant Deputy Administrator State and County Operations, ASCS, U.S. Department of Agriculture.

Dairy cow means a bovine animal which is owned or leased for the purpose of producing milk for commercial marketing and that is pregnant or lactating.

Dry supplemental feed means a dry feed ingredient, or combination of dry feed ingredients, derived as by-products from processing feed and feed grains, oil seeds, meat, fish, citrus, sugar beets, or dairy products that are added to other dry feed materials to improve the nutritional balance or performance of the total feed ration. Antibiotics, emulsifiers, hormones, minerals, and vitamins, as determined and announced by CCC are also included.

Eligible feed for assistance means any type of feed (feed grain, oilseed meal, premix or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that best suits the owner's livestock operation which is consistent with acceptable feeding practices and which was not produced by the owner except for feed grain pledged as collateral for a farm stored price support loan or upon which assistance has not been provided. Any type of crop not normally considered as a feed grain may if the crop will be feed to the owners livestock, as determined by CCC, be considered as a feed grain and be considered in providing assistance to the owner. If assistance on such crop is requested by the owner, all such crops produced by the owner shall be considered when making a determination of the monetary value of feed available. Such crop shall not be used in determining the monetary value of feed production loss.

Eligible livestock means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and fish used for food. Buffalo and beefalo are also included when maintained on the same basis as beef cattle. Eligible livestock used for determining feed assistance are those livestock that are part of a foundation herd (including producing dairy cattle) or offspring or are purchased as part of a normal operation and not to obtain additional benefits under this part. Eligible livestock also includes: (1) Livestock inherited by the owner, or (2) purchased by the owner as part of a complete farm operation.

Equine animals means horses, mules, and donkeys, and includes animals:

(1) Used commercially for human food, or

(2) Kept for producing food and fiber on the owner's farm, such as draft horses, or cow ponies.

Eligible equine animals are limited to the number needed to produce food and fiber on the owner's farm or breed

horses and mules to be used to produce food and fiber on the owner's farm, and does not include such animals which are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

Equine animals for food means those horses which are maintained for commercial sale to food processors for human consumption.

Executive Vice President means the Executive Vice President, CCC, or a designee of the Executive Vice President.

Feed available means the monetary value of the owner's current year feed production on hand on the date the feeding period begins. Feed available shall also include any feed on hand owned by the owner of eligible livestock on the date of application as provided in § 1475.6 of this subpart.

Feed dealer or manufacturer means a person engaged in selling processed feed who is approved by the county committee to advance processed feed from such person's inventory to approved owners when requested to do so by the county committee under a feed dealer's agreement executed with CCC.

Feeding period means: (1) For all livestock except fish for food, the period beginning and ending on the dates determined as follows: The period shall begin on the later of:

(a) The date of the application for assistance; or

(b) The authorization of the implementation of the program. The period shall end on:

(c) If both grazing and nongrazing livestock are included, the earlier of the date when additional feed is normally expected to become available; or

(d) The end of the crop year or the end of the grazing period if pasture (including wheat pasture) is the only crop produced; or

(e) If only nongrazing livestock are included, on the later of the date when additional feed is normally expected to become available or the end of the crop year.

(2) For fish for food, the period beginning and ending on the dates determined as follows: The period shall begin on the later of:

(a) The date of the application for assistance; or

(b) The authorization for implementation of the program and the period shall end on the earlier of:

(c) The estimated date the owner intends to harvest the fish;

(d) The anticipated date when water temperature in the pond is expected to be 54 degrees Fahrenheit or less;

(e) The end of the current feeding period established for other eligible livestock if other livestock are included on the application; or

(f) The end of the emergency livestock feed program crop year.

Fish for Food means those fish which are maintained for commercial sale to restaurants, food stores, fish haulers and processors for human consumption.

Foundation livestock means eligible livestock that are kept for breeding and the reproduction of such livestock.

Handler means any person approved by the county committee to perform designated services in accordance with a grain handler agreement executed by such person and CCC.

Husbander means owner as defined in this subpart.

Liquid supplemental feed means that which contains protein, urea or other nonprotein nitrogen, minerals, and vitamins that are added to molasses or other liquids resulting in a product that is mixed, handled, and fed in a liquid form. They may also include such products as emulsifiers for fat, certain antibiotics, and hormones.

Natural disaster means disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster.

Net energy maintenance means for all livestock, except fish for food, the appropriate amount of net energy needed to meet the daily maintenance needs for livestock based on the average weight class by type of eligible livestock as provided in this section as determined by CCC. The maintenance level for fish for food shall be one percent of the average weight of all fish for food owned by the owner times the number of days in the feeding period.

Normal yield means for program crops the yield established for other ASCS programs unless such established yield was based on a type of operation other than the owner's actual type of operation. If no yield is established for programs crops, the yield shall be based on similar farms. For nonprogram crops, the yield shall be the lower of the yield specified by the owner or the average yield for the county determined according to NASS, unless the owner can substantiate that his or her normal yield is higher than that of NASS. Yields determined by NASS shall be based on a 5-year average excluding the high and low years.

Owner means: (1) A citizen of, or legal resident alien in the United States;

(2) A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in the United States, if they are engaged in livestock production or husbandry or dairy production;

(3) Any Indian tribe under the Indian Self-Determination and Education Assistance Act;

(4) Any Indian organization or entity chartered under the Indian Reorganization or entity chartered under the Indian Reorganization Act;

(5) Any tribal organization under the Indian Self-Determination and Education Assistance Act; and

(6) Any economic enterprise under the Indian Financing Act of 1974.

The owner must own or jointly own the eligible livestock to be fed with the eligible feed which is to be purchased or acquired through donation in accordance with this part or with respect to which assistance is provided in accordance with this part. An owner who pledges livestock as security for a loan shall be considered as the owner for the purpose of this part if all other requirements of this part are met. Notwithstanding any other provisions of this section, livestock leased under a contractual agreement which has been in effect at least 3 months for poultry or fish and 6 months for other livestock on the date of application for assistance under this part requires the lessee to furnish the feed for such livestock and provides for a beneficial interest in such livestock such as the right to market a share of the increases shall be considered as being owned by the lessee. An owner does not include:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity which is determined to be ineligible to receive payments or benefits in accordance with part 1498 of this chapter.

Owner's holdings means all land and livestock located within a reasonable travel area, as determined by the county committee, for the owner. Owner's holdings shall also include all land and livestock that is not within a reasonable travel area, if crops and or livestock from such land are normally transported from one operation to the other operation to allow the owner to utilize all feed and grazing available on all operations.

Person means a person as determined according to part 1497 of this title.

Poultry means domesticated chickens, ducks, geese and turkeys.

Premix means a formulation of one more microingredients, such as vitamins minerals, drugs, or other ingredients when one type of ingredient is evenly mixed with one or more of other types of ingredients or with a carrier. One vitamin mixed together solely with another kind of vitamin, or one mineral

mixed together solely with another kind of mineral is not considered a premix.

Principal owner means the owner who is designated in the contract as the person to receive communications from CCC concernng the contract.

Processed feed means feed grain which contains not more than 90 percent, by weight, of any one feed grain whch is ground, rolled, steamed, pelletized, or otherwise processed provided that all of the ingredients of the whole grain are included in such mixture.

Program means emergency livestock feed programs authorized by this part.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

State means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

State committee, State office, county committee, or county office, means the respective ASC committee or ASCS office.

Substantial loss of production means the monetary value of feed produced by the owner (including pasture, forage and feed in storage) during the crop year which has, because of a natural disaster, suffered at least a 40 percent reduction in the yield from normal production computed by the county office, or such other amount as determined by the Executive Vice President, CCC, to be the normal production produced by the owner with respect to lands operated by the owner. Any loss of feed production which the approving official determines is attributable to:

(1) Overgrazing; or

(2) Farming practices not recognized as being normal in the area, shall not be included in determining a substantial loss of production. Loss of feed production on crop land leased by the owner, under a new lease, after the beginning of the emergency livestock feed program crop year shall not be included in determining a substantial loss of production. Loss of feed production on pasture land leased by the owner, under a new lease, less than 90 days before the implementation of the emergency livestock feed programs shall not be included in determining a substantial loss of production, unless otherwise allowed by CCC.

The increase in costs of livestock feed because of a natural disaster or any other reason shall not be construed to mean that the owner has had a loss of production.

Total benefits available means the total monetary value of assistance for which an owner is eligible as originally computed and entered on the contract. Total benefits available is a percentage of the lesser of the value of feed production loss or the value of additional feed needs.

Total adjusted benefits available means the total assistance for which an owner is eligible as recomputed and entered on an addendum to the contract due to changes in feed which becomes available or changes in livestock during the feeding period.

Value of additional feed needs means the monetary value needed to provide the daily energy requirements for the entire feeding period for the eligible livestock after subtracting feed available to the owner.

Value of total feed needs means, except fish for food, the total monetary value needed to provide daily energy requirements for eligible livestock for the entire feeding period. Feed benefits for fish for food shall be as provided in § 1475.6 of this subpart.

Warehouse means a warehouse which is currently operating in accordance with a valid Uniform Grain Storage Agreement executed with CCC.

§ 1475.4 Program availability.

(a) Whenever the Governor of a State determines that a livestock feed emergency due to a natural disaster exists in a State, or an area of the State, or a county committee determines that such an emergency exists in the county or area within the county, the Governor or the county committee may submit a request for a determination by the Secretary of a livestock feed emergency in the State, county, or area thereof and for emergency livestock feed assistance under this part. Any request for a determination that a livestock emergency exists because of a slow developing natural disaster such as a drought must be submitted by October 31 of the current crop year. A determination that a livestock emergency due to natural disaster exists may also be made for a State, county or area thereof by the Secretary, whether or not a request for assistance is submitted. The request of a Governor or county committee for a livestock feed emergency determination and for emergency livestock feed assistance shall include recommendations to the Secretary of those options that will fully use feed available through local sources. The request of the Governor must specify the names of the counties for which assistance is requested. The request submitted by a county committee for a livestock feed emergency determination must be submitted to the State committee and must contain:

(1) A County Feed Loss Assessment Report, Form CCC-650;

(2) The rainfall data by month expressed in inches and percent of normal for the current crop year and the two previous calendar years if the request is due to the occurrence of drought or excess moisture;

(3) The type of assistance requested; and

(4) A report of an on-site visit by the county committee and a State committee representative stating existing production conditions.

(b) The State committee shall forward such a request with a recommendation of whether the request should be approved to DASCO.

(c) The Executive Vice President, CCC, or his designee shall make a final determination as to whether a livestock feed emergency exists not later than 30 days after receipt of any request made in accordance with paragraph (a) of this section and shall notify the Governor or the county committee of such determination as applicable and the livestock feed programs authorized to be implemented.

(d) Owners in any county contiguous to a county that has been designated as a livestock feed emergency county shall be eligible to receive emergency livestock feed assistance under this part, except for the Crash Feed Grain Donation Program, at any time during the 8-month period beginning on the date on which the emergency was determined exists in the other county.

§ 1475.5 Owner eligibility.

Subject to the terms and conditions in this part, an owner, including an Indian tribal member owner who is participating in the Indian Acute Distress Donation Program (IADDP), may be approved to participate in a program established in accordance with this part.

§ 1475.6 Application for assistance.

(a) Any owner of livestock may file an application for participation in a program made available by CCC in an approved county. When an application is filed, the owner or a duly authorized representative of the owner shall execute the certification contained on the approved CCC form.

(b) The owner or duly authorized representative of the owner shall enter into a contract with CCC to receive assistance not to exceed the amount of eligibility determined on the approved CCC form.

(c) An application and contract must be filed at the county office in an approved county or in a county office in a continguous county.

(d)(1) The owner, or a duly authorized representative of an owner, shall:

(i) Furnish all the information specified on the application and contract;

(ii) Certify that the owner meets the requirements of the applicable program; and

(iii) provide any other information which the approving official determines to be necessary to determine the owner's eligibility.

(2) Applications for assistance due to production losses because of a livestock feed emergency determine to exist for 1990 and subsequent livestock feed crop year disasters must be filed by December 31 of the year in which the disaster occurred.

(3) With respect to owners in a county contiguous to a county where a livestock feed emergency has been determined to exist, owners must file not later than the last day of the 8-month period beginning on the day the Secretary determines that a livestock feed emergency exists in the other county.

(e)(1) With respect to those programs which require that an eligible livestock owner must have suffered a substantial loss of production of feed, in determining whether a substantial loss of production of feed exists, the normal production of livestock feed and the current year livestock feed production harvested by the owner shall be converted to a monetary value based on established crop yields or the 5-year average yield of the crop excluding the high and low years, obtained from the National Agriculture Statistics Service (NASS). The amount of loss of livestock feed production shall be determined by CCC by comparing the monetary value of normal feed production produced on the owner's land holdings including leased land and any other land which is available for use by the owner to the monetary value of the actual livestock feed production harvested from such holdings. Loss of pasture production shall be based on the normal carrying capacity of such pasture. The owner must have suffered a substantial monetary value loss on feed normally produced by the owner to be eligible to participate in the emergency livestock feed programs.

(2) A substantial loss of production may, as determined by CCC, include feed stocks produced in the current crop year which were damaged or destroyed by a natural disaster while in storage. Feed stocks not totally destroyed shall be appraised by CCC on the basis of the remaining value of such stocks as livestock feed.

(3) The determination of a substantial loss of production with respect to pasture, range, or other grazing land shall be computed based on the loss of current year grazing after the beginning of the feeding period. County committees shall establish a value per acre for each type of grazing for the county and the maximum degree of loss for each type of grazing. Any production loss attributed to overgrazing in a prior crop year shall be excluded.

(4) In determining a substantial loss of production with respect to feed grain, silage, green chop, hay, and other roughage, the current crop year acreage and normal yields for such crops shall be used.

(i) The owner with swine, poultry or fish and grazing livestock shall have the option to include only eligible livestock that do not normally graze or use forage in the application for assistance under this part; and

(ii) An owner who elects to purchase CCC-owned feed grain will have the remaining monetary value on the application reduced by the result of multiplying the amount of CCC-owned grain purchased times an amount determined by DASCO.

(5) The amount of payment on any loss of production otherwise computed shall be reduced due to the receipt of other government disaster benefits which are received by the person for livestock feed normally grown by the owner. No reduction shall be made for CCC-owned grain that is donated to eligible Indian livestock owners under the IADDP.

(6) No loss of production shall be determined on acreage conservation reserve (ACR) or conserving use (CU) for payment acreage during the 5-month restricted period.

(f) The same monetary value per ton, bushel or hundredweight, as applicable, used to determine the value for normal production harvested shall be used to determine a monetary value for feed on hand.

(g) Feed available owned by the owner of eligible livestock on the date of application shall include, but is not limited to:

(1) Feed grain, silage, green chop, hay, pasture, and other roughage;

(2) Current crop year production of feed still on hand;

(3) Current crop year feed grain pledged as collateral for a CCC price support loan during the current crop year;

(4) Any current year feed grain in excess of the amount of grain required to be pledged as collateral for CCC price support loan during the current year;

(5) Any current crop year feed grain pledged as collateral for a CCC price support loan that has been redeemed and is still on hand;

(6) Any current crop year feed that is sold during the current crop year by considering the date of delivery of the feed as the date sold;

(7) Pasture, range, or other grazing land owned by the owner and any benefits from any pasture or grazing rights purchased or leased as part of the owner's normal farming operation;

(8) Grazing benefits from hay or grain crops which are grazed instead of or in addition to harvesting during the feeding period, including any temporary grazing of crops such as wheat;

(9) Temporary winter cover crops available for grazing;

(10) Any feed produced by the owner, on the owner's holdings, that is included on the application for assistance, filed by the owner;

(11) Any feed utilized in a feedlot for the commercial feeding of livestock;

(12) Any available donated feed received during the current year on hand; except for feed grain donated by CCC under the IADDP;

(13) Any roughage or grazing value available during the feeding period from ACR or CU during the 7-month nonrestricted period;

(14) If having or grazing of ACR or CU for payment acreage during the 5-month restricted period is authorized, any roughage or grazing value available from these acreages during the feeding period; and

(15) Except as otherwise provided in this section, any other feed that may be determined by approving officials in accordance with instructions issued by DASCO including adjustments based upon other government disaster benefits which are received by the person.

(h) The total monetary value of feed available, for an Indian tribal member who is determined eligible to receive assistance under the emergency livestock feed programs and receive donated grain under the IADDP, shall be the monetary value of the Indian owner's current year livestock feed available as determined in paragraphs (g)(1) through (15) of this section, less the monetary value, as determined by DASCO, of any donated grain received under IADDP.

(i)(1)(i) The value of total feed needs determined with respect to an owner of livestock, other than fish for food, shall not exceed the amount obtained by multiplying:

(A) The daily cost of corn as established by CCC before the beginning of the crop year that is determined necessary to provide the energy requirements established for

each weight class of livestock by type; times

(B) The number of eligible animals of each type and class of livestock; times

(C) The number of days in the feeding period.

(ii) The value of additional feed needs determined with respect to an owner shall be the monetary value of the total feeds needs less the monetary value of feed available including feed grain, hay, silage, pasture and range, and any other source of feed, determined by the approving official to be available to the owner for feeding eligible livestock during the feeding period.

(iii) The amount of total benefits available determined with respect to an owner for the entire feeding period shall be a percentage as determined by DASCO of the smaller of the monetary value of additional feed needs or the monetary value of feed production loss by the owner.

(2) The value of feed needs determined with respect to an owner of fish for food shall not exceed the average pounds of fish owned by the owner times the number of days in the feeding period times one percent times the cost of feed as determined by DASCO. The average weight of the fish shall be determined by:

(i) Determining the estimated average weight of the fish at the time of application;

(ii) Determining the estimated average weight of the fish on the ending date of the feeding period; and

(iii) Dividing the sum of (i) and (ii) by 2.

(j)(1) The county committee or designee shall review each application and contract. The county committee and, if designated by the county committee, the County Executive Director, is authorized to approve or disapprove all applications and contracts. Each application or contract for a county committee member or an ASCS employee shall be reviewed by the State Committee after approval by county committee or its designee.

(2) Each application or contract for a State committee member or State Executive Director shall be reviewed by DASCO after approval by the county committee or its designee.

(3) All applications and contracts forwarded to a higher authority for review shall be accompanied by necessary data that may be applicable. No application or contract shall be approved unless the owner meets all eligibility requirements. Information furnished by the owner and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application and contract shall be denied until sufficient additional information is provided by the owner. The owner shall be notified of the reason for denial and provided an opportunity to submit additional information as requested.

(4) An owner shall be notified in writing of the action taken with respect to an application and contract by the approving official.

§ 1475.7 Adjustment of total benefits available.

(a)(1) The determination of the total benefits available to the owner may be decreased or increased as the result of assistance made available to the owner after such a determination has been made. The principal owner shall notify all other owners which are a party to the application and contract of all changes regarding the application and contract.

(2) If there is an increase or a reduction in the number of the owner's eligible livestock, this fact shall be promptly reported to the approving official and such official shall make an adjustment in the owner's additional feed needs and therefore a possible adjustment in the benefits issued to the owner if applicable. This increase or reduction shall be made by revising the benefits available on the application and contract by the result of multiplying the amount of the change in eligible animals, times the number of days remaining in the feeding period times the cost per day to provide energy requirements for the applicable weight class by type of eligible livestock. After adjusting the benefits available, the county office shall notify the principal owner of the current total benefits available and issue an additional amount that may become due the owner or request payment from the owner of any amount that may be due CCC as applicable.

(3) If, due to a change in total benefits available, an excess amount of assistance was provided to the owner, the owner must refund such excess including applicable interest as determined by DASCO.

(b) If additional feed, including pasture, becomes available to the owner from production on any land included in the owner's holdings covered by the contract during a feeding period, this fact shall be promptly reported to the county office and proper adjustments shall be made.

(c) If any decrease in feed production, including pasture, occurs on any land including in the owner's holdings covered by the contract during a feeding period, this fact shall be promptly reported to the county office and proper adjustment shall be made.

§ 1475.8 Disposition of feed.

(a)(1) Feed grain or other livestock feed obtained under this part shall not be exchanged for any ingredients, services, cash, credit, or any other thing of value.

(2) An owner may feed eligible livestock feed to any livestock owned, after a determination has been made that the owner's eligible livestock were the only livestock used in determining the owner's total benefits available.

(b) The total quantity of feed purchased in accordance with this part, for which CCC has provided assistance under contract with the owner, must be fed to the owner's livestock within the feeding period. The county committee may consider livestock feed as having been fed within the feeding period if the county committee determines that failure to timely feed the livestock feed was due to conditions beyond the control of the owner. The amount of livestock feed remaining which may be considered as being timely fed shall not exceed a 10-day supply of feed for the owner's eligible livestock.

(c)(1) If the owner does not feed the feed grain or other livestock feed as provided in paragraphs (a), (b), and (c) of this section, with respect to the unfed amount the owner shall pay to CCC the followings amounts plus any applicable interest, as determined by CCC:

(i) With respect to purchased CCC-owned feed grain, the difference between the price paid for such feed grain and the Posted County (PCP) thereof, on the date the payment was received, or such other value as determined by CCC, based on the price of such type of feed grain in the county where the feed grain was stored; and

(ii) With respect to cost-share assistance, the amount of assistance received; and

(iii) With respect to CCC-owned feed grain donated to the owner, the rate equal to the PCP of the feed grain in the county where the grain was stored, on the date the feed grain was made available to the livestock owner.

(2) If the owner has failed to report a change in the livestock operation of the owner as required by this subpart and excess assistance was provided to the

owner, the owner shall pay to CCC following amounts plus any applicable interest as determined by CCC:

(i) With respect to purchased CCC-owned feed grain, the difference determined under paragraph (c)(1)(i) of this section for any benefits received by the owner under the terms of the contract for the purchase of such feed grains which was purchased in excess of the quantity that CCC would have approved on the contract and made available, if such report had been made.

(ii) With respect to cost-share assistance, the amount of cost-share assistance which was received under the terms of the contract, as determined by CCC, based on the amount in excess of the amount that CCC would have approved on the contract if such report had been made.

(iii) With respect to CCC-owned feed grain donated to the owner, the rate equal to the PCP of the feed grain in the county where the grain was stored, on the date the feed grain was made available to the livestock owner.

§ 1475.9 Payments.

(a) The total amount of payments which are made by CCC to all persons under the contract shall be the amount equal to the total benefit available to all persons which comprise the contracting entity. Such amount shall be paid by CCC only if it has been determined that the persons are eligible to receive such benefits according to the terms and conditions of the regulations and the contract.

The county office shall provide a percentage of the total amount of benefit due upon approval of the owner's application for benefits and acceptance of the contract as determined by DASCO. The remainder of the total amount of benefits due if any will be made after the owner has shown that the terms and conditions of the contract have been met. If any terms, conditions, or requirements of the regulations and the contract are not met, payments and benefits previously provided by CCC which were not earned under the provisions of the contract shall be refunded.

(b) At any time during the period of the contract, the owner shall, as requested by the county committee, submit to the county office, receipts and sales documents that are required verifying that the owner purchased the necessary feed to feed the livestock under the terms and conditions of the contract.

(c) Any receipts or sales documents that may be required of the owner by CCC showing that the terms of the contract have been met must be submitted by the owner by not later than the tenth working day after the end of the feeding period on the contract or addendum.

(d) Each person's share of the total contract payment shall be indicated on the contract, and each person shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the contract.

(e) The owners who file applications for more than one feeding period relating to a crop year shall execute a contract for each subsequent feeding period for which the owner is eligible. CCC shall provide assistance equal to the amount of benefits determined for the owner for the feeding periods that the owner is eligible to receive benefits.

(f) The failure of any principal owner to file the necessary receipts or sales documents showing that the terms and conditions of the regulations and the contract have been met shall render all of the persons ineligible for any payments and benefits under the contract including any payments previously made. Payments made shall be refunded to CCC with interest, if applicable, as determined under § 1475.17 of this subpart.

(g) Any payments or benefits, as determined under § 1475.17 of this subpart, and interest if applicable, made to participating owners for benefits on each feeding period shall be refunded to CCC if the owner does not submit receipts or sales documents to CCC for purchases of feed not later than the tenth working day after the end of each feeding period on the contract.

§ 1475.10 Termination and suspension of program.

(a) The county committee, in the county that requested emergency livestock feed program assistance, may at any time during the operation of a program recommend suspension or termination of a program. The State committee may at any time during the operation of a program suspend or terminate a program, with the concurrence of DASCO, for the county that requested emergency livestock feed program assistance. DASCO may suspend or terminate a program at any time for the county that requested the emergency livestock feed programs. The suspension or termination of a program in a county shall not apply to any application filed prior to the effective date of the suspension or termination of a program. Owners who filed an initial application prior to the termination of the program shall be eligible to file subsequent applications and addenda.

(b) Emergency livestock feed program assistance in a county contiguous to a county that requested and was determined eligible to receive livestock program assistance shall not be suspended or terminated prior to the last day of the 8-month period beginning on the date that an emergency has been determined to exist in the county that requested emergency livestock feed program assistance.

§ 1475.11 Maintenance of books and records.

Warehouseman, handlers, dealers, and owners shall maintain and retain financial books and records which will permit verification of all transactions with respect to the provisions of this part for at least 3 years, following the end of the calendar year in which assistance was provided, or for such additional period as CCC may request. An examination of such books and records by a duly authorized representative of the United States Government shall be permitted at any time during business hours. The owners shall, within 30 days after the request by the county committee, submit any requested information with respect to the owner's livestock feeding operation.

§ 1475.12 Liens and claims of creditors; setoffs.

Any payment or benefit or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 1403 of this chapter shall be applicable to this part.

§ 1475.13 Assignments of payments.

Payments which are earned by a person under the emergency livestock feed programs may be assigned in accordance with the provisions of 7 CFR part 1404.

§ 1475.14 Limitation of authority.

No delegation herein to a State or county committee or a commodity office shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee or employee of the Department of Agriculture.

§ 1475.15 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such

determination in accordance with the appeal regulations set forth at part 780 of this chapter.

§ 1475.16 Misrepresentation, scheme or device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program;

(b) Made any fraudulent representation; or

(c) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program with respect to the crop year involved.

§ 1475.17 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the contract, or this part, and if any refund of a payment to CCC shall otherwise become due in connection with the contract, or this part, all payments made under this part to any person shall be refunded to CCC, together with interest and late-payment charges as provided for in this paragraph.

(b) The person in the contracting entity shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under the terms and conditions of the contract or this part.

(c) Interest shall be applicable to refunds required of the owner because of intentional misrepresentation, scheme or device on the part of the owner including failure to purchase the amount of feed required to justify the amount of benefits received.

(d) Interest shall not be applicable to refunds required of the owner because of unintentional misaction on the part of the owner if refund is made within 30 days of the demand letter as determined by the county or State Committee in line with procedures issued by DASCO.

(e) Interest that is determined to be due by CCC with respect to any refund, shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date of the disbursement by CCC of the monies or benefits to be refunded. Interest that is determined to be due CCC shall accrue from the date of such disbursement by CCC to the date of repayment if repayment is made within 30 days of the demand letter. However, if repayment is not made within 30 days of the demand letter the account shall bear late payment charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 1403.

(f) Persons who are a party to the emergency livestock feed program contract must refund to CCC any excess payments made by CCC with respect to such contract.

(g) In the event that the emergency livestock feed program contract was established as a result of erroneous information provided by any owner to the county office or was erroneously computed by such office, the emergency livestock feed program contract shall be recomputed and any payments made or due under the contract shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputations of the contract shall be remitted to CCC with any applicable interest.

(h) Any refund of payments, which is determined to be required as a result of any violation of the provisions of the contract by the owner shall be remitted to CCC with any applicable interest.

§ 1475.18 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1475.19 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1475.20 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance, of any person who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

§ 1475.21 Violations.

(a) *Disposal of grain.* (1) If the owner has failed to utilize the entire quantity of livestock feed purchased under the terms and conditions of the application for assistance and contract of these programs, the owner shall not dispose of any remaining quantity of such livestock feed except as specified by CCC.

(2) Except as permitted by CCC, if feed acquired from CCC is made available to any other person, or if a delivery order is used for obtaining a type of grain other than that specified on the delivery order, the owner shall be subject to such civil penalties and to such criminal liabilities as are provided by applicable State and Federal statutes.

(b) *Fraudulent representations.* Any warehouseman, handler, dealer, or any other person may be suspended from participation in a program in accordance with part 1407 of this chapter if such person has:

(1) Made a false certification, representation or report in accordance with this subpart; or

(2) Otherwise failed to comply with any provisions of this part or any contracts entered into in accordance with this part.

The making of such fraudulent representations shall make such person liable in accordance with applicable State and Federal criminal and civil statutes.

§ 1475.22 Benefits limitation.

The total amount of benefits that a person, as determined in accordance with part 1497 of this title, shall be entitled to receive annually under one or more of the programs established under this part, may not exceed $50,000 per calendar year in which payment is made.

§ 1475.23 Gross revenue limitation.

A person, as defined in part 1497 of this title, as applicable, who has annual gross income in excess of $2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross income means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross income received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross income from all sources.

§ 1475.24 Actively engaged in farming determination requirement.

To be eligible for assistance under this part, a person as defined in part 1497 of this title, must receive 10 percent or more of such persons total gross annual income from the production of grain or livestock.

§ 1475.25 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1475) have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560–0029.

Subpart—Livestock Preservation Donation Program

§ 1475.101 General statement.

(a) This subpart sets forth the terms and conditions of the Livestock Preservation Donation Program. This program shall only be in effect upon a determination that a livestock feed emergency exists in a State, county or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State and county offices.

(b) In order to be eligible to participate in the program, an owner of livestock must have suffered a substantial loss of production of feed as defined in § 1475.3 of this part. The objective of the program is to provide assistance approved by CCC through a contract with the owner, for the owner to receive donated CCC-owned feed grains, for livestock owners who are financially unable to purchase feed, or to otherwise participate in any other program authorized under this part. The owner must establish to the satisfaction of the approving official that:

(1) Without assistance the owner's livestock would perish or be sold at distress prices; and

(2) The owner has insufficient cash or credit to buy feed for eligible livestock.

§ 1475.102 Eligibility.

(a) A livestock owner may be approved to participate in the program if it is determined that in addition to the provisions of §§ 1475.1–25 that:

(1) The livestock owner's need for replacing and repairing losses of buildings, equipment, supplies, and other related matters will leave insufficient cash or credit to buy feed for livestock;

(2) The livestock owner has insufficient cash or credit to buy feed for eligible livestock;

(3) The owner's livestock would perish or be sold at distress prices without donation of feed grains under this program;

(4) The livestock owner does not have sufficient livestock feed to feed the livestock through the period of the emergency; and

(5) The livestock owner is unable to participate in any other emergency livestock feed program which is currently in effect in accordance with this part.

(b) With respect to the determinations made in accordance with paragraphs (a)(2)–(4) of this section, the approving official must determine that under prevailing local conditions the owner's financial resources preclude the owner from obtaining sufficient quantities of feed from normal suppliers without:

(1) Imperiling continuance of the farming operations;

(2) Placing the owner in default with respect to existing financial obligations;

(3) Causing the owner to engage in unsound borrowing practices; or

(4) Resulting in excessive disposal of livestock by the owner.

(c) Purchased feed shall be considered as an available asset in determining whether an owner is suffering an undue financial hardship. In making this determination, the approving official shall take into consideration the normal financial resources of owners in the area. If the owner meets the conditions as provided in § 1475.10 of this part, the resources of the owner and all of the related persons shall be taken into consideration in determining the eligibility of the owner to receive assistance.

§ 1475.103 Assistance.

(a) The livestock owner shall establish that the livestock owner's operation has been so damaged by the disaster that sufficient cash or credit does not exist which may be used to purchase necessary feed grain at present market prices. The owner shall not sell or dispose of in any way, except by feeding to the owner's livestock, CCC-donated feed grain. The owner shall reimburse CCC at a rate equal to the value of the feed grain, as determined by CCC, on the date the feed grain was made available to the livestock owner for any CCC-donated grain which is on hand after the end of the emergency period that exceeds a 10-day supply.

(b) CCC shall designate the kind of CCC-owned feed grain to be donated under this program and the delivery point at which such feed grain shall be made available. The delivery point may be in the eligible designated county, contiguous county, or any other location as designated by the Executive Vice President, CCC. In those instances where feed grain is not available in such a county, CCC shall reimburse the livestock owner for the cost of transportation of the feed grain at a rate determined by DASCO.

(c) Transportation assistance will be provided to owners based on the smaller of the following:

(1) The loaded mileage from the warehouse storage location to the county line of the county in which the livestock owner is located; or

(2) When the owner delivers grain to a feed dealer for processing, the loaded mileage from the warehouse storage location to such feed dealer's facility.

(d) The maximum quantity of CCC-donated feed grain made available to an owner under this subpart shall be limited to the quantity determined by CCC in accordance with § 1475.6 of this part based on the cost of CCC-owned feed grain purchased in accordance with § 1475.202(g) of this part.

§ 1475.104 Feeding period.

The feeding period established under this subpart for owners shall be limited to the number of days determined by DASCO on a case by case basis.

Subpart—Emergency Feed Assistance Program

§ 1475.201 General statement.

(a) This subpart sets forth the terms and conditions of the Emergency Feed Assistance Program. This program shall be in effect only upon a determination that a livestock feed emergency exists in a State, county or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State and county offices.

(b) In order to be eligible to participate in the program, an owner of livestock must have suffered a substantial loss of production of feed as defined in § 1475.3 of this part. The objective of the program is to provide livestock owners with the option to purchase a quantity of CCC-owned grain, not to exceed the owner's eligibility as stated on the contract at a reduced price.

§ 1475.202 Sale of CCC-owned grain.

(a) CCC shall designate the kind of CCC-owned feed grain to be sold under this program and the delivery point at which such feed grain shall be made available. The delivery point may be in the eligible county, contiguous county, or any other locations as designated by the Executive Vice President, CCC. In those instances where feed grain is not available in such a county, CCC shall

reimburse the owner for transportation on the smaller of:

(1) The loaded mileage from the warehouse storage location to the county line of the county in which the livestock owner is located; or

(2) When the owner delivers grain to a feed dealer for processing, the loaded mileage from the warehouse storage location to such feed dealer's facility.

(b) Sales of CCC-owned grain shall be made in a quantity which does not exceed the quantity determined by CCC in accordance with § 1475.6 of this part based on a cost provided for in paragraph (g) of this subpart, which will permit feeding of grain to eligible livestock by the owner for a feeding period that will not extend beyond the date feed normally becomes available in the county.

(c) After payment is received by CCC, delivery shall be authorized by issuance of nontransferable delivery orders by CCC stating the kind and quantity of grain to be delivered and the expiration date in accordance with instructions issued by DASCO. Quantities authorized by delivery orders shall not exceed the quantity of grain determined in accordance with paragraph (a) of this section.

(d) The owner shall take physical delivery of the grain as soon as possible after issuance of the delivery order but not earlier than the date of such issuance and not later than a date determined by DASCO which would normally permit feeding of the grain as specified in paragraph (a) of this section. Title and risk of loss to the grain specified in the delivery order and stored at a warehouse or handler's facility shall pass to the owner when the owner accepts the grain and the owner and warehouseman certify on the delivery order. The owner shall promptly present the delivery order to the warehouseman or handler. CCC shall not be responsible for storage charges after the title passes to the owner but shall be responsible for handling charges at a rate not to exceed the rate provided in CCC's agreement with the warehouse or the handler. In cases where there is an underdelivery in quantity of the eligible grain, the owner shall not make settlement with the warehouse or handler but shall promptly notify the county office which issued the delivery order and a revised delivery order will be issued to the owner or a refund of the value of underdelivered feed grain will be made to the owner. Differences in quality between the grain accepted by the owner and the grain described in the loading order issued to the warehouseman or handler by CCC shall be settled between the warehouse or handler and the owner.

(e)(1) Where CCC-owned feed grain is not available in an area in which an eligible county is located and there are no CCC-approved handlers or dealers in such area, CCC shall ship the required quantity of feed grain to the area and cosign such grain to the county committee. Title and risk of loss shall pass to the owner upon delivery of the feed grain into the owner's conveyance or whenever the owner takes possession of the feed grain if such possession occurs prior to placing the feed grain in such conveyance.

(2) The sale price shall not be subject to adjustment for the grade and quality actually delivered into the owner's conveyance.

(3) The feed grain shall be weighed at destination if scales approved by CCC are available. If such scales are not available, settlement weights shall be as determined by CCC.

(4) CCC shall bear charges for transportation to the delivery point, for unloading the feed grain from the carrier's conveyance, for loading the feed grain into the owner's conveyance, and for determining the weight of the feed grain.

(f)(1) An owner may elect to receive eligible feed grain under the provisions of this subpart from feed grain stored on the livestock owner's farm if such grain has been pledged as collateral for a CCC price support loan. Payment for such feed grain shall be made to CCC at the county office where the loan application was filed. Feed grain acquired by the owner shall not be exchanged for any ingredient, service, cash, credit, or any other thing of value.

(2) An owner may elect to receive eligible feed grain under the provisions of this section through a feed dealer provided the owner executes a power of attorney as provided on Form ASCS-211, authorizing the feed dealer to execute the delivery order on behalf of the owner. Payment for feed grain shall be made to CCC at the county office where the application for feed grain is filed when requesting the delivery order. Feed grain purchased by a feed dealer on the behalf of the owner shall not be exchanged for any ingredient, service, cash, credit, or any other thing of value.

(3) The feed dealer shall provide such county office, in writing, the names of agents, such as company representatives, authorized to sign the delivery order on behalf of the feed dealer at the time of delivery of feed grain. The feed dealer shall:

(i) Take delivery of the feed grain before the expiration date of the delivery order;

(ii) Take physical delivery of the feed grain at each warehouse where the feed grain is located;

(iii) Not be reimbursed for transportation of feed grain received on behalf of the applicant; and

(iv) Present to such county office a statement signed by the owner and feed dealer certifying that the processed feed contained feed grain in the same quantity, type, and same or better grade as purchased by the owner.

(g) An owner who desires to have grain pelletized, ground, rolled, custom mixed, or otherwise processed may do so if the feed is processed from the feed grain purchased from CCC or the feed accepted from the processor is processed from the same kind of feed grain stated on the delivery order which grades the same or better as compared to such feed grain. The quantity of feed grain processed by the processor and delivered to the owner shall be the same quantity as the feed grain purchased from CCC, except for minor milling losses. CCC shall not be responsible for any charges involving processing, bagging, added freight incurred for processing in transit or any other cost which is incurred which would not have been incurred except for the processing of such feed grain.

(h) The sales prices of eligible feed grain made available by CCC in response to any livestock feed emergency determined to exist shall be 50 percent of the PCP determined by CCC on the date the payment is received in the county in which the feed grain is stored. If no such PCP is established, the sales price shall be established at a comparable rate in accordance with instructions issued by DASCO.

(i) The quantity of feed grain delivered to an owner shall not exceed the total quantity approved for sale by CCC by more than 5 percent. Differences in quantity between the grain delivered to the owner and the quantity of grain described in the delivery order issued to the warehouseman or handler that was removed from the delivery point in excess of 105 percent shall be considered as open stocks and shall be settled between the livestock owner and the warehouseman. Differences in quantity between the grain delivered to the livestock owner and the quantity of feed grain described in the delivery order issued to the warehouseman or handler between 100 and 105 percent shall be paid by the owner to CCC at 50 percent of the PCP determined by CCC for the commodity in the county in which the feed grain is stored.

(j) An amount equal to the purchase price times the quantity not delivered to the owner shall be refunded to the owner in those cases in which the total approved quantity shown on the delivery order and paid for by the owner is not delivered to the owner.

(k) When an owner desires to purchase feed grain pursuant to an approved application and contract, the owner must make a payment to CCC, in the manner specified in instructions issued by DASCO with respect to the quantity of grain to be purchased prior to issuance of a delivery order for such feed grain. The county committee may waive such prior payment requirement if a State or Federal agency certifies to CCC that such agency will finance part or all of the cost of the purchase. If such agency agrees to make payment directly to CCC as specified by the county committee, such a certification may be accepted by the county committee in lieu of cash to the extent of the amount so certified.

Subpart—Emergency Feed Program

§ 1475.301 General statement.

(a) This subpart sets forth the terms and conditions of the Emergency Feed Program. This program shall be in effect only upon a determination that a livestock feed emergency exists in a State, county or area, and it has been announced that this program is in effect. The objective of the program is to provide monetary assistance to eligible owners of livestock for the purchase of necessary feed. Information regarding the availability of the program in a county may be obtained from State and county offices.

(b) In order to be eligible to participate in the program, an owner of livestock must have suffered a substantial loss of production of feed as defined in § 1475.3 of the part.

§ 1475.302 Cost-share assistance.

(a) An owner of eligible livestock who has submitted an application for participation and a contract has been approved by a representative of CCC in accordance with § 1475.1 through § 1475.25 of this part shall receive monetary assistance for not more than 50 percent of the cost of eligible feed purchased by the owner not to exceed the monetary amount stated on the contract provided the owner presents evidence of the purchase of feed to the approving official at any time during the terms of the contract. If the approving official determines that the owner has met the conditions set forth in § 1475.1 through 1475.25 of this part, assistance for the weight class by type of eligible livestock may be made available to the owner as provided in § 1475.9 of this part.

(b) In no case may assistance be provided with respect to the value of purchased feed which is greater than the total feed benefits determined in accordance with § 1475.6 of this part.

(c) Acceptable evidence which may be presented to an approving official is limited to a sales document or receipt which:

(1) Is signed by the seller, unless the approving official waives such requirement; and

(2) Contains:

(i) The dates of purchase and delivery; and

(ii) The kind, price, and quantity of feed purchased.

(d) Eligible costs of feed purchases are limited to the purchase price paid by the owner at the point of delivery and may include as determined by the approving official:

(1) Costs normally associated with the preparation of mixed or processed feed;

(2) The cost of leasing or purchasing grazing rights for temporary pasture;

(3) The cost of leasing range or other grazing; and

(4) The cost of feed for eligible livestock in a feed lot.

Subpart—Crash Feed Grain Donation Program

§ 1475.401 General statement.

(a) This subpart sets forth the terms and conditions of the Crash Feed Grain Donation Program. This program shall be in effect upon a determination that a sudden livestock feed emergency in a State, county or area requires the implementation of the program. The objective of the program is to provide CCC-owned feed grains on a donation basis to livestock which are:

(1) Stranded;

(2) Unidentified by owner; and

(3) In danger of perishing after the occurrence of a sudden natural disaster.

(b) The Crash Feed Grain Donation Program is for use after a sudden major disaster has occurred and conditions are such that livestock cannot be tended to in a normal manner and would probably perish without the implementation of this program. Livestock owners who have their livestock under control and are capable of caring for them are not eligible to receive CCC-donated grain under this subpart.

§ 1475.402 Assistance.

(a) Assistance is for eligible livestock which are commingled, stranded, and unidentified as to the livestock owner.

(b) The State committee, or its designee, shall determine the eligibility and the amount of assistance which shall be made available in the area for donation under this subpart.

(c) CCC-owned grain donated under this program shall not be sold or disposed of in any way except for feed for the livestock stranded and unidentified as to its owner.

(d) CCC shall designate the kind of CCC-owned grain to be donated under this program and the delivery point at which such grain shall be made available.

(e) The maximum amount of CCC-donated grain under this subpart shall be limited to the total quantity that the approving official determines is needed for the emergency period.

(f) Assistance shall include the cost of transporting the feed from the delivery point to the affected area.

§ 1475.403 Feeding period.

The feeding period established under this subpart shall not exceed the number of days established by DASCO on a case by case basis.

Subpart—Prickly Pear Cactus Burning Program

§ 1475.501 General statement.

This subpart sets forth the terms and conditions of the Prickly Pear Cactus Burning Program. This program shall be in effect only upon a determination that a livestock feed emergency exists in a State, county or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State and county ASCS offices. The objective of the program is to provide cost-share assistance not to exceed 50 percent of the cost of propane, butane, or kerosene used to burn the spines from prickly pear cactus to make it suitable for livestock feed. The livestock owner may be approved to participate in the program if the owner has an inadequate quantity of feed on hand.

§ 1475.502 Definitions.

Butane means either of two isomeric flammable gaseous paraffin hydrocarbons obtained from petroleum or natural gas and used for fuel.

Kerosene means a flammable hydrocarbon oil obtained by distillation of petroleum and used as fuel.

Propane means a heavy flammable gaseous paraffin hydrocarbon found in crude petroleum and natural gas and used for fuel.

§ 1475.503 Eligibility.

A livestock owner may be approved to participate in the program only if the livestock owner has insufficient feed to maintain the farm's livestock for the period of the emergency.

§ 1475.504 Assistance.

(a) The maximum amount of cost-share assistance under this program shall be limited to 50 percent or less of the cost of butane, kerosene, or propane used to burn the prickly pear not to exceed an amount as determined by DASCO.

(b) Prickly pear cactus made suitable for livestock feed shall not be considered as feed on hand in determining whether an owner is eligible to participate in this program or any other program implemented in accordance with this part.

(c) Feed obtained from burning prickly pear cactus for which assistance is obtained under this part shall only be used by the eligible owner to feed such owner's livestock.

Signed at Washington, DC, on February 28, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-5022 Filed 3-5-90; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions pertain to the definition of affected area, previously mined area, fish and wildlife, performance bonds, and civil penalties. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards. This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t. March 21, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, S.W., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

New Mexico Energy & Minerals Department, Mining & Minerals Division, 2040 South Pacheco Street, Santa Fe, NM 87505, Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address listed in "**ADDRESSES**" or telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program, can be found in the December 31, 1980, **Federal Register** (45 FR 86489). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.13, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated May 25, 1989 (Administrative Record No. NM-499), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to a November 3, 1988, letter that OSM sent in accordance with 30 CFR 732.17(c).

OSM published a notice in the June 16, 1989 **Federal Register** (54 FR 25591) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-512). The public comment period ended July 17, 1989.

During its review of the amendment, OSM identified concerns relating to a policy concerning the definition of affected area, previously mined area at Coal Surface Mining Commission (CSMC) Rule 80-1-11-19(q), fish and wildlife at CSMC Rule 80-1-20-97(b), and civil penalties at CSMC Rules 80-1-31-23 and 80-1-31-24. OSM notified New Mexico of the concerns by letter dated August 4, 1989 (Administrative Record No. NM-527). New Mexico responded in a letter dated February 19, 1990, by submitting a revised amendment (Administrative Record No. NM-561). The regulations and policy that New Mexico proposes to amend are: The policy on the definition of affected area; previously mined area at CSMC Rules 80-1-1-5 and 80-1-11-19; fish and wildlife at CSMC Rules 80-1-8-20, 80-1-9-16, and 80-1-20-97; performance bonds at CSMC Rules 80-1-1-5, 80-1-14-23, and 80-1-14-40; and civil penalties at CSMC Rules 80-1-31-21, 80-1-31-22, 80-1-31-23, and 80-1-31-24.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "Dates" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 27, 1990.

Allen D. Klein,

Acting Assistant Director, Western Field Operations.

[FR Doc. 90-5036 Filed 3-5-90; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions pertain to other treatment facilities, siltation structures, and impoundments. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and clarify ambiguities. This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t. March 21, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102. Telephone: (505) 766-1486.

New Mexico Energy & Minerals Department, Mining & Minerals Division, 2040 South Pacheco Street, Santa Fe, NM 87505. Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address listed in "**ADDRESSES**" or telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program, can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.13, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated July 12, 1990 (Administrative Record No. NM-521), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to an August 14, 1986, letter that OSM sent in accordance with 30 CFR 732.17(c).

OSM published a notice in the August 4, 1989, **Federal Register** (54 FR 32095) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-531). The public comment period ended September 5, 1989.

During its review of the amendment, OSM identified concerns relating to the definition of other treatment facilities at Coal Surface Mining Commission (CSMC) Rule 80-1-1-5, siltation structures at CSMC Rule 80-1-20-46 (a) and (h), and impoundments at CSMC Rule 80-1-20-49(f). OSM notified New Mexico of the concerns by letter dated October 13, 1989 (Administrative Record No. NM-547). New Mexico responded in a letter dated February 19, 1990, by submitting a revised amendment (Administrative Record No. NM-560). The regulations that New Mexico proposes to amend are:

The definition of water treatment facilities which has been deleted and replaced with a definition of other treatment facilities at CSMC Rule 80-1-1-5; hydrologic balance general requirements at CSMC Rule 80-1-20-41(f); siltation structures at CSMC Rule 80-1-20-46; and impoundments at CSMC Rule 80-1-20-49.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Suface mining, Underground mining.

Dated: February 27, 1990.

Allen D. Klein,

Acting Assistant Director, Western Field Operations.

[FR Doc. 90-5037 Filed 3-5-90; 8:45 am]

BILLING CODE 4310-05-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition To List Agave Murpheyi

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service announces a 12-month petition finding for a petition to amend the Lists of Endangered and Threatened Wildlife and Plants. Substantial information has been presented that the petition to list the plant *Agave murpheyi* is warranted, but precluded by listing actions of higher priority.

DATES: The finding announced in this notice was made in January, 1990.

ADDRESSES: Information, comments, or questions regarding the petition may be submitted to the Phoenix Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas, Suite 6, Phoenix, Arizona

85019 (Telephone 602/261–4720, FTS 261–4720).

The petition, petition finding, and supporting data are available for public inspection, by appointment, during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Rutman at the Phoenix Field Office listed above.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, the U.S. Fish and Wildlife Service (Service) should make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Such a 12-month finding is to be published promptly in the **Federal Register.**

A petition (dated August 30, 1988) from Dr. Gary Nabhan, Wendy Hodgson, and Rick Delamater of the Desert Botanical Garden in Phoenix, Arizona was received by the Service on September 9, 1988. It requested the Service to list the plant *Agave murpheyi* as a threatened species. A 90-day determination that the action requested may be warranted was reported in the **Federal Register** for April 24, 1989 (54 FR 16379). (This notice erroneously stated that the petition requested listing the species as an endangered one.) That notice initiated formal status review of the species.

Agave murpheyi (Hohokam agave) is a unique agave of unknown origin that reproduces mainly by vegetative means. It is now restricted to fewer than 50 individuals in central Arizona. A few additional individuals are found on the Tohono O'Odham Indian Reservation in southern Arizona, and in northern Sonora, Mexico. In cental Arizona, *Agave murpheyi* has been found in the Tonto Basin, southern Bradshaw Mountains and the New River foothills, where it grows below 2,800 feet elevation in association with prehistoric villages and agricultural terraces. In southern Arizona and northern Sonora, individuals are found in historic or currently occupied small towns and settlements. In all cases the surrounding vegetation is Sonoran desertscrub.

Threats include suburban development in central Arizona, rural development in Mexico, inundation by expanding reservoirs and reservoir construction activity, illegal collecting, and livestock grazing. Plants in Paradise Valley (Phoenix) have already been lost to suburban development and more may be lost in the New River and other areas due to the same threat. Inundations by the impending expansion of Lake Pleasant and loss of habitat due to associated construction activities could potentially destroy plants. Although *Agave murpheyi* is protected by Arizona native plant law, plants may be taken in remote areas or where law enforcement is difficult. Cattle may remove all or part of the developing flower stalks and reduce reproductive potential.

Due to *Agave murpheyi's* limited distribution and abundance, and the present threats to the species, the Service has determined that the action requested by the petitioners is warranted but precluded by listing actions of higher priority. The Service intends to add the species to the next plant notice of review as a Category 2 candidate species.

The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any interested party concerning this species.

Author

This notice was prepared by Vicki M. Finn, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/358–2171 or FTS 921–2171).

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: February 23, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–5001 Filed 3–5–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 44
Tuesday, March 6, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Price Wise Timber Sale, Beaverhead National Forest, Beaverhead, MT

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest and regenerate timber stands, reconstruct existing roads and construct new roads in the headwaters of the Grasshopper Creek drainage on the Dillon Ranger District and headwaters of Wise River drainage on the Wise River Ranger District, Beaverhead National Forest, Beaverhead County, Montana. The project area is located approximately 30 miles northwest of Dillon. The proposed action is located within portions of the West Pioneer Roadless Areas 1-006D, and 1-006E and in portions of the East Pioneer Roadless Area 1-008A. This EIS will tier to the Beaverhead National Forest Land and Resource Management Plan EIS of April 1986, which provides overall guidance in achieving the desired future condition for the area. The purpose and goal of the proposed action is to help satisfy the short-term demands for timber, maintain a continuous supply of timber for the future, and produce a distribution of size and age classes of timber stands that more fully realize site potential, are healthier, and are more resistant to disease and insect infestations. The Forest Service is seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in and or affected by the proposed action. This input will be used in preparing the Draft Environmental Impact Statement (DEIS). This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.

The agency invites written comments and suggestions on the issues in the area being analyzed.

DATES: Comments should be received by March 23, 1990 to receive timely consideration in preparation of the Draft EIS.

ADDRESS: Submit written comments to the District Ranger, Dillon Ranger District, Box 1258, Dillon, Montana 59725, or to District Ranger, Wise River Ranger District, Box 100, Wise River, Montana 59762.

FOR FURTHER INFORMATION CONTACT: Barry Hicks, District Ranger, Dillon Ranger District, Beaverhead National Forest, telephone (406) 683-3960, or Ed Levert, District Ranger, Wise River Ranger District, Beaverhead National Forest, telephone (406) 832-3178.

SUPPLEMENTARY INFORMATION: The proposed action is designed to fulfill the goals and objectives of the Land and Resource Management Plan for the Beaverhead National Forest which provides the overall guidance for management activities in the potentially affected area.

The areas of proposed timber harvest, regeneration, and associated road reconstruction and construction activities within the drainages are located in Forest Plan Management Areas, 13, 16, 18, and 29.

Management Area Descriptions

Management Area 13: Areas suitable for timber management on moist sites characterized by springs, seeps and wet areas. Usually requires selection systems and cable yarding.

Management Area 16: Areas that are available and suitable for timber management.

Management Area 18: Areas that are available and suitable for timber management; generally on slopes less than 45%. The suitable lands are located within existing livestock grazing allotments; livestock grazing will use existing natural openings and transitory range. Dispersed recreation is provided additional emphasis in this Management Area.

Management Area 29: National Recreation Trail Corridors; management will be to preserve the visual integrity of the area; classified as suitable for timber management where adjacent to or surrounded by suitable timber Management Areas.

The analysis will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed harvest, regeneration, road reconstruction and road construction activities would be implemented. Other alternatives will examine varying levels and locations for the proposal in response to issues and objectives.

Potential environmental issues, formulated from previous NEPA analyses in this area and from an internal analysis relative to this proposed action, have been identified as:

Issue 1. Roadless Areas—What are the potential effects of the proposed action on the roadless characteristics of the East and West Pioneers Roadless Areas?

Issue 2. Watershed and Fisheries—What are the potential effects of the proposed action on water quality, quantity, and the fisheries resources?

Issue 3. Recreation and Visual Resources—What are the potential effects of the proposed action on visual resources, National Scenic and Recreational Trails and Byways, and other recreation opportunities?

Issue 4. Wildlife—What are the potential effects of the proposed action on wildlife habitats and populations?

Three RARE II roadless areas are located within the project area and could be affected by the proposed timber harvest, regeneration, and road construction. The West Pioneer Roadless Area is comprised of several parcels of which two, 1-006D, and 1-006E could be affected. Parcel 1-006D totals 11,382 acres and parcel 1-006E totals 11,765 acres. The East Pioneer Roadless Area also contains several parcels of which one, 1-008A could be affected. Parcel 1-008A contains 3,818 acres.

The EIS will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. Past, present and projected

activities on both private and National Forest Lands will be considered. In addition, the EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by July 1, 1990. At that time, the EPA will publish a Notice of Availability of the DEIS in the **Federal Register**. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by October 1, 1990. The Forest Service will respond in the FEIS to the comments received on the DEIS.

Public participation will be important in the analysis and in the review of the DEIS. People are invited and encouraged to contact and or visit with Forest Service officials at any time during the analysis and prior to the decision.

The Forest Supervisor for the Beaverhead National Forest, Ronald Prichard, who is the responsible official for the EIS, will make a decision regarding this proposal considering the comments, responses, environmental consequences discussed in the FEIS and applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency published the notice of availability in the **Federal Register**. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft environmetal impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 16, 1990.

Ronald Prichard,

Forest Supervisor, Beaverhead National Forest.

[FR Doc. 90-5008 Filed 3-5-90; 8:45 am]

BILLING CODE 3410-11-M

Kitty Stover Timber Sale, Beaverhead National Forest, Beaverhead County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest and regenerate timber stands, reconstruct existing roads and construct new roads in portions of the Bloody Dick Creek drainage on the Dillon Ranger District, Beaverhead National Forest, Beaverhead County, Montana. The proposed action is located approximately 44 miles West of Dillon and includes portions of the Saginaw Creek Roadless Area 1-004 and the West Big Hole Roadless Area 1-934B. This EIS will tier to the Beaverhead National Forest Land and Resource Management Plan EIS of April 1986, which provides overall guidance in achieving the desired future condition for the area. The purpose and goal of the proposed action is to help satisfy the short-term demands for timber, maintain a continuous supply of timber for the future, and produce a distribution of size and age classes of timber stands that more fully realize site potential, are healthier, and are more resistant to disease and insect infestations. The Forest Service is seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in and or affected by the proposed action. This input will be used in preparing the Draft Environmental Impact Statement (DEIS). This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

DATE: Comments should be received by March 23, 1990 to receive timely consideration in preparation of the Draft EIS.

ADDRESS: Submit written comments to the District Ranger, Dillon Ranger District, Box 1258, Dillon, Montana 59725.

FOR FURTHER INFORMATION CONTACT: Barry Hicks, District Ranger, Dillon Ranger District, Beaverhead National Forest, telephone (406) 683-3960.

SUPPLEMENTARY INFORMATION: The proposed action is designed to fulfill the goals and objectives of the Land and Resource Management Plan for the Beaverhead National Forest which provides the overall guidance for management activities in the potentially affected area.

The areas of proposed timber harvest, regeneration, and associated road reconstruction and construction activities within the Bloody Dick Creek drainage are located in Forest Plan Management Areas, 16, 19, and 20.

Management Area Descriptions

Management Area 16: Areas that are available and suitable for timber management.

Management Area 19: Areas with high wildlife values such as summer range, security cover, elk calving areas, or limited winter range; generally on slopes less than 45 percent on existing livestock grazing allotments; classified as suitable for timber management at low intensity levels with no planned cultural treatments.

Management Area 20: Same as Management Area 19 except that timber management will be at moderate levels permitting cultural treatments.

The analysis will consider a range of alternatives. One of these will be the

"no action" alternative, in which none of the proposed harvest, regeneration, road reconstruction and road construction activities would be implemented now. Other alternatives will examine varying levels and locations for the proposal in response to issues.

Potential environmental issues, formulated from previous NEPA analyses in this area and from an internal analysis relative to this proposed action, have been identified as:

Issue 1. Roadless Areas—What are the potential effects of the proposed action on the roadless characteristics of the Saginaw Creek and West Big Hole Roadless Areas?

Issue 2. Watershed and Fisheries—What are the potential effects of the proposed action on water quality, quantity, and the fisheries resources?

Issue 3. Recreation and Visual Resources—What are the potential effects of the proposed action on the visual resources, National Scenic and Historic Trails, and other recreation opportunities?

Issue 4. Wildlife—What are the potential effects of the proposed action on wildlife habitats and populations?

Issue 5. Threatened, Endangered, and Sensitive Species—What are the potential effects of the proposed action on the habitats of threatened, endangered, and sensitive plants and animals?

Two RARE II areas that could be affected by the proposed timber harvest, regeneration and road construction are located in the Bloody Dick Creek area. The Saginaw Creek Roadless area 1-004 totals 8493 acres. The West Big Hole Roadless Area is comprised of several parcels of which one, 1-943B could be affected. Parcel 1-943B totals 13,760 acres.

The EIS will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. Past, present and projected activities on both private and National Forest Lands will be considered. In addition, the EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

The DEIS is expected to be filled with the Environmental Protection Agency (EPA) and available for public review by June 1, 1990. At that time, the EPA will publish a Notice of Availability of the DEIS in the **Federal Register**. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by August 31, 1990.

Public participation will be important in the analysis and in the review of the DEIS. People are invited and encouraged to contact and or visit with Forest Service officials at any time during the analysis and prior to the decision.

The Forest Supervisor for the Beaverhead National Forest, Ronald Prichard, who is the responsible official for the EIS, will make a decision regarding this proposal considering the comments, responses, environmental consequences discussed in the FEIS and applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency published the notice of availability in the **Federal Register**. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 16, 1990.

Ronald Prichard,

Forest Supervisor, Beaverhead National Forest.

[FR Doc. 90-5009 Filed 3-5-90; 8:45 am]

BILLING CODE 3410-11-M

Ionosphere Broadcasting Special Use Permit; Sequoia National Forest, Tulare County, CA; Intention To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service is seeking issues and concerns for the preparation of an environmental impact statement. The environmental analysis will provide the basis for a decision to issue, or not to issue, a Special Use Permit to Ionosphere Broadcasting Limited Partnership (Ionosphere) for the authority to construct an electronic type land use site atop Eshom Point, near the town of Badger, California.

The Sequoia National Forest Land and Resource Management Plan has been prepared. Management Direction in the Management Plan calls for granting new non-recreational special-use permits or easements only when suitable private land is not available and they would not conflict with Forest management objectives.

Ionosphere seeks authority to locate the KQKK transmitting facilities on National Forest land and to construct a 230-foot self-supporting tower, equipment shelter, emergency generator enclosure, a driveway, and a crushed stone parking area. The site will be employed for signal transmission only. The total land area required for the facility, excluding the access driveway, is about 2500 square feet.

Federal, State, and local agencies; user groups; and other individuals or organizations who may be interested in or affected by the decision have been invited to participate in the scoping process. The scoping process began in January, 1990 and will continue until March 20, 1990. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public

review and comment by January 1, 1991. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 90 days from the date of the EPA's published notice of availability. All persons interested in the proposed projects are urged to participate at that time. Comments on the draft EIS should be as specific as possible and may address the adequacy of the EIS or the merits of the alternatives considered. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.) In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewers position and contentions, *Vermont Yankee Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages Inc.*, versus *Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service in a timely manner so the agency can respond to them in the final EIS.

After the comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final (EIS). The final EIS is scheduled to be complete by June 1991. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding these project proposals. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

James A. Crates, Forest Supervisor, Sequoia National Forest, Porterville, California, is the responsible official. Written comments and suggestions concerning the analysis should be sent to James A. Crates, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257.

Questions about the proposed action and environmental impact statement should be directed to Cynthia A. Whelan, Resource Planner, 35860 East Kings Canyon Rd., Dunlap, CA 93621, phone 209-338-2251.

Dated: February 21, 1990.

James A. Crates,

Forest Supervisor.

[FR Doc. 90-5041 Filed 3-5-90; 8:45 am]

BILLING CODE 3410-11-M

White Mountain National Forest; Draft Environmental Impact Statement for the Expansion of Loon Mountain Ski Area

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to issue a revised Draft Environmental Impact Statement (DEIS).

SUMMARY: The Department of Agriculture, Forest Service, will issue a revised Draft Environmental Impact Statement (DEIS) which was previously issued as a DEIS (EPA No. 890025) and a Supplement (EPA No. 890328) thereto for the Loon Mountain Ski Area—South Mountain Expansion Project. The previously issued Draft and Supplement are hereby withdrawn. A final EIS will be issued after public review of the revised DEIS.

The revised DEIS is for the proposed action of amending the Special Use Permit for the Loon Mountain Ski Area to allow for the use and occupancy of approximately 940 additional acres of adjacent National Forest System land on South Mountain. The Forest Service will consider alternative locations to provide increased downhill skiing as well as considering alternative site designs for the South Mountain area and increased use of the area already under permit at Loon Mountain.

The agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested persons are aware of how they may participate and contribute to the final decision.

The agency will initially accept written comments and suggestions as well as hold public meetings on the scope of the analysis. Since the agency has received voluminous public comment relating to the proposed action at Loon Mountain during preparation of the original DEIS and the Supplement, it urges that additional comments focus on new issues and the expanded range of alternatives and that earlier comments not be repeated. Those earlier comments will continue to be considered during preparation of the revised DEIS. General notice to the public concerning the scope of the analysis will be provided by a newsletter and/or news release.

There will also be a period provided for written comments and public meetings on the content of the revised DEIS once it is issued. That period will extend for 45 days from the date the Environmental Protection Agency's notice of availability of the revised DEIS appears in the **Federal Register.** It will be critical that those persons interested in the management of the White Mountain National Forest participate during the comment period for the revised DEIS. Comments on the DEIS should be specific, and address the adequacy of the DEIS or the merits of the alternatives discussed (*see* the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). After the comment period ends on the DEIS, the comments will be analyzed and considered by the agency in preparing the final EIS.

DATES: Comments related to the scope of the analysis should be mailed to the agency by April 15, 1990, to ensure timely consideration. Public meetings on the scope of the analysis will be held during March 1990, with the dates, times, and locations to be announced through news releases.

ADDRESSES: Mail comments to: Forest Supervisor, White Mountain National Forest, P.O. Box 638, Laconia, NH 03247.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the revised DEIS to: Dain Maddox, Project Coordinator, Eastern Region, USDA, Forest Service, 310 West Wisconsin, Milwaukee, WI 53203, phone: (414) 297-3305.

SUPPLEMENTARY INFORMATION: Public comment received on the original Loon Mountain Ski Area—South Mountain Expansion Project DEIS and the Supplement thereto has prompted the Forest Service to issue a revised DEIS to more clearly define the proposed action and more fully investigate reasonable alternatives.

The White Mountain National Forest presently provides, through special use permit ski area operation, approximately 212,000 visitor-days use in downhill skiing on about 2,000 acres of National Forest System land. By the end of the current 10-year planning period, the Forest's Land and Resource Management Plan (LRMP) calls for providing an additional 132,000 visitor-days of skiing opportunity on an additional 1,400 acres of land adjacent to existing ski areas. By the end of the decade after the current 10-year plan, an additional 28,000 visitor-days on up to 1,000 more acres are projected to be

needed. These second decade conclusions will be reviewed when the Plan is re-visited at the end of the current 10-year period. The proposed action is consistent with the LRMP and furthers the management direction set forth therein.

The proposed expansion of the Loon Mountain Ski Area would place an additional 940 acres under permit there. Approximately 348 acres of that would be cleared for ski lifts and trails. This expansion would provide for approximately 30 percent of the projected increased demand for downhill skiing opportunities on the White Mountain National Forest.

The original DEIS and the Supplement thereto only considered alternative levels of expansion at the proposed South Mountain site although it did include general discussion of the conditions on the existing permit area. The revised DEIS will, in addition, consider alternative locations for meeting the need for increased downhill skiing opportunities on the Forest. These alternative sites will include:

1. Attitash Ski Area at Bartlett
2. Waterville Valley
3. Cannon Mountain in Franconia Notch
4. Bretton Woods near Crawford Notch
5. Wildcat Ski Area in Pinkham Notch
6. Other sites that may be identified during the scoping process.

The evaluation of the above sites will enable the Forest Service to consider alternative locations for providing downhill skiing opportunities on the Forest and evaluate the cumulative environmental effects of reasonably foreseeable expansion at those other areas.

The revised DEIS will also consider an expanded range of alternatives at the proposed South Mountain site and the existing Loon Mountain Ski Area which is adjacent to it. These alternatives will include:

Alternative 1. A no action alternative which will continue current operations at Loon Mountain Ski Area with no expansion of the permitted area.

Alternative 2. An alternative which provides for increased use of the existing Loon Mountain site with no expansion of the permitted area.

Alternative 3. An alternative which provides expansion of the permitted area onto South Mountain with construction of limited ski facilities.

Alternative 4. An alternative that provides for expansion of the permitted area onto South Mountain with an intermediate level of new facilities there.

Alternative 5. An alternative that provides for expansion of the permitted area onto South Mountain with full scale development of facilities there as proposed by Loon Mountain Recreation Corporation.

Alternative 6. Other alternative(s) that may be developed as a result of the scoping process.

A preferred alternative will be identified in the revised DEIS.

The DEIS is expected to be filed with the EPA and to be available for public review in July 1990. At that time, EPA will publish a notice of availability in the Federal Register.

The FEIS is scheduled to be completed and available to the public approximately 4 months following the close of the review period for the DEIS. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR part 217.

The Forest Service official responsible for approving the proposed action is: Forest Supervisor, White Mountain National Forest, P.O. Box 638, Laconia, New Hampshire 03247.

Dated: February 28, 1990.

Michael B. Hathaway,

Forest Supervisor.

[FR Doc. 90-5002 Filed 3-5-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Deferral of Modification; John G. Shedd Aquarium (P396B)

On August 2, 1989, notice was given that the John G. Shedd Aquarium, 1200 South Lakeshore Drive, Chicago, Illinois 60605, had requested a modification to Marine Mammal Protection Act Permit No. 662 (54 FR 19934) issued pursuant to the provisions of section 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Permit No. 662 authorized the importation of six (6) Pacific false killer whales (*Pseudorca crassidens*) from Japan. The Permit Holder requested that the permit be modified to allow the option of collecting up to six (6) Pacific false killer whales from waters of the Hawaiian Islands.

Notice is hereby given that the National Marine Fisheries Service has deferred a decision on the requested modification until the following information is available:

(a) A compilation and evaluation of historical data on all live-captures of false killer whales and their localities by age/size and sex in Hawaiian waters;

(b) A compilation and evaluation, in light of available population data to determine whether the incidental take, by itself or in combination with proposed live captures and removals or other human activities, might disadvantage the population;

(c) Results of additional surveys to determine seasonal and annual variation in abundance and herd structure;

Documents associated with this application and modification request are available for review by appointment in the following offices:

Office of Protected Resources and Habitat Programs (F/PR1), National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; (301) 427-2289;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7451; (213) 514-6196 or FTS 795-6196; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930; (617) 281-3600 or FTS 837-9200.

Dated: February 28, 1990.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 90-4991 Filed 3-5-90; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35)

Title, Applicable Form, and Applicable OMB Control Number: AF ROTC Form 36. Air Force ROTC Scholarship Nomination. OMB Number 0701-0103.

Type of Request: Revision of a currently approved collection.

Average Burden Hours/Minutes per Response: .50 Hour per response.

Frequency of Response: One response per respondent.

Annual Burden Hours: 1000.

Annual Responses: 2000.

Needs and Uses: Provides identification data, academic aptitude

from scores, performance data in extra-curricular activities, and Professor of Aerospace Studies evaluation of a scholarship applicant's performance and potential: For use by AFROTC Selection Board in evaluating a scholarship applicant's competitiveness for AFROTC scholarship award.

Affected Public: Individuals or households.

Frequency: Onetime only.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: February 28, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-4992 Filed 3-5-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Dredging of the Thames River in Southeastern Connecticut

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the proposed dredging of the Thames River in southeastern Connecticut. This proposed dredging is required to allow the safe passage of SSN 21 class submarines from the mouth of the Thames River to Piers 32 and 33 at Naval Submarine Base (SUBASE) New London, Connecticut. SSN 21 class submarines require a channel depth of −41 feet mean low water (MLW).

Congress authorized the construction of the newest class of submarine, the SEAWOLF (SSN 21) in 1986. Delivery of the first boat is expected in 1993. Prior to its commissioning, the first submarine, as well as those to follow, must undergo extensive operational and engineering evaluations. These evaluations are conducted by Submarine Squadron 12, stationed at SUBASE New London.

The existing channel in the Thames River varies from −34 MLW at Pier 33 to −41 feet MLW at the harbor entrance. Average depth north of I-95 bridge to Pier 33 are −36 feet MLW. The channel north of the bridge is in excess of −40 feet MLW with a few high areas which will require spot dredging. Total estimated volume of sediments to be dredged is 2 million cubic yards.

Alternatives to the proposed action identified for analysis in the EIS include No Action, and berthing SSN 21 class submarines at Naval Underwater Systems Center piers in New London (this alternative would result in reduced dredging volumes). Also, alternative methods of dredge material disposal will be analyzed.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on March 21, 1990, from 2 p.m. to 5 p.m., and from 7 p.m. to 10 p.m. at the Mitchell College auditorium located at 437 Pequot Avenue, New London, Connecticut. This meeting will be advertised in New London area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than April 4, 1990, to Ms. Kimberly DePaul (telephone (215) 897-6262 (Code 2022)), Northern Division, Naval Facilities Engineering Command, U.S. Naval Base, Philadelphia, Pennsylvania 19112-5000.

Dated: March 1, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-5039 Filed 3-5-90; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on March 20, 1990. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9 a.m. and terminate at 4 p.m. on March 20, 1990. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to meet in Executive Session to commence 1990 study initiatives. The agenda will include briefings and discussions related to conflict of interest statutes, security initiatives, and 1990 study topics, which are Determining the Impact of Noncooperative Target Recognition Technology on U.S. Navy Warfare Mission Areas, Ultra Wideband Radar, and Tactical Air-to-Air Defense Suppression in the Year 2000. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact:

Commander John Hrenko,

U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

Dated: February 28, 1990.

Jane M. Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 90-5038 Filed 3-5-90; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Notice was published on February 15, 1990, at 55 FR 5492 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Space Policy Task Force will meet on March 6–7, 1990 at 4401 Ford Avenue, Alexandria, Virginia. Because of operational necessity, the meeting date has been changed to March 8–9, 1990.

In accordance with 5 U.S.C. section 552b(e)(2), the meeting rescheduling is publicly announced at the earliest practical time.

Dated: March 2, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–5205 Filed 3–2–90; 3:07 pm]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031G]

Invitation for Applications for New Awards Under the Endowment Challenge Grant Program for Fiscal Year 1990.

Purpose of Program: Provide grants to eligible institutions of higher education so they can establish or increase their endowment funds.

Eligibility: Potential applicants, including current grantees under any of the programs authorized by title III of the Higher Education Act, are advised that a notice was published in the **Federal Register** on August 18, 1989, 54 FR 34214–34215, informing interested parties how to be designated as eligible to apply for Endowment Challenge Grant and Strengthening Institutions Program funds. Current grantees under the Strengthening Historically Black Colleges and Universities Graduate and Undergraduate Programs are automatically eligible to apply for Endowment Challenge Grant funds.

Deadline for Transmittal of Applications: June 11, 1990.

Applications Available: April 11, 1990.

Available Funds: $17,893 million.

Estimated Range of Awards: Small Grants: $50,000–$500,000; Large Grants: Over $1,000,000.

Estimated Average Size Awards: Small Grants: $256,000; Large Grants: $1,744,000.

Estimated Number of Awards: 20 to 30.

Project Period: 240 months.

Fundraising Period: 18 months.

Applicable Regulations: The Endowment Challenge Grant Program Regulations, *34 CFR part 628.*

For Applications or Information Contact: Ms. Anne Price-Collins, Chief, Challenge Grant and Endowment Branch, U.S. Department of Education, 400 Maryland Avenue SW., room 3042, ROB–3, Washington, DC 20202–5337, Telephone: (202) 732–3335.

Applications will be sent to those institutions designated as eligible under the title III Programs.

Program Authority: 20 U.S.C. 1065a.

Dated: Feburary 27, 1990.

Leonard L. Haynes, III,

Assistant Secretary, for Postsecondary Education.

[FR Doc. 90–4980 Filed 3–5–90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Savannah River Operations Office; Financial Assistance Award; Restriction of Eligibility for Grant Award

AGENCY: U.S. Department of Energy.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a grant to Claflin College, Orangeburg, SC, in support to research entitled, "Kinetics and Mechanisms of Abiotic Degradation of Selected Organic Compounds." The grant will be for a three-year period at a DOE funding level of approximately $243,587. Pursuant to DOE Financial Assistance Regulations, 10 CFR part 600.7(b)(1) and 600.14(d). DOE has determined that eligibility for this grant award shall be limited to Claflin College.

Procurement Request Number: 09–90SR18159.000.

Project Scope: Claflin College will conduct research on the kinetics and mechanisms of abiotic degradation of selected organic compounds of importance to operations on the Department of Energy's Savannah River Site (SRS) near Aiken, SC. The experiments will focus on the effects of mineral phases (i.e., kaolin, FE and Mn oxides) on the degradation of tetraphenylborate (TPB) and its breakdown products in the absence of microbes. Previous research at SRS has shown that TPB, soon to be used in large quantities in the Defense Waste Processing Facility (DWPF), degrades in soil (without microbial action) into diphenylborinic acid (DBPA) which severely decreases plant and bacterial growth.

Claflin College is a Historically Black College or University (HBCU) and falls within the meaning and intent of Executive Order 12677 (dated 4/28/89) pertaining to Government assistance to HBCUs. The participation of HBCUs in federally supported research is relatively limited. In order to overcome some of these limitations, the executive order directs federal agencies to increase the participation of HBCUs in federally-funded programs and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen the research capabilities and academic programs at this college and increase their participation in DOE mission-oriented research.

The DOE has determined that this award to Claflin College on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Simpson, Chief, Contracts Management Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2096.

Issued in Aiken, SC, on February 22, 1990.

John D. Wagoner,

Deputy Manager, Head of Contracting Activity Designee, Savannah River Operations Office.

[FR Doc. 90–5056 Filed 3–5–90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Amend Cooperative Agreement With University City Science Center

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive assistance award.

SUMMARY: The U.S. Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(D) it is noncompetitively adding work to Cooperative Agreement No. DE–FC01–87 CE40806 with the University City Science Center (UCSC).

SCOPE: The purpose of this additional work is to stimulate industrial energy conservation in small and medium sized manufacturing plants. With the new work, the UCSC will continue direction and management of 13 Energy Analysis and Diagnostic Centers (EADCs) which are located at institutions that are accredited by the Accreditation Board for Engineering and Technology. Each

EADC performs 30 audits during the academic year at qualifying small and medium sized manufacturing plants. The UCSC will modify the contracts with each EADC to include the identification of industrial waste generated while the manufacturing process is documented for energy analysis. The industrial waste information will be collected in 220 audits performed in the 1989–90 school year. The UCSC will modify the EADC Database, which documents and catalogs successful energy opportunities and audit reports, to include the industrial waste data collected. Archive capacity will be maintained for industrial waste data. The past 2 years manufacturing process data will be analyzed and a summary report will be provided to the DOE Office of Industrial Programs for use in planning future areas of R&D interest.

ELIGIBILITY: Eligibility of this award is being limited to UCSC, because of its unique qualifications and expertise as an institution and as a manager of the EADC program. The program manager has been instrumental in guiding this program to accomplish the high level of achievement currently being realized and to continue the work planned in this amended scope of work.

The additional work shall be performed from the effective date of the amendment through January 1, 1991. The estimated cost for the proposed work is $143,429.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rosemarie H. Marshall, MA-405.42, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-5057 Filed 3-5-90; 8:45 am]

BILLING CODE 6450-01-M

Idaho Operations Office; Intention To Renew a Cooperative Agreement With the University of Southwestern Lousiana

AGENCY: Department of Energy.

ACTION: Intent to renew a cooperative agreement with the University of Southwestern Louisiana of Lafayette, Lousiana.

SUMMARY: "U.S. Gulf Coast Geopressured-Geothermal Program." The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, a cooperative agreement for approximately $160,000 per year, for up to three years, with The University of Southwestern Louisiana (USL) of Lafayette, Louisiana. This action is prompted by Public Law 93-40, the Geothermal Research, Development, and Demonstration Act of 1974. The proposed effort includes seven areas under the Liquid Hydrocarbon Project: Solubility of certain aromatic hydrocarbons, sampling and analysis of brine and cryocondensates, correlation of cryocondensate yields with well operations, monitoring Pleasant Bayou Well for aliphatic hydrocarbons production, correlation of hydrocarbon production with well operating parameters, monitoring of Hulin Well (if appropriate), and development and testing of a harsh environment pH probe. The continuing research supports the promotion of expansion of the knowledge of geothermal and geopressured technologies. These activities will further advance the knowledge, and ultimately encourage the utilization, of an environmentally benign renewable energy source that will help reduce dependence upon foreign energy sources and help reduce atmospheric pollution. In particular, the proposed research meets the objectives as stated in the programmatic Annual Report for Geoscience, Reservoir Engineering, Geopressured Resource Analysis and improves the technology to the point where electricity could be produced commercially from a substantial number of geopressured resource sites via wells of opportunity. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR parts 600.7(b)2)(i), (A) The activity to be funded is necessary to the satisfactory completion and is a continuation of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity or completion of the Liquid Hydrocarbon Project. The work at USL definitely meets the purpose of Public Law 93-40 and addresses a public need for decreasing the utilization of energy. Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Marshall Garr, Contract Specialist (208) 526-1536.

Dated: February 23, 1990.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 90-5058 Filed 3-5-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time: Thursday, March 29, 1990, 2 p.m.-5:30 p.m.; Friday, March 30, 1990, 9 a.m.-3 p.m.

Place: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

Contact: Ms. Rene Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI-72, Washington, DC 20585, Telephone: (202) 586-2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, March 29, 1990

A. Opening Remarks
B. Major Topics:
1. Reports on National Energy Modeling System
a. Oil and Gas
b. Electricity and Nuclear
c. Coal
d. Renewables
e. Consumption and Conservation (Public Comments)

Friday, March 30, 1990

2. Overview of plans for National Energy Strategy.
3. Discussion of technical aspects of long-term forecasting (Public Comments).
C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone listed above or Ms. Wanda Thompson at (202) 586-2222.

Transcripts: Available for public review and copying at the Public Reading Room, (room 1E-290), 100 Independence Avenue, SW., Washington, DC 20585, (202) 586-6025, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Issued at Washington, DC on March 1, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-5059 Filed 3-5-90; 8:45 am]

BILLING CODE 6560-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-712-000 and CP88-712-002; Docket No. CP90-189-000]

CNG Transmission Corp., Texas Eastern Transmission Corp. and CNG Transmission Corp.; Intent To Prepare an Environmental Assessment for the Proposed CNG/VNG Project and Request for Comments on Its Scope

February 28, 1990.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the natural gas facilities proposed in the above-referenced dockets. The proposal will be referred to as the CNG/VNG Project.

In total, the jurisdictional facilities proposed by CNG Transmission Corporation (CNG) and Texas Eastern Transmission Corporation (TETCO) consist of 52.2 miles of 24-inch-diameter natural gas pipeline in Greene and Fayette Counties, Pennsylvania, and Loudoun and Prince William Counties, Virginia. In addition, a total of 29,500 horsepower (hp) of compression is proposed at four locations in Virginia, West Virginia, and Pennsylvania (2 locations).

The associated nonjurisdictional facilities by Virginia Natural Gas, Inc. (VNG), the City of Richmond, Virginia (Richmond), Doswell Limited Partnership (Doswell), and Virginia Electric and Power Company (Virginia Power) consist of: 134 miles of 10- and 24-inch-diameter pipeline; a 600-megawatt (Mw) electric power plant near Doswell, Virginia; and a 210-Mw power plant addition at Virginia Power's Chesterfield Power Station. All facilities are located within the Commonwealth of Virginia.

Proposed Project

Pursuant to section 7(c) of the Natural Gas Act, CNG proposes to render long-term firm sales of natural gas to VNG and Richmond, and to render firm natural gas transportation and storage service to Doswell and Virginia Power.

To facilitate upstream transportation of the natural gas from Appalachian Basin producing and storage areas, CNG and TETCO have entered into a joint proposal (Docket No. CP90-189-000) whereby CNG would deliver 224,000 decatherms of natural gas per day (dth/d) to a new meter and regulator station and proposed interconnection with TETCO near Crayne Farm in Greene County, Pennsylvania. The gas would then be transported eastward through jointly owned facilities to a new proposed meter and regulator station and interconnection between CNG and TETCO at TETCO's Chambersburg Compressor Station in Franklin County, Pennsylvania. CNG would receive the gas at Chambersburg and transport it southward to a new proposed interconnection with VNG near Watson, in Loudon County, Virginia. VNG would then make downstream deliveries to Doswell, Richmond, and Virginia Power.

Proposed Jurisdictional Facilities

The facilities are itemized and their proposed locations are identified in table 1. Also identified in table 1 are the nonjurisdictional facilities associated with the proposed project. Figures 1 through 7 show the general locations of all the proposed jurisdictional and nonjurisdictional facilities associated with the NCG/VNG Project.[1] The total estimated cost of the facilities proposed by CNG and TETCO is $93,493,580.

CNG propoes to construct 27 miles of 24-inch-diameter pipeline which would be located entirely within Loudoun and Prince William Counties, Virginia. The proposed route trends in a general north/south direction and parallels an existing Virginia Power transmission line for approximately 85 percent of its length. Land use along the route is primarily a mix of forest and pastureland; small amounts of cropland and residential land (about 0.5 mile each), and one industrial park (0.2 mile) would also be crossed by the proposed pipeline.

CNG proposes to acquire a 50-foot-wide permanent right-of-way. Where the route parallels existing utiltities, CNG would install the pipeline at or near the edge of the existing utility right-of-way and use 25 to 30 feet of the existing corridor as part of its permanent right-of-way; thus encumbering less than a full 50-foot width of land not currently dedicated to energy transmission.

CNG and TETCO jointly propose to replace 25.2 miles of TETCO's existing pipeline in Greene and Fayette Counties, Pennsylvania. An existing 20-inch-diameter pipeline would be removed and a new 24-inch-diameter pipeline would be installed in the same trench. Prior to undertaking removal of the old pipe, the applicants would be required to obtain a permit (or modification to TETCO's existing permit) from the U.S. Environmental Protection Agency (EPA), because the EPA believes that the facilities are contaminated with polychlorinated biphenyls (PCBs).

Compressor units would be installed at four locations. All of the proposed compressor facilities would be installed within existing CNG or TETCO property currently or formerly used for natural gas pipeline facilities. The Connellsville and Chambersburg, Pennsulvania sites are existing compressor stations where additional horsepower would be installed. Lambert Station is the site of a former meter station which was removed in 1983; no compressor facility currently exists there. Leesburg Station would be located at the north end of CNG's proposed 27-mile-long pipeline at a site which is currently a meter and regulator station with no existing compression. The Lambert and Leesburg Stations would be constructed by CNG. Compressor facilities at Connellsville and Chambersburg would be jointly owned by CNG and TETCO.

Related Nonjurisdictional Facilities

Beginning at the sought end of CNG's proposed 27-mile-long pipeline near the Prince William/Fauquier County border in Virginia, VNG would construct approximately 118 miles of 10- and 24-inch-diameter pipeline. The proposed route extends in a general south-southeasterly direction terminiating at the community of Toano, Virginia in James City County, where the pipeline would tie-in to VNG's existing distribution system.

The project consists of 82 miles of 24-inch-diameter pipeline from the interconnection with CNG to a point in southern Hanover County approximately 5 miles northeast of Richmond—the "Joint Use Section". From the point to Toano (36 miles), 10-inch-diameter pipeline would be installed (the VNG Lateral). Also, from the end of the Joint Use Section and extending southward, Richmond would construct 16 miles of 24-inch-diameter pipeline (the Richmond Lateral) to deliver gas to Virginia Power's Chesterfield Power Station. VNG and Richmond would transport gas through the proposed piplines on behalf of CNG for Doswell, Richmond, Virginia Power, and for VNG's own system supply.

[1] Figures 1 through 7 are not being printed in the **Federal Register**; however, copies are being mailed to everyone on the Commission's service and mailing lists. Copies are also available from the Commission's Public Reference Branch, room 2200, 825 North Capitol Street NE., Washington, DC 20426, or by calling (202) 357-8118.

Construction of the proposed pipeline facilities has been authorized by the Virginia State Corporation Commission (SCC).

Doswell has recently received approval from the SCC to construct a new gas-fired 600-Mw, combined cycle electric power plant on an approximately 150-acre site in Hanover County, about 5 miles north-northeast of Ashland, Virginia. Doswell would burn approximately 140,000 dth/d, and would sell all of its electricity to Virginia Power. Doswell is currently in the process of applying for the various other required state and local permits, including a Prevention of Significant Deterioration (PSD) permit from the Virginia Department of Air Pollution Control.

Virginia Power has received the necessary authorizations, including a certificate of public convenience and necessity from the SCC, and has already constructed Unit 7 at its Chesterfield Power Station in Chesterfield County, Virginia. The new facility consists of a 210-Mw, gas-fired combined cycle electric power plant. Virginia power would receive 37,500 dth/d for use at its Chesterfield Power Station. The SCC has also authorized construction of Unit 8, which would be identical to Unit 7.

Current Environmental Issues

The EA will address the environmental concerns that have been and will be identified by the FERC staff, interveners, and by concerned resource agencies and individuals who have contacted the FERC. The following issues have been identified for consideration in the EA:

Water Resources
- —Impact on streams.
- —Effect on public drinking water supplies.

Cultural Resources—Effect of the project on properties listed or eligible for the National Register of Historic Places.

Biological Resources
- —Impact on threatened and endangered species.
- —Impct on wetlands and fisheries.
- —Habitat alteration.

Air and Noise—Air quality and noise impact of compressor station facilities.

Geology and Soils
- —Geologic hazards.
- —Impact on exploitable mineral resources.
- —Erosion control and right-of-way restoration/revegetation.

Land Use
- —Utilization of existing right-of-way.
- —Consistency with approved coastal zone management plans.
- —Impact on residences and public recreation areas.

PCB's—Removal and disposal of facilities contaminated with PCB's.

Alternatives—Pipeline route variations to avoid environmentally sensitive areas.

Comment Procedures.

Comments from Federal, state, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of issues that need to be analyzed, and to identify and eliminate from detailed review the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Detailed maps of specific portions of the proposed pipeline routes and facility locations are available from the project manager identified below or call (202) 357-8891.

Comments are also requested on the specific environmental issues which may be associated with the nonjurisdictional facilities identified in table 1. If no significant issues are raised concerning the nonjurisdictional facilities, and the facilities have been approved or are in the process of detailed review at the state or local level, the Commission staff intends to limit its environmental review of these facilities. In this case however, the review would still address the potential indirect effects on federally listed or proposed threatened and endangered species, cultural resources, and consistenecy with approved coastal zone management plans.

Written comments should be submitted on or before March 30, 1990, reference Docket No. CP88-712-000, et al., and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Lonnie Lister, Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, DC 20426.

The EA will be based on the FERC staff's independent analysis of the proposal, and together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Lois D. Cashell,

Secretary.

TABLE 1.—PROPOSED FACILITIES CNG/VNG PROJECT

Applicant	Facilities	State	Counties
	Jurisdictional Facilities		
CNG (Docket Nos. CP-88-712-000 and CP88-712-002).	27 miles of 24-inch-diameter pipeline (TL-465 Line)	VA	Loudoun, Prince William.
	New 6,000 horsepower compressor station (Leesburg Station)	VA	Loudoun.
	New 6,000 horsepower compressor station (Lambert Station)	WV	Wetzel.
	New meter and regulator stations (Crayne Farm)	PA	Greene, Franklin.
CNG/TETCO (Docket No. CP90-189-000)	25.2 miles of 24-inch-diameter pipeline (replacing 20-inch diameter pipeline).	PA	Greene, Fayette.
	11,000-horsepower compressor station addition (Connellsville Station 21-A).	PA	Fayette.
	6,500-horsepower compressor station addition and aerodynamic assembly change-outs (Chambersburg Station).	PA	Franklin.
	Nonjurisdictional Facilities		
VNG	82 miles of 24-inch-diameter pipeline (Joint Use Section)	VA	Fauquier, Stafford, Spotsylvania, Caroline, Hanover.

TABLE 1.—PROPOSED FACILITIES CNG/VNG PROJECT—Continued

Applicant	Facilities	State	Counties
	36 miles of 10-inch-diameter pipeline (VNG Lateral)	VA	Hanover, New Kent, Charles City, James City.
City of Richmond, VA	16 miles of 24-inch-diameter pipeline (Richmond Lateral)	VA	Hanover, Henrico.
Doswell Limited Partnership	600-megawatt electric power plant (Doswell Plant)	VA	Hanover.
Virginia Power	210-megawatt electric power plant addition (Chesterfield Unit 7)	VA	Chesterfield.

[Docket Nos. MT89-5-003]

West Texas Gathering Co., et al.; Natural Gas Pipeline Filings

February 26, 1990.

Take notice that the following filings have been made with the Commission:

1. West Texas Gathering Company

[Docket No. MT89-5-003]

Take notice that on February 21, 1990, West Texas Gathering Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497-A and § 250.16 (d)(2) of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 2:

Second Revised Sheet No. 19
Revised Sheet No. 19.a
Revised Sheet No. 19.b
Revised Sheet No. 19.c
Revised Sheet No. 19.d
Second Revised Sheet No. 19.e
Second Revised Sheet No. 19.f
Second Revised Sheet No. 19.g
Second Revised Sheet No. 19.h
Second Revised Sheet No. 19.i
Second Revised Sheet No. 19.j
Second Revised Sheet No. 19.k
Original Sheet No. 19.l

Comment date: March 13, 1990, in accordance with Standard Paragraph K at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. MT88-24-007]

Take notice that on February 21, 1990, Northern Natural Gas Company, Division of Enron Corp., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497-A and § 250.16 (d)(2) of the Commission's Regulations as part of its FERC Gas Tariff, Third Revised Volume No. 1:

Fourth Revised Sheet No. 52f.21
First Revised Sheet No. 52f.22

Comment date: March 13, 1990, in accordance with Standard Paragraph K at the end of this notice.

Standard Paragraphs:

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. 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.

Louis D. Cashell,
Secretary.

[FR Doc. 90-4990 Filed 3-5-90; 8:45 am]
BILLING CODE 6717-01-M

Western Area Power Administration

Record of Decision To Construct the Charlie Creek-Belfield 345 Kilovolt Transmission Line Project, North Dakota

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of decision to construct, operate, and maintain the Charlie Creek-Belfield 345-kV Transmission Line Project, North Dakota.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), has made the decision to construct, operate, and maintain the Charlie Creek-Belfield 345-kilovolt (kV) Transmission Line Project within the environmentally preferred eastern alternative corridor (E41R) identified in the draft and final environmental impact statements (DEIS and FEIS, together referred to as the EIS). A single-circuit 345-kV transmission line will be constructed utilizing lattice steel structures, and a new substation will be constructed near the town of Belfield, North Dakota, and the existing Charlie Creek Substation will be expanded as part of the project. Western will proceed with land acquisition, construction, and subsequent operation and maintenance of the proposed facilities. The availability of the DEIS and FEIS for the project was announced in the **Federal Register** by the Environmental Protection Agency on June 24, 1988, (53 FR 23791) and October 27, 1989, (54 FR 43858), respectively.

Western has adopted the mitigation measures identified in the EIS. In addition, any site-specific mitigation requirements developed during construction will be addressed by Western and coordinated with appropriate Federal, State, and local agencies.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800, (406) 657-6532.

SUPPLEMENTARY INFORMATION: The proposed Charlie Creek-Belfield 345-kV Transmission Line would interconnect the existing Antelope Valley Station (AVS)-Charlie Creek 345-kV Transmisison Line in southern McKenzie County, North Dakota, with the Dawson County-Dickinson 230-kV Transmission Line near the town of Belfield in Stark County.

The electrical needs of the Charlie Creek-Williston area are presently served by a single 345-kV transmission line from the Antelope Valley Station and several 115-kV transmission lines from Garrison, Tioga, Wolf Point, and Richland. Distribution to consumers is provided by McKenzie Electric Cooperative and West Plains Electric Cooperative.

The need for additional transmission capacity into the area has been demonstrated by operational experience and power system simulation studies. Any outage of the AVS-Charlie Creek 345-kV Transmission Line causes severe low voltages, facility overloads, and possible loss of electric service to customers in the Charlie Creek-Williston area. In the future, system voltages and facility loadings will be unacceptable during both outage and system intact conditions.

The proposed action will: (1) Provide improve service to area loads, (2) improve system reliability, (3) contribute to energy conservation, and (4) provide flexibility for future system expansion should it become necessary.

Planning for the proposed project began in late summer 1986. In January 1987, Western conducted scoping

meetings involving Federal, State, and local agencies, and the general public. The public scoping meetings were held in Belfield and Grassy Butte, North Dakota. Potential visual impact to viewsheds visible from the Theodore Roosevelt National Park (TRNP), and possible resultant negative impacts to Park visitation and the State's tourism economy, were the major concerns of the agencies, State Congressmen, interested groups, and individuals. Area landowners became concerned about rights-of-way (ROW) acquisition procedures and compensation later in the process, when it became more clear who might be affected, but the visual issue was still of major concern with this group as well.

Following the scoping meetings, Western evaluated the resources within the study area. The factors considered in the siting study included visual resources, land use patterns (especially agricultural and residence locations), vegetation and habitat, wildlife, floodplains and wetlands, geology and soils, hydrology, socioeconomics, archaeological and historical sites, areas significant to Native Americans, and paleontological resources. Areas of opportunity for locating a transmission line, and those of avoidance or exclusion, were identified resulting in the development of several alternative routing corridors. Western then conducted public planning workshops to present the alternative corridors and solicit input from agencies, landowners, and other interested groups and individuals. These workshops were held in Belfield and Grassy Butte in May 1987. The laternative corridors were further refined in response to public comments, and environmentally preferred and agency preferred corridors were identified through an impact assessment process.

The eastern most corridor was identified as being the environmentally preferred by a very narrow margin, based on the lower total level of visual impact. The western corridor had somewhat higher potential visual impacts, but these were partially offset by lesser impacts to land use. Overall, the two corridors were nearly identical in terms of potential environmental impact. Because of the similarity, engineering factors and construction costs were assessed. The western corridor was perceived to have better access for construction and maintenance, found to be less expensive to build, and thus became Western's agency preferred route.

The draft EIS (DEIS) was issued in June 1988. Public hearings on the DEIS were held in Belfield and Grassy Butte in July 1988. The central issue was the possible visual impact on the TRNP. In general, the agencies, groups, and elected officials were opposed to siting in the western corridor closest to the TRNP, while the public felt that the Park should share some of the visual impact with the local residents.

Western decided to develop and assess two routing options at the southern end of the western corridor in an attempt to lessen the potential for visual impact to the TRNP. Further input for the decision making process was solicited through continuing dialogue with the National Park Service and the State, and in public meetings held in Belfield and Grassy Butte in August 1988. After careful consideration of all of the additional data and input, Western announced that it had changed the agency preferred route from the western to the eastern corridor at public meetings in Belfield and Grassy Butte in November, 1988. The final EIS (FEIS) was issued in October, 1989.

Description of Alternatives and Basis of Decision

1. No Action—Western would construct no new transmission facilities in the area. Selection of the no-action alternative would mean that the Charlie Creek-Williston area would be subject to low voltage and possible loss of service during an outage of the AVS–Charlie Creek 345–kV Transmission Line. In addition, the existing transmission system would not be able to support future area electrical loads under system-intact conditions. Overloaded facilities, low voltage conditions, and service interruptions would increase in frequency and severity as time passes.

2. Energy Conservation—Western continually encourages its customers to exercise energy conservation through its marketing contracts and conservation and renewable energy programs. Many possible energy saving steps have already been taken. There are no conservation measures that could be implemented that would reduce present loads or future growth to the point the proposed project would not be needed.

3. Other Existing or Planned Transmission Systems—There are no other existing or planned transmission systems that Western could use to meet the stated need for the proposed transmission facilities.

4. Other Technologies—Western considered the possibility of using a direct current (DC) system instead of an alternating current (AC) system. While advantageous for long distance (300 miles or more) bulk transfer of power, a DC system is more expensive than an AC system for relatively short distances, due mainly to the AC/DC conversion facilities needed to integrate with the existing AC system. A DC system was therefore not considered to be a viable alternative to an AC-line.

Underground construction was also considered for the proposed transmission line. The primary application for underground construction is for short sections in congested urban areas where above ground construction is limited or prohibited by existing development or lack of sufficient right-of-way. Construction costs are 8 to 10 times that of conventional overhead transmission lines, and construction requires that a continuous trench be excavated and backfilled for the length of the line. Overhead construction results in less disturbance, and allows the spanning of sensitive areas such as streams and wetlands; an underground system would, however, reduce visual impacts. After consideration of all the pros and cons, Western determined that an overhead system was the most reasonable and practical for this specific application.

5. Design Alternatives—As detailed in the DEIS, a number of system planning studies have been conducted in the project region since about 1980. The project proposed by Western is consistent with the findings and recommendations of those studies. Western considered various voltage levels (230-kV and 345-kV) and structure types (wood H-frame, steel H-frame, and steel lattice) for the Charlie Creek-Belfield project. The 345-kV option was found to provide the best system performance and greatest flexibility for future system additions should they be needed. It also would result in more line loss savings than the 230-kV option. Steel structures have a greater initial cost than wood pole structures, but have a much longer lifespan, and require less maintenance. Analysis of the economics of steel versus wood over the life of the project shows steel construction to be the most cost-effective. There is little difference between lattice steel and steel H-frame construction in terms of cost, span lengths, etc. The lattice steel-type was selected, primarily because it is a standard structure design for 345-kV at Western, and will match closely other transmission lines in the area.

6. Routing Alternatives—28 initial routes were developed during the environmental analysis. This number was refined down to three main corridors (western, central, and eastern) and four substation locations having the

least overall environmental impact. In response to public comment, two additional routing options at the south end of the western corridor were developed and analyzed. The corridors were compared and ranked by an interdisciplinary study team, resulting in the identification of an environmentally preferred corridor. The environmentally preferred corridor is Western's ultimate choice as the location within which to construct the proposed transmission line.

Mitigation

All practicable means to avoid or minimize potential environmental impact associated with the proposed action were identified in the DEIS and FEIS. Western will incorporate these measures in constructing, operating, and maintaining the proposed project. Special environmental requirements for sensitive or fragile areas will be included in the construction specifications for the construction contract, making them binding and enforceable on the contractor. Western project inspectors will be fully familiarized with the committed mitigation measures, and will ensure their implementation during construction. Where crossings of Federal or State lands are involved, Western will ensure that appropriate agency representatives are notified to perform any necessary monitoring functions. Western will consider any additional reasonable site-specific mitigation measures identified during construction or further consultation with other Federal and State agencies.

Integration with other Requirements

Intergovernmental Cooperation—Under requirements of the Intergovernmental Coordination Act, Western coordinated project planning with other Federal and State agencies. The TRNP and U.S. Forest Service were closely involved, attending public and agency meetings, and reviewing and commenting on the EIS. Western further coordinated with the State Historic Preservation Officer, the U.S. Fish and Wildlife Service, State elected officials, and local planning boards and commissions. It also incorporated any reasonable suggestions and concerns of affected landowners into project planning wherever feasible. A list of agencies involved is provided in the DEIS in part VI., Agencies, Organizations, and Persons Receiving a Copy of the Draft EIS.

Endangered Species—The U.S. Fish and Wildlife Service, under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*, as amended), concurred with the "no effect" determination for threatened and endangered species and critical habitat.

Floodplains/Wetlands—In response to Executive Order 11988, Floodplain Management (May 24, 1977), and DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR part 1022), Western evaluated the potential effects of the project on floodplains and wetlands. The transmission line will span or avoid wetland areas, and will span all floodplain areas. A total of 0.7 miles of riparian vegetation will be crossed by the proposed transmission line. No permanent access roads will be located in floodplains or wetlands. Western will implement erosion control measures including reseeding and the use of selective biodegradable soil stabilizing agents as needed to minimize potential soil erosion impacts. No practicable alternatives exist that would completely avoid floodplains, as the proposed action is a linear facility nearly 41-miles long. However, careful planning has reduced any potential impact to the minimum possible, and no significant impacts are expected.

Copies of this record of decision will be sent to the Federal, State, and local agencies, organizations, and individuals listed in part VI of the DEIS, as well as any parties who have expressed an interest in the project since the DEIS was issued.

Issued at Golden, Colorado, February 9, 1990.

William H. Clagett,

Administrator.

[FR Doc. 90-5060 Filed 3-5-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3730-1]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Upjohn Company, Kalamazoo, MI

AGENCY: Environmental Protection Agency.

ACTIO: Notice of final decision on petition.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (USEPA) that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) has been granted to the Upjohn Company, for its' two Class I injection wells located at Kalamazoo, Michigan. As required by 40 CFR part 148, the company has adequately demonstrated, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by the Upjohn Company for the specific restricted hazardous wastes, identified as F001, F002, F003, F005, D001, and D007 (see 40 CFR part 261), exclusively into the Class I hazardous waste injection wells at the Kalamazoo facility specifically identified as Wells Number 3 and 4. This decision constitutes final USEPA action and there is no Administrative appeal process available for this final petition.

Background

The Upjohn Company submitted a petition for an exemption from the land disposal restrictions on hazardous waste injection on February 22, 1988. USEPA personnel reviewed all data pertaining to the site including, but not limited to, well construction, regional and local geologic conditions, other penetrations of the confining zone, seismic activity, and the computer model. The USEPA has determined that the geological setting at the site as well as the construction and operation of the well are adequate to prevent fluid migration out of the injection zone in the 10,000 year period, as required under 40 CFR part 148. The injection zone for this site is the Munising Formation, and the immediate confining zone is the Trempealeau Dolomite, at a depth of 4250 feet below the surface. The confining zone is separated from the lowermost underground source of drinking water (at a depth of 370 feet below the surface) by a sequence of permeable and less permeable sedimentary rocks, which provide additional protection from fluid migration into a drinking water source. A fact sheet containing a more complete summary of the proposed decision was published in the **Federal Register** on October 16, 1989 (54 FR 42448).

A public notice was issued on October 6, 1989, pursuant to 40 CFR 124.10. A public hearing was held on November 16, 1989, and upon request, the public comment period was extended to December 11, 1989. Several commentors questioned whether the exemption violated the intent of the HSWA amendments; however, the exemptions are authorized under RCRA (section 3004(d)(1), (e)(1), (f)(2), and (g)(5)). Several commentors asked about

the risk of seismic activity, and teh effect that this may have on the demonstration. Further review shows that seismic activity is minimal near the Upjohn site, and will pose no danger. Several commentors questioned whether the injection and confining zones were adequate to contain the acidic waste. Review of the expected chemical interactions rock and the injected waste shows that the dissolution of rock will be minor compared to the thickness and amount of rock present. All comments have been considered in making the final decision. A responsiveness summary has been mailed to all commentors and included as part of the Administrative Record relating to this decision.

Conditions

Conditions relating to the exemption may be found in 40 CFR 148.23 and 148.24. In addition, the following conditions must be met:

(1) The combined annual injection volume for Well Numbers 3 and 4 must not exceed 20 million gallons;

(2) The injection zone shall be limited to the Munsing Formation; and

(3) Injection shall only occur into the Mt. Simon Member and into that portion fo the Eau Claire Member which is below 4750 feet.

The permits governing the use of these wells have been modified to impose these conditions on Upjohn.

DATE: This Action is effective as of February 27, 1990.

FOR FURTHER INFORAMTION CONTACT: David Werbach, Lead Petition Reviewer, USEPA—Region 5, telephone (312) 886-4242. Copies of the petition and all pertinent information relating thereto are on file and are part of the administrative record. It is recommended that you contact the lead petition reviewer prior to reviewing the administrative record.

Kenneth A. Fenner,

Acting Director, Water Division.

[FR Doc. 90-5048 Filed 3-5-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140129; FRL-3709-3]

Access to Confidential Business Information by the Cadmus Group, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the Cadmus Group, Inc. (CAD), of Waltham, Massachusetts, and its subcontractor Booz-Allen & Hamilton, Inc. (BAH), of Bethesda, Maryland, for access to information which has been submitted to EPA under section 4 of the Toxic Substances Control Act (TSCA). Some of the information involved may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 16, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D8-0111, contractor CAD, of 135 Beaver Street, Waltham, MA, and its subcontractor BAH, of 4300 East West Highway, Bethesda, MD, will provide support for the Office of Toxic Substances (OTS) in identification of regulatory and non-regulatory alternatives, regulatory support, and negotiation support. The support may be in the form of conducting meetings, conferences, workgroups, TSCA implementation activities, and identification of emerging issues that could affect OTS programs. Also, CAD and its subcontractor may provide system development support and assist in the review, development of policies, strategies, and plans for EPA toxic substance responsibilities. In addition, CAD and its subcontractor will conduct a census of the toxicological testing in order to access the capacity for EPA under section 4 of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68-D8-0111, CAD and its subcontractor will require access to CBI submitted to EPA under section 4 of TSCA to perform successfully the duties specified under the contract. Some of the information involved may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under section 4 of TSCA that EPA may provide CAD and its subcontractor access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters and BAH's facility located at 4330 East West Highway, Bethesda, MD. CAD and its subcontractor BAH have been authorized access to TSCA CBI at BAH's facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved BAH's security plan and has found the facility to be in compliance with the manual.

Clearance for access to TSCA CBI under this contract is scheduled to expire on May 31, 1990.

CAD and subcontractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: February 26, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-5046; Filed 3-5-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-30000/53D; FRL 3712-8]

Ethylene Bisdithiocarbamates; Amendments and Cancellations of Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amended notice and notice of receipt.

SUMMARY: In the Federal Register of December 4, 1989 (54 FR 50020), EPA issued a notice under section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., which announced EPA's receipt of requests from registrants of certain technical and end-use ethylene bisdithiocarbamate (EBDC) pesticide products to amend their registrations to delete certain uses on food crops or to voluntarily cancel certain product registrations.

This notice amends the December 4 notice to include several additional crops in the list of those deleted from Pennwalt Corporation's affected maneb registrations and labels, to amend the list of affected product registrations by correcting a Pennwalt maneb registration number, to include affected Pennwalt mancozeb registration numbers which were omitted in the earlier notice, to delete an E.I. duPont de Nemours & Co. mancozeb product which was included by error, and to delete a Morgro zineb product from the list of cancelled registrations and to add it to the list of registrations with deleted uses. All other portions of the December 4 notice pertaining to these products and uses as well as all other products and uses affected by that notice remain the same. The December 4 notice is not amended or otherwise changed in any way for those products not affected by these changes.

In addition, this notice announces EPA's receipt of some additional

requests from registrants of end-use EBDC pesticide products to amend their registrations to delete uses and/or active ingredients or to voluntarily cancel their registrations. The affected registrations include the following: requests for deleted food crop uses for a Griffin Corp. maneb product and for a Ciba-Geigy mancozeb product, requests for voluntary cancellation of six Rohm and Haas Co. maneb products and one Agsco zineb product, and requests to delete the EBDC active ingredient and corresponding fungicidal uses for a Riverdale Chemical Co. maneb product and to delete the EBDC active ingredient from a Chas. H. Lilly zineb product.

The several EBDC products affected by the requests referenced in this notice contain the following active ingredients: maneb, mancozeb, and zineb. Pennwalt's requests include requests for provisions for the disposition of existing stocks of Pennwalt's affected maneb and mancozeb product registrations. Such provisions are described in this notice. This notice announces that EPA intends to approve and give effect to these requests by, as to the particular affected product, cancelling the affected registrations or amending those affected maneb, mancozeb, and zineb product registrations to delete the specified food crop uses or associated uses claims.

With the exception of the registrations of Riverdale Chemical Co. and Chas. H. Lilly Co., EPA expects to approve these requests effective March 16, 1990. As of that date, all future distribution, sale, or use of affected EBDC products shall be in accordance with the terms and conditions described herein. With respect to the Riverdale and Chas. H. Lilly registrations, EPA expects to approve these requests thereafter following completion of review of the companies' submissions.

DATES: The cancellations or modifications of registrations shall be effective March 16, 1990. In the case of the Riverdale and Chas. H. Lilly requests, EPA expects to approve these requests thereafter following completion of review of the companies' submissions.

FOR FURTHER INFORMATION CONTACT: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-557-1900.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 6 and 8, 1989, the four major registrants of maneb, mancozeb, and metiram technical and end-use pesticide products submitted requests to EPA asking that 42 food crop uses of maneb, mancozeb, and metiram be deleted from their product registrations. The registrants involved in these actions are Pennwalt Corp. (maneb), BASF Corp. (metiram), and Rohm and Haas Co., Pennwalt Corp. and E.I. duPont de Nemours & Co. (mancozeb).

In total, these registrants requested that their affected products be registered for no more than a total of 13 food uses.

Along with their requests, the registrants submitted labeling amendments reflecting the deleted uses. The registrants also submitted requests for labeling changes for technical products restricting the use of the technical or manufacturing use products to formulation of end-use products for use only on one or more of the 13 remaining crops for which the particular parent EBDC continued to be registered.

In March 1989, Rohm and Haas Co., the sole registrant holding registrations for nabam agricultural uses, requested that all of its nabam food uses be voluntarily cancelled.

In July 1989, Microflo Co., the sole registrant of zineb technical product and the sole registrant supporting any uses of zineb, submitted a request to EPA that each of Microflo's zineb product registrations be voluntarily cancelled. As of December 4, 1989, 15 other zineb registrants had requested voluntary cancellation of an additional 51 zineb products. The change in these numbers from the December 4 notice (which listed the numbers as 16 and 52, respectively) is due to the correction of Morgro's zineb product registration status from a cancelled registration to a product with deleted uses.

These requests were described in the **Federal Register** notice of December 4, 1989 (54 FR 50020). Copies of each of the letters have been included in the public docket (OPP-30000/53) which is maintained for the EBDC Special Review.

Several errors were made in the December 4 notice, and those errors are described and corrected below. Since the December 4 notice was published, some additional requests have been processed which are appropriate to be announced pursuant to section 6(f)(1) of FIFRA. This notice includes those requests as well. In all other respects, the December 4 notice remains in effect for the products not affected by this amended notice. Furthermore, the terms and conditions of the December 4 notice are incorporated herein by reference.

II. Summary of Corrections and Additional Requests

A. Maneb

On September 8, 1989, Pennwalt Corp. submitted requests to EPA that the following crops be deleted from its maneb product registrations and labels: Peppers, tomatoes, onions, beans, broccoli, cabbage, cantaloupes, watermelon, other melons, cucumbers, squash, apples, spinach, stone fruits, carrots, celery, turnips, cauliflower, Brussels sprouts, collards, mustard greens, kale, rhubarb, lettuce, Chinese cabbage, eggplant, endive, grapes, and pumpkins. The latter four crops were inadvertently omitted from the list of deleted crops in the earlier notice. The notice correctly stated that, as a result of Pennwalt's requests, the following food uses would remain on its maneb labels: almonds, bananas, potatoes, sugar beets, and sweet corn. Pennwalt's affected maneb products are EPA Reg. Nos. 4581-255, 4581-355, and 4581-359.

The December 4 notice erroneously listed Pennwalt's EPA Reg. No. 4581-225 as one of the affected maneb products. EPA Reg. No. 4581-225 was cancelled, effective July 1, 1987. The correct product number for the product involved in Pennwalt's request is EPA Reg. No. 4581-255.

On January 8, 1990, Rohm and Haas submitted a request to voluntarily cancel its maneb products. Affected by that request are the following six maneb products: EPA Reg. Nos. 707-48, 707-83, 707-101, 707-103, 707-124, and 707-170. This notice includes these maneb products in the list of cancelled registrations.

On January 8, 1990, Riverdale Chemical Co. submitted a request to amend its product registration, EPA Reg. No. 228-188, by deleting maneb as an active ingredient and by removing claims for the product's use as a fungicide. That product has been registered for use as a miticide, insecticide, and fungicide. EPA construes Riverdale Chemical Co.'s request to remove maneb from its formulation and any associated claims as an amendment to delete the product's fungicidal uses and fungicidal claims while maintaining its registration as a miticide/insecticide. This notice announces EPA's receipt of Riverdale Chemical Co.'s request to amend its product registration and includes that end-use product in its list of affected product registrations. Approval of Riverdale Chemical Co.'s request to

amend its product registration is expected to occur following completion of EPA's review of its submission.

On January 24, 1990, Griffin Corp. (an end-use maneb product formulator) acknowledged that its maneb product, EPA Reg. No. 1812-251, would be affected by the deletion of food uses requested by the maneb technical registrants. Griffin Corp. requested an amendment to its registration deleting the following food uses: apples, grapes, beans, broccoli, cabbage, cantaloupes, watermelon, other melons, cucumbers, eggplant, endive, lettuce, peppers, pumpkins, spinach, squash, and tomatoes. As a result, the above-referenced Griffin Corp. product will remain registered for the following food uses: Almonds, potatoes, sugar beets, and sweet corn. This notice includes this Griffin Corp. maneb end-use product in its list of affected product registrations with deleted uses.

B. Mancozeb

The earlier notice indicated that on September 8, 1989, Pennwalt submitted a letter to EPA requesting that certain uses be deleted from its mancozeb product registrations and labels. Pennwalt requested that the following food crops be deleted: cucumbers, melons, summer squash, field corn, celery, carrots, apples, pears, crabapple, and quince. As a result of that request, Pennwalt's mancozeb products remain registered for the following uses: sugar beets, peanuts, wheat, potatoes, tomatoes, corn (sweet and popcorn), onions, asparagus, cranberries, and grapes. The earlier notice omitted the affected Pennwalt products from the list of affected registrations with deleted uses appearing at the end of the notice. Products included in this amended Notice which should have appeared in the December 4 notice are EPA Reg. Nos. 4581-358 and 4581-370.

The December 4 notice included E.I. duPont de Nemours & Co.'s EPA Reg. No. 352-343 among the list of affected mancozeb products. EPA Reg. No. 352-343 is currently registered for turf use only and was therefore erroneously included among affected products with food uses. That product remains unaffected by any of the requests announced in either this notice or the notice published on December 4, 1989.

On November 28, 1989, Ciba-Geigy (an end-use mancozeb product formulator) acknowledged that its mancozeb product, EPA Reg. No. 100-629, would be affected by the deletion of food uses requested by the mancozeb technical registrants. Ciba-Geigy requested an amendment to its registration deleting the following food uses: cucumbers, melons, and squash. As a result, the above referenced mancozeb Ciba-Geigy product will remain registered for the following food uses: potatoes, tomatoes, and onions. This notice includes this Ciba-Geigy mancozeb end-use product in its list of affected product registrations with deleted uses.

C. Zineb

On October 12, 1989, Agsco submitted a request to voluntarily cancel a zineb end-use product, EPA Reg. No. 554-72. This notice includes this additional zineb product in the list of cancelled registrations.

On August 9, 1989, Morgro submitted a request to amend its product registration, EPA Reg. No. 42057-73, by deleting zineb as an active ingredient and by removing claims for the product's use as a fungicide. That product has been registered for use as a miticide, insecticide, and fungicide. The earlier notice erroneously included Morgro's zineb product registration in its list of cancelled registrations. EPA construes Morgro's request to remove zineb from its formulation and any associated claims as an amendment to delete the product's fungicidal uses and fungicidal claims while maintaining its registration as a miticide/insecticide. This amended notice removes Morgro's zineb product from the list of cancelled registrations and includes it on the list of products with deleted uses.

On May 17, 1989, the Chas. H. Lilly Co. submitted a request to amend its product registration, EPA Reg. No. 802-474, by deleting zineb as an active ingredient. The product was a multiple-active-ingredient product and, therfore, the registration did not require deletion of its food crop uses and remains registered for the following food uses: carrots, corn, cucumbers, melons, summer squash, potatoes, and tomatoes. Although section 6(f) does not require EPA to publish notice of this request because it is neither a request to cancel nor a request to amend to remove uses, EPA has elected to include an announcement of this particular request in this notice. Therefore, this notice includes this Chas. H. Lilly end-use product in its list of affected product registrations. Approval of Chas. H. Lilly's request to amend its product registration is expected to occur following completion of EPA's review of its submission.

III. Existing Stocks Determination

For the purposes of this notice, existing stocks are defined as those stocks which are currently in the United States and which already had been packaged, labeled, and released for shipment, or were in the growers' possession before January 1, 1990. Of the above registrants, only Pennwalt Corp. requested an existing stocks provision for its maneb and mancozeb product registrations. Therefore, EPA was not requested to grant, nor is it granting, any existing stocks provisions for the continued sale and distribution of the other registrants' products. However, product already in the growers' possession may be used until those stocks are exhausted.

As described in the December 4 notice, EPA reviewed the existing stocks and relabeling elements of Pennwalt's request and concluded that Pennwalt could proceed according to the plan it described in its request for use deletions for its maneb and mancozeb products. EPA considered the amounts of stock represented to be in existence in the United States and under the control of this registrant and determined, as described in the December 4 notice, that distribution and sale of those stocks until January 1, 1990, and the use of those stocks in the growers' hands until the stocks were exhausted would not be inconsistent with FIFRA. Pennwalt previously has agreed to relabel, after that date, all product remaining which is not in growers' hands to reflect the use deletions. Therefore, EPA has not granted any additional existing stock provisions for the sale and distribution of Pennwalt EBDC pesticides which do not bear labeling reflecting the use deletions.

IV. Conclusion

Except as explained below, EPA has received and expects to approve each of the requests referenced above effective March 16, 1990, incorporating the requested actions and the decisions governing existing stocks provisions as described above. With respect to Riverdale Chemical Co.'s end-use maneb product registration and Chas. H. Lilly Co.'s end-use zineb product registration, EPA expects to approve the companies' requests to amend their registrations thereafter following completion of EPA's review of their submissions.

V. Amended List of Affected Registrations

Active Ingredient	Registrant	Product Number
Deleted Uses:		
Maneb	Pennwalt	4581 - 255
Maneb	do	4581 - 355
Maneb	do	4581 - 359
Maneb	Griffin	1812 - 251
Mancozeb	Pennwalt	4581 - 358
Mancozeb	do	4581 - 370
Mancozeb	Ciba-Geigy	100 - 629
Deleted Active Ingredients/Changed Uses:		
Maneb	Riverdale Chemical	228 - 188
Zineb	Morgro	42057 - 73
Deleted Active Ingredient/Same Uses:		
Zineb	Chas. H. Lilly	802 - 474
Cancelled Registrations:		
Maneb	Rohm & Haas	707 - 48
Maneb	do	707 - 83
Maneb	do	707 - 101
Maneb	do	707 - 103
Maneb	do	707 - 124
Maneb	do	707 - 170
Zineb	Agsco	554 - 72
Registered Product/Status Unaffected		
Mancozeb	duPont	352 - 343

Dated: February 26, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-5044 Filed 3-5-90; 8:45 am]

BILLING CODE 6560-50-D

[FRL-3729-9]

Further Extention of Time to Either Withdraw the Proposed Determination or Prepare a Recommended Determination for Two Forks Dam and Reservoir.

AGENCY: Environmental Protection Agency.

ACTION: Notice of a further extension of time.

SUMMARY: As announced in the February 6, 1990 **Federal Register** (55 FR 4009), the EPA extended the 404(c) process to either withdraw the Proposed Determination or prepare a Recommended Determination for the Two Forks Dam and Reservoir until February 28, 1990. Additional time is needed to catalog and review public comments and other documents relevant to the decision. Therefore, EPA has decided under its authority contained at 40 CFR 231.8 to further extend the 404(c) process to either withdraw the Proposed Determination or prepare a Recommended Determination until March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Gene Reetz, Two Forks Team Leader or Mary Alice Reedy, Records Clerk, State Programs Management Branch, Water Management Division, EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405 (303) 293-1570, FTS 330-1570.

Lee A. DeHihns,

Regional Decision Officer EPA Region VIII.

[FR Doc. 90-5047 Filed 3-5-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Title: Port of San Francisco/Evergreen. Marine Corporation Terminal Agreement.

Parties:
Port of San Francisco (Port).
Evergreen Marine Corporation (Taiwan), Ltd. (EMC).

Synopsis: The Agreement provides for EMC to make San Francisco its published regularly-scheduled Northern California port of call. EMC guarantees the Port an annual minimum of 49 vessel calls and an annual minimum thruput of 23,000 20-foot equivalent units, excluding empty containers loaded/discharged from the vessels. In consideration thereof, EMC will pay to the Port discounted dockage and wharfage rates on a sliding scale based on the Port's Tariff No. 3-C.

Title: Virginia Port Authority/Sea-Land Service, Inc. Terminal Agreement.

Parties:
Virginia Port Authority
Sea-Land Service, Inc.

Synopsis: The Agreement revises Paragraph 4A of the basic agreement to indicate that if an option to renew the agreement is exercised, the option will be filed with the Commission as an amendment before it becomes effective.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 28, 1990.

[FR Doc. 90-4957 Filed 3-5-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Robert Angus Connell, el al; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Robert Angus Connell*, Jackson, Louisiana; to acquire an additional 2.45 percent of the voting shares of BOJ Bancshares, Inc., Jackson, Louisiana, for a total of 13.29 percent and thereby indirectly acquire Bank of Jackson, Jackson, Louisiana.

B. **Federal Reserve Bank of Chicago** (David S. Esptein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bank of Monticello, Inc. Employee Stock Ownership Plan and Trust*, Monticello, Illinois; to acquire an additional 21.3 percent of the voting shares of First State Bancorp of Monticello, Inc., Monticello, Illinois, as the result of a stock redemption and thereby indirectly acquire First State Bank of Monticello, Monticello, Illinois; State Bank of Hammond, Hammond, Illinois; and Prairie State Bank of Bloomington, Bloomington, Illinois.

Board of Governors of the Federal Reserve System, February 28, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-5004 Filed 3-5-90; 8:45 am]

BILLING CODE 6210-01-M

Jessup Family Limited Partnership, et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 26, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jessup Family Limited Partnership*, Eastman, Georgia; to become a bank holding company by acquiring 49.4 percent of the voting shares of Bank of Eastman, Eastman, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Esptein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Bancshares of Wisconsin, Inc.*, Grafton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Grafton, Grafton, Wisconsin, a *de novo* bank.

2. *Sandwich Banco, Inc.*, DeKalb, Illinois; to acquire 100 percent of the voting shares of First Harvard Corporation, Harvard, Illinois, and thereby indirectly acquire First State Bank of Harvard, Harvard, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Arkansas Bankers' Bancorporation, Inc.*, Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Arkansas Bankers' Bank, Little Rock, Arkansas, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 28, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-5005 Filed 3-5-90; 8:45 am]

BILLING CODE 6210-01-M

Wellington Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.25)(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1943(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanined by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Wellington Bancorp, Inc.* Springfield, Illinois; to engage *de novo* through its subsidiary, Community Bank, Hoopeston, Illinois, as broker in the sale of credit life, accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Northern Vermillion and Southern Iroquois counties of Illinois.

Board of Governors of the Federal Reserve System, February 28, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-5006 Filed 3-5-90; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

February 28, 1990.

BACKGROUND

On June 15, 1984, the Office of Management and Budget (OMB)

delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be received on or before March 2, 1990.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Federick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

1. *Report title:* Senior Financial Officer Survey.

Agency form number: FR 2023.

OMB Docket number: 7100-0223.

Frequency: Up to four times per year.

Reporters: Commercial banks, other depository institutions, corporations or large money-stock holders.

Annual reporting hours: 240.

Estimated average hours per response: 1.0.

Number of respondents: 60.

Small businesses are not affected.

General description of report:

This information collection is voluntary (12 U.S.C. 225, 248(a) and 263) and the confidential will be determined on a case-by-case basis.

The survey collects qualitative and limited quantitative information about deposit relationships and other aspects of bank funding practices from a selection of commercial banks, or if appropriate, other depository institutions, corporations or large money-stock holders. The survey assists the Federal Reserve in its assessment of the monetary aggregate and financial market conditions.

Board of Governors of the Federal Reserve System, February 28, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-5003 Filed 3-5-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. C-3269]

Heilig-Meyers Co. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Richmond, Va. corporation to calculate and disclose accurately the annual percentage rates (APRs) that it discloses in connection with future extensions of consumer credit subject to the Truth in Lending Act. The order also requires respondents to make adjustments to the accounts of customers to whom it disclosed APRs that were understated by more than ¼ of one percentage point, except for accounts where the amount of the adjustment is less than one dollar.

DATES: Complaint and Order issued November 20, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Chris Couillou, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St. NW., Rm. 1000, Atlanta, Ga. 30367. (404) 347-4836.

SUPPLEMENTARY INFORMATION: On Tuesday, July 25, 1989, there was published in the **Federal Register**, 54 FR 30942, a proposed consent agreement with analysis In the Matter of Heilig-Meyers Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 12 CFR 226; Pub. L. 90-321; 15 U.S.C. 45, 1601, *et seq.*

Donald S. Clark,

Secretary.

[FR Doc. 90-5023 Filed 3-5-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3268]

Structural Engineers Association of Northern California, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an association of approximately 1,000 engineers from restricting truthful advertising, price competition, and the offering of services to clients of other engineers.

DATES: Complaint and Order issued November 2, 1989.[1]

[1] Copies of the Complaint, the Decision and Order, and Statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ralph E. Stone, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA. 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: On Wednesday, August 16, 1989, there was published in the **Federal Register**, 54 FR 33779, a proposed consent agreement with analysis In the Matter of Structural Engineers of Northern California, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 90-5024 Filed 3-5-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Nursing Research; Meeting of the Nursing Science Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, March 14-16, 1990, Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on March 14 from 9 a.m. to 10 a.m. Agenda items to be discussed will include the NCNR Director's Report and the Chairman's Report.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d)) of Pub. L. 92-463, the meeting will be closed to the public on March 14 from 10 a.m. to adjournment on March 16 for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Janet Heinrich, Director, Division of Extramural Programs, National Center for Nursing Research, National Institutes of Health, Building 31, Room 5B03, Bethesda, Maryland 20892, (301) 496-0523, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: February 22, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-5027 Filed 3-5-90; 8:45 am]

BILLING CODE 4140-01-M

Meeting of the National Commission on Sleep Disorders Research

Notice is hereby given of the meeting of the National Commission on Sleep Disorders. This meeting will be held on March 28, 1990, from 3 to 5 p.m., and March 29, 1990, from 9 a.m. to 5 p.m., in Conference Room 9, Building 31C, 6th floor, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Information on this program may be obtained from: G. Bohler, NIA/NNA, 9000 Rockville Pike, Building 31C, Room 5C35, Bethesda, Maryland 20892, (301) 496-9350.

Dated: February 22, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90-5028 Filed 3-5-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of the Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on March 22-23, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on March 22 from 9 a.m. to approximately 2 p.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 22, from 2 p.m. to adjournment on March 23, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Carol Shreffler or Donald McRee, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institute of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919-541-7826), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: February 22, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-5029 Filed 3-5-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-90-3033]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act.

ADDRESS: Interested persons may submit comments regarding the paperwork request. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a

toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It also is requested that OMB complete its review within five days. This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new, an extention, or reinstatement; and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1990.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

Proposal: Collecting Information from section 202 Sponsors for Proposals Involving Relocation and Disclosure of Other Related Governmental Assistance

Office: Housing

Description of the Need for the Information and its Proposed Use: This information will enable HUD to determine whether sponsors comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and the Department of Housing and Urban Development Reform Act of 1989. The information will assist the Department in its responsibility to assure adherence to statutory and regulatory requirements

Form Number: None

Respondents: Nonprofit sponsors applying for Fund Reservations under the Notices of Fund Availability for Section 202 Housing for the Elderly and section 202 Housing for Nonelderly Handicapped Families and Individuals

Frequency of Submission: One time

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Relocation assistance	20		1		1–4		20–80
Other governmental assistance	370		1		.5		185
Total burden	390		1		1.5–4.5		205–265

Status: New

Contact: Sharon Mizell, HUD, (202) 755–5866; John Allison, OMB, (202) 395–6988.

Dated: February 27, 1990.

FR–2764—Loans for Housing for the Elderly

FR–2768—Loans for Housing for Nonelderly Handicapped Families and Individuals

Supporting Statement

A. Justification

1. Need for Information

HUD is the lender for the section 202 direct loan program. As such, it is responsible for assuring that all statutory and regulatory requirements are met and that sufficient funds are available either from loan funds or from other sources to build the project and assure it continued successful operation over the life of the 40-year loan. There also must be assurance that funds are not duplicated, i.e., HUD is not providing more funds than necessary for a project.

Statutory requirements related to the Department of Housing and Urban Development Reform Act of 1989 (Reform Act—see Attachment A) are being implemented for the elderly and handicapped portions of the program. As the paperwork requirements approved in connection with the implementing rule for the handicapped program in 1989 included requirements for data collection on relocation, approval for these requirements to implement the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended by title IV—Uniform Relocation Act Amendments of 1987 (URA—see Attachment B) is requested only for the elderly portion of the program.

Information collection already has been approved (0991–0002) for requirements being implemented in connection with the Drug-Free Workplace Act of 1988. All sponsors will be required to certify as to compliance comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Information collection already has been approved (0348–0046) for requirements being implemented in connection with the Department of Interior Appropriations Act (Restrictions on Lobbying Activities). All sponsors will be required to submit the certification at the Fund Reservation Stage. Only those sponsors selected for funding will be required to submit the disclosure form.

The section 202 program was not covered by statutory relocation requirements until the Department of Transportation implemented the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA). Also, until recently relocation costs could not be paid for out of the loan. Based upon the requirements of the statute and implementing regulations (49 CFR part 24, Attachment C) issued by the Department of Transportation, a Model Uniform Act Report form was approved by OMB under number 2105–0508. However, that level of detail is not considered to be necessary at the Fund Reservation Stage since many applicants will not be funded. However, the information for which we are requesting approval is considered minimal for complying with statutory responsibilities and determining the financial impact of any proposed relocation at that stage of processing. This includes the number of families, individuals and business concerns to be displaced, identified by race and ethnicity, and whether they are owners or renters; a description of the relocation plan and how relocation payments will be funded (up to $500 per household or business, etc., can be included in the loan); demonstration that advisory services will be provided to displacees regarding available housing and that housing opportunities for low income and minority persons will be provided outside areas of low income and minority concentration (see Attachment D). In addition, sponsors which are awarded fund reservations will be required to sign a certification

identifying only the project, the Borrower, the official's title, signature and date. This certification is considered exempt from imposing a paperwork information burden since 5 CFR part 1320, Controlling Paperwork Burdens on the Public, states that certifications and acknowledgments that entail no burden other than to identify the respondent, the date, and such additional basic items as address and nature of the instrument are not generally considered "information". A sample certification form is attached. (See Attachment E.)

The more detailed Model Uniform Act Report information will be required of those sponsors which are funded if relocation is involved. However, the Department proposes to submit a separate request for paperwork after the end of the funding cycle when better information is available on the number of proposals involving relocation.

In connection with the implementation of the Reform Act, sponsors would be required to list any anticipated related direct or indirect assistance with respect to the proposed project from Federal, state or local governmental sources. This information is necessary to assure that funds from HUD are not duplicating those received from other governmental sources.

In connection with implementation of the legislative provisions related to restrictions on lobbying, the Department proposes to use only the approved certification form at the time of the Fund Reservation Application. The disclosure forms (Disclosure of Lobbying Activities—OMB approval number 0348–0046) would be provided to those sponsors which are approved with the Notification of Approval Letter, requiring that the completed disclosure form be submitted with the Conditional Commitment Application.

3. The information requested represents the minimum information needed by HUD to comply with statutory requirements.

4. No duplication exists, as there is no other process used for the purpose specified under Item 2 above.

5. The information contained in each submission relates to the sponsor's particular proposal concerning a specific project, site, etc.; therefore, the information collected will be significantly different for each submission.

6. Sponsors are encouraged to utilize cleared sites which are already buildable or have vacant structures which are not subject to payment of relocation benefits. It is expected that no more than 5 percent of the proposals will involve any potential relocation benefits. Requests for more detailed information will be made only for sponsors approved at the Fund Reservation Stage. Likewise, sponsors are encouraged to comply with all cost containment requirements in order to be able to develop projects within the cost and rent limitations. If not, such costs must be paid for from other sources. If a fully cost-contained project is developed, there would be relatively few instances where secondary financing would be required. However, the Reform Act requires the Department to determine that funding is not being duplicated.

7. Without the information HUD could not comply with the statutory requirements (copies attached and highlighted). It could result in persons not receiving relocation benefits to which they are entitled and excessive loans or operating budgets being approved where sponsors have received some portion of the funds from other governmental sources.

8. Request for information is consistent with the 5 CFR 1320.6 guidelines.

9. No formal consultations were made outside the agency.

10. HUD does not assure confidentiality.

11. There are no sensitive questions.

12. *Estimates of annualized cost to the Federal Government and to the respondents.*

(a) *Estimate of cost to Federal Government:* All reviews will be at the HUD field office level. They will involve a determination that all persons or businesses occupying a property have been identified, whether stated relocation costs appear adequate, and generally whether the sponsor will comply with the statutory requirements. The relocation data primarily will be reviewed by Community Planning and Development staff (HUD's liaison with the Department of Transportation) in the Field Office.

The information collected on relocation costs and other direct or indirect funding from governmental agencies will be reviewed by the Mortgage Credit staff. Since they already review financial statements, very little additional time will be involved to determine whether sufficient funds will be available to cover relocation costs and to determine whether there is likely to be any duplication of governmental funding.

If the sponsor either has potential relocation or proposes use of other governmental assistance, the cost to the Federal Government is estimated as follows:

Operational Costs

DIRECT PERSONNEL

	Total time per submission (hours)	Hourly rate	Total
Relocation	1	$18	$18.00
Other governmental assistance	¼	$14	3.50
Overhead			
Relocation	1	$5	5.00
Total operational costs—1 submission			23.00
Total estimated number of responses			x 20
Total annual cost to Federal Government—relocation submissions			$460
Other governmental assistance	1	$5	5.00
Total operational costs—1 submission			8.50
Total estimated number of responses			x 370
Total annual cost to Federal Government—other governmental assistance submissions			$3,145

(b) *Estimate of Cost to Respondents:* In estimating the cost involved to the Sponsor, we note that only private, nonprofit entities may participate in the section 202 program. Therefore, the Sponsor does not charge for preparation. However, we estimate the following cost to the Sponsor to develop the submission.

	Total time per submissionm (hours)	Hourly rate	Total
Sponsor: Time/Overhead (Relocation)	[1] 1–4	$20	$20–$80
Total annual number of responses			x20
Total annual cost to sponsors—relocation submissions			$400–$1,600
Sponsor: Time/Overhead (Governmental assistance)	½	$20	$10.00
Total annual number of responses			x 370
Total annual cost to sponsors—other governmental assistance submissions			$3,700

[1] Depends on the number of families and/or businesses to be relocated.

13. The burden estimates for the requirements related to relocation are estimated as follows:

20 respondents/20 annual responses/20–80 hours of annual burden.

Based upon experience in the program, relatively few housing for the elderly proposals utilize sites that involve potential relocation. Given that experience, we believe that no more than five percent of the new proposals will involve relocation.

The burden was included in the Department's Information Collection Budget. However, based upon further review, we believe the burden was overstated. See more detailed explanation under 14. below.

The burden estimates for the requirements related to other governmental assistance are estimated as follows:

370 respondents/370 annual responses/185 hours of annual burden.

The capping of the section 8 rents has increased the need for funds beyond the section 202 loan to finance the project and achieve financial feasibility even for a cost-contained project. Current experience indicates that about half of the applicants will obtain some other governmental assistance, and that based on submissions for the elderly and handicapped programs in FY 1989, about 370 sponsors will propose some form of other governmental assistance.

The burden related to information collection for other governmental assistance was not included in HUD's Information Collection Budget as the Reform Act was passed after the ICB submission was made.

14. HUD believes the burden is necessary in order to comply with the legislative requirements of the URA and the Reform Act.

The burden was included in HUD's Information Collection Budget but is revised based upon better information. The Department will seek approval of the use of the Model Uniform Act Report at the Conditional Commitment Stage in a separate submission.

15. Not applicable.

B. Not applicable.

Note: This document is being published for information only and not for effect.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OFFICE OF ASSISTANT SECRETARY FOR HOUSING, FEDERAL HOUSING COMMISSIONER

[DOCKET NO. _____; FR 2764]

Section 202 Loans for Housing the Elderly; Announcement of Fund Availability, Fiscal Year 1990

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Fund Availability.

SUMMARY: HUD is announcing the availability of Fiscal Year 1990 loan authority under the section 202 Housing for the Elderly Direct Loan Program. The loan authority will be used to provide direct Federal loans for a maximum term of 40 years under section 202 of the Housing Act of 1959 to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing and related facilities to serve the elderly. The Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1990 (Pub. L. 101–144, approved November 9, 1989) (Fiscal Year 1990 Appropriations Act) requires that 25 percent of the direct loan authority appropriated for Fiscal Year 1990 shall be used only to provide housing for nonelderly handicapped families and individuals. A separate Notice of Fund Availability will be published in the **Federal Register** for that portion of the funds.

DATES: The deadline date for submission of applications in response to this Notice of Fund Availability will be announced in a separate Notice published in the **Federal Register** after the Office of Management and Budget has approved the information collection requirements. (See Findings section below.)

INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION: Notice is hereby given under title 24 Code of Federal Regulations part 885, that the Department of Housing and Urban Development will be accepting Applications for Fund Reservations from eligible Sponsors for direct loans for the construction or substantial rehabilitation of housing and related facilities for dwelling use by the elderly under the provisions of section 202 of the Housing Act of 1959. (See 24 CFR 885.5 for the definition of "Sponsor" and other terms.)

The Assistant Secretary for Housing is assigning Fiscal Year 1990 section 202 loan fund authority to the HUD Regional Offices identified below in conformance with the provisions of section 213(d) of the Housing and Community Development Act of 1974. Given the level of Fiscal Year 1990 funding for housing for the elderly, and in keeping with the provisions of the Department of Housing and Urban Development Reform Act, the funds are being allocated primarily on a Regional Office basis since allocations to the Field Office level would result in such small dollar amounts in many Field Offices that feasible projects could not be developed. However, metropolitan funds will be allocated directly to Chicago, New York, Jacksonville and Los Angeles since these offices have allocations of 225 or more units. No funds are being retained in Headquarters, except for amendments.

While the precise number of units to be funded depends upon the number of approvable applications received, the following distribution plan shows the estimated numbers of units and Fiscal Year 1990 loan authority under which applications may be funded in each Regional Office jurisdiction identified below.

FISCAL YEAR 1990 SECTION 202, DISTRIBUTION PLAN BY HUD FIELD OFFICE, JURISDICTION

	Estimated number of units	Estimated loan authority
Boston Regional Office	(Will be supplied before publication for effect)	
New York Regional Office, New York		

FISCAL YEAR 1990 SECTION 202, DISTRIBUTION PLAN BY HUD FIELD OFFICE, JURISDICTION—Continued

	Estimated number of units	Estimated loan authority
Philadelphia Regional Office		
Atlanta Regional Office, Jacksonville		
Chicago Regional Office, Chicago		
Fort Worth Regional Office		
Kansas City Regional Office		
Denver Regional Office		
San Francisco Regional Office, Los Angeles		
Seattle Regional Office:		
National total		

The foregoing distribution plan is a guide for prospective Sponsors. It estimates the loan authority that is expected to be available for projects for the elderly in each HUD Regional Office jurisdiction. Each HUD Field Office will publish an Invitation for Applications for section 202 Fund Reservation (Invitation) indicating the amount of loan authority and the maximum number of units this amount is expected to assist on a regional basis, as well as the total number of units available for metropolitan and nonmetropolitan areas. Whether an area is "metropolitan" or "nonmetropolitan" will be determined in accordance with the redefinitions of metropolitan statistical areas established by the Office of Management and Budget and in effect as of July 1989.

Priority Categories for Selection: The purpose of the priority system for the Section 202 program is to assure that applications from localities that have been relatively underfunded over the years receive priority consideration and are treated in an equitable manner.

In view of the limited Fiscal Year 1990 funds, and in order to assure open competition, Regional Offices will not suballocate funds within their jurisdiction, except as previously indicated. Nationally, 20–25 percent of the funds available for new units for the elderly will be allocated to nonmetropolitan areas to meet rural housing needs. Field Office Invitations will identify the total number of units available for metropolitan and for nonmetropolitan areas under the Regional Office's jurisdiction. Except as noted, applications received for projects in metropolitan areas will compete against each other on a regional basis; applications received for projects in nonmetropolitan areas similarly will compete against each other.

In order to assure that applications are funded in the areas of greatest need, approvable applications will be divided into two categories, each of which shall have two subcategories. The categories and subcategories are as follows:

Category A—Applications for the elderly projects which will be located in localities which have previously been underfunded relative to their needs and the funding needs of other localities.

(1) Such applications for elderly projects which are in localities within jurisdictions having rental vacancy rates of 5 percent or less;

(2) Such applications for elderly projects which are in localities within jurisdictions having rental vacancy rates in excess of 5 percent.

Category B—Applications for elderly projects which will be located in localities which have *not* been underfunded relative to their needs and the funding needs of other localities.

(1) Such applications which are in localities within jurisdictions having rental vacancy rates of 5 percent or less;

(2) Such applications which are in localities within jurisdictions having rental vacancy rates in excess of 5 percent.

Applications shall be selected for funding first from Category A(1), second from Category A(2), third from Category B(1), and finally from Category B(2). An application in a lower subcategory which is judged clearly superior to one in the next higher subcategory, i.e., its score is at least 10 points higher, may be selected for funding. For example, if an application in Category A(1) has a score of 57, and an application in Category A(2) has a score of 67, the higher-scored application may be selected over the lower-scored application. The rule would not apply to projects that are more than one subcategory apart, as for example, a higher-scored project in either B(1) or B(2) could not be selected over a lower-scored project in A(1).

Criteria for selection: In accordance with the requirements of the Department of Housing and Urban Development Reform Act of 1989, following are the selection factors and maximum points on which applications will be rated:

	Points
Sponsor's capacity to carry through to long-term operation a project for housing and related facilities	20
Sponsor's financial capacity	25
Desirability of the proposed location	20
Compliance with modest design and cost containment objectives	25
Total possible score	90

Schedule for Section 202 Invitations, Workshops and Application Deadline: Although the Fiscal Year 1990 funds are allocated on a Regional Office basis, all applications for Section 202 Fund Reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits and additional information as required by 24 CFR 885.210, except as modified by this Notice.

In *date to be inserted* HUD Field Offices will publish a one-time-Invitation in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on *date to be inserted*, unless that time is extended by a Notice published in the **Federal Register**. Applications Received after that Date and Time will not be Accepted, even if Postmarked by the Deadline Date.

Organizations interested in applying for a section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, advise the Field Office whether they wish to attend the workshop described below, and secure the program handbook and Application Package. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in their Invitations, will conduct workshops to explain the section 202 Program and the Seed Money Loan program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 202 eligible Borrowers to cover certain preconstruction expenses. At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost containment requirements and required exhibits) will be discussed, and concerns such as local market conditions, building codes, historic preservation, floodplain management, relocation payments, zoning and housing costs will be addressed. HUD strongly recommends that prospective applicants attend the local Field Office workshop. Interested disabled persons should contact the Field Office to assure that any necessary arrangements can be made for them to be able to attend and participate in the workshop.

Section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) amended section 202 to better serve the special housing and related needs of nonelderly handicapped families and individuals. Section 162 authorized a new type of project assistance payment to replace assistance made under section 8. On June 20, 1989 (54 FR 25960) HUD published a final rule implementing the program. A separate Notice of Fund Availability for the Fiscal Year 1990 nonelderly handicapped program will announce the deadline for filing applications as well as the workshops to be conducted for the nonelderly handicapped program.

Additional Information: (1) Part 885 currently requires the Borrower to be in existence when the application for the section 202 fund reservation is submitted, and requires the application to include specific information concerning the Borrower. In Fiscal Years 1986, 1988 and 1989, the section 202 NOFA permitted the Sponsor to delay the formation and submission of information on the Borrower until after the issuance of the fund reservation. Based on this experience, HUD has determined that the deferral of the formation of the Borrower results in more and better applications, reduces the costs to Sponsors that are not funded, and reduces HUD processing time and effort thus helping to meet the tight deadline for application processing. Accordingly, the formation of the Borrower corporation will not be a prerequisite to submission of an Application

for Fund Reservation this fiscal year. The submission requirements for Borrowers described in § 885.210(b) must be satisfied by the Sponsor with the exception of paragraph (b)(9).

Because the formation of the Borrower corporation is not required at the Application stage, the applicants will be the Sponsors and the applications will be reviewed and rated based solely on the qualifications of the Sponsor, as well as other program requirements, as modified by this NOFA. If a Sponsor submits information on the Borrower, the information will not be reviewed, and approval of the application will NOT constitute approval of the Borrower.

The requirements under § 885.225 for issuance of the fund reservation to the Borrower are modified to provide that the fund reservation shall be issued to the Sponsor and transferred to a separate single-purpose Borrower corporation upon satisfactory compliance by the Borrower with all submission requirements and approval of its Conditional Commitment Application. When the Conditional Commitment Application is submitted, the newly-formed Borrower must include submissions to satisfy § 885.210(b) (8), (9), and (13) and, if different from previous submission, (12) and (14).

The request for direct loan financing and Conditional Commitment Application under § 885.400 shall be submitted by an eligible single-purpose Borrower corporation created by the Sponsor receiving a fund reservation which shall submit with such Application evidence of compliance with the requirements waived at the fund reservation application submission stage. Any information below that makes reference to an eligible Borrower corporation is provided as guidance for use at the Conditional Processing stage.

(2) In evaluating applications for section 202 Fund Reservations, the Department's equal opportunity, environmental and cost containment requirements are significant factors in the ranking process. Further, in order to eliminate minimally qualified applications, only those proposals that meet certain threshold scores on the standard ranking format will be considered for funding. These requirements will be included in the section 202 Application Package available at the local HUD Field Office. The section 202 workshops will include discussions of these and other application requirements.

(3) Religious bodies may serve as project Sponsors, but must establish a Borrower corporation as a separate legal entity to be the owner, prior to the submission of a Conditional Commitment Application. When the Borrower corporation is created, no reference to religion or religious purposes may be included in the Articles of Incorporation or By-Laws of that corporation. The mere recital in a Borrower's Articles of Incorporation that it is organized exclusively for religious, charitable, scientific, literary or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code will not by itself make a Borrower ineligible. However, the dissolution clause must provide that, upon dissolution or winding up of the corporation, its assets remaining after payment of all debts and liabilities, shall be distributed to a nonprofit fund, foundation or corporation other than one created for a religious purpose, which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code.

(4) Borrower corporations will not be permitted to engage in any other business or activity, including the operation of any other rental project, or to incur any liability or obligation not in connection with the proposed project. The intent of this requirement is to give HUD sole claim to the assets of the Borrower corporation in case of default under the Regulatory Agreement.

(5) Sponsors, including churches, must have a current nonprofit tax exemption ruling under the IRS Code.

(6) Applications will be accepted only from eligible Sponsors which must be eligible entities as defined in 24 CFR 885.5.

(7) Because of the nonprofit nature of the section 202 program, no officer or director of the Sponsor or Borrower, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the provision of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever, except that this prohibition does not apply to any management contracts (or management fees associated therewith) entered into by the Borrower with the Sponsor or its nonprofit affiliate.

(8) Where the proposed project site is being optioned or acquired from a general contractor or its affiliate, the section 202 Borrower will be prohibited from selecting that contractor to construct the project for which an Application for funding is being made. Further, the proposed contractor may not be the attorney, architect, housing consultant or management agent for the project. This prohibition extends to any firm or subsidiary having an identity of interest with the contractor.

(9) The Sponsor must have control of the project site at the time of submission of its loan application. The contract of sale, option agreement, or other binding agreement must have been executed prior to the application deadline date.

In cases involving sites to be acquired from a local public body, satisfactory evidence of site control consists of evidence that the public body (a) possesses clear title to the land and (b) has entered into a legally binding commitment to the Sponsor to convey the property to a Borrower corporation created by the Sponsor upon its receiving section 202 funding. A mere recitation of intent to convey the land to a Borrower to be created by the Sponsor made by an official of the public body to the Sponsor or preliminary actions on the part of the public body are not adequate evidence of site control.

(10) Under 24 CFR 885.215, no single Sponsor may submit an Application or Applications in any HUD Region for more than 300 units.

(11) Reservations for projects intended for the elderly in metropolitan areas will not be approved for more than 125 units or less than 75 units (unless the Regional Office allocation is less).

(12) To be responsive to the Invitation, Sponsors must not request in a single application more units than advertised for the respective metropolitan or nonmetropolitan areas designated in the Invitation or 125 units, whichever is lesser. Applications not complying with the limits set forth in (10), (11) and (12) herein will be rejected.

(13) If the Sponsor elects to use a housing consultant, it should be careful to select a consultant who is knowledgeable about the section 202 housing program. Failure to meet program requirements will be a cause for rejection of the application, whether or not a housing consultant is used by the Sponsor. Sponsors are encouraged to contact groups which have used the consultant under consideration in order to make a determination as to the consultant's qualifications.

(14) Deficiency letters will be issued by the Field Offices and the Sponsors have 14 calendar days from the date of the letter to deliver the identified missing information or to explain inconsistencies in the application submission. Responses must be in the Field Office within 14 days and postmarks will not be considered. No amendments or corrections to applications will be permitted after the *date to be inserted* application filing deadline. Further, all necessary actions (e.g., adoption of corporate resolutions) must have been taken on or before the deadline date for filing applications.

(15) HUD will make contract authority and budget authority under section 8 of the United States Housing Act of 1937 available for successful Sponsors.

(16) A notice of approval will be sent to the Sponsors selected in accordance with the requirements of 24 CFR 885.220 [Review of Application for Fund Reservation] and on the basis of information furnished by the Sponsors as set forth in the Field Office Application Package.

(17) To be considered for Fiscal Year 1990 funding, new applications must be submitted under this Notice of Fund Availability.

(18) 24 CFR 885.410(j) contains a minimum capital investment requirement. This requirement applies to all section 202 projects receiving fund reservations in Fiscal Year 1990. The minimum capital investment is currently established at one-half of 1 percent (0.5%) of the total HUD-approved mortgage amount, not to exceed $10,000. Section 106(b) Seed Money Loan Funds, under 24 CFR part 271, may not be used to satisfy the minimum capital investment requirement.

(19) HUD's regulations at 24 CFR part 885 do not reflect several recent changes made to the section 202 program that may be relevant to Sponsors making applications under this NOFA. These changes were contained in the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) (1987 Act); and the Housing and Urban Rural Recovery Act of 1983 (Pub. L. 98–181, approved November 30, 1983) (HURRA). Three statutory changes made in section 223(e) of HURRA have not, as yet, been

covered by HUD's regulations. The statutory changes include:

—HURRA added a provision specifying that, unless otherwise requested by the Sponsor, a maximum of 25 percent of the units in a project may be efficiency units, subject to a HUD determination that such units are appropriate for the elderly or handicapped population residing in the vicinity of the project or to be served by the project. The Department no longer requires that projects for the elderly include 25 percent efficiency units. At its discretion, a Sponsor may elect to include efficiency units in any number it chooses provided those units are marketable. (In a final rule revising part 885 published August 5, 1987 (52 FR 29010), HUD indicated that this change would be incorporated into a pending proposed rule. HUD now intends to include this HURRA requirement in a proposed rule that addresses certain 1987 Act changes.)

—HURRA also added a provision prohibiting the Secretary from denying any Sponsor the opportunity voluntarily to pay for amenities or design features not included in the loan. A Sponsor may elect to pay for excess amenities that would not be permitted under the Department's cost containment guidelines, provided that the residential characteristic of the proposal is not altered. (This provision also will be incorporated in a proposed rule implementing the 1987 Act changes.)

—Finally, HURRA added a provision requiring the Secretary to take into account special design features necessary for housing for the elderly and handicapped and to adjust cost limits at least once annually to reflect changes in construction costs. The Department modifies the base cost limits published in 24 CFR 885.410, as necessary, by adjusting upward or downward the high cost percentages for each base locality. HUD annually reviews the high costs percentages to assure that adjustments are made to reflect changes in construction costs. In addition, special design features provided by section 202, such as multi-purpose space, central dining rooms, etc., are not included in the calculations for the section 202 per unit cost limits. In a final rule published on March 18, 1988 (53 FR 8874), HUD revised the base unit costs for various programs, including the base unit costs for the section 202 program.

(20) In an elderly housing project, 10 percent of the units as well as all community facilities and common areas must be designed to be accessible to and usable by wheelchair users or other persons with mobility impairments. The 10 percent accessible unit requirement may be reduced where justified by local needs assessment, but such reduction shall not exceed 5 percent. The accessible units will be available for occupancy by both elderly and nonelderly handicapped individuals.

In addition, covered multifamily dwellings for first occupancy after March 13, 1991 must be designed and constructed to meet the accessibility and adaptability requirements contained in the final rule published January 23, 1989 (54 FR 3232) implementing the Fair Housing Amendments of 1988 (Pub. L. 100-430, approved September 13, 1988).

(21) On March 2, 1989, the Department of Transportation (DOT) published in the **Federal Register** (54 FR 8912) a final governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), codified at 49 CFR part 24. That rule supersedes 24 CFR part 42 and applies to all HUD-assisted programs, including section 202 projects.

Under the new URA statutory changes and the new rule at 49 CFR part 24 all persons (families, individuals, businesses, nonprofit organizations and farms displaced (forced to move permanently) on or after April 2, 1989 as a direct result of privately undertaken rehabilitation, demolition or acquisition for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.

The application of the URA rule to a displacement does not depend on the date when the HUD assistance was approved. The new rule is triggered if the person moves on or after April 2, 1989 and the move is determined to be "for the HUD-assisted project." even a person forced to move before HUD approval of a project may be determined to have been displaced "for the HUD-assisted project."

(22) In accordance with the Department of Housing and Urban Development Reform Act of 1989, sponsors must provide information regarding any related assistance expected to be made available with respect to the proposed project, including but not limited to Federal, State or local government loans, grants, guarantees, subsidies, rebates, tax benefits or any other forms of direct or indirect assistance.

(23) On December 20, 1989, the Department published a notice at 54 FR 52070 advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriation Act, Public Law 101-121, approved October 23, 1989, generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan, applicants must provide information in accordance with OMB's guidance at 54 FR 52321 (December 20, 1989). A form containing language for the certification and disclosure is provided there. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(24) The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential grantee must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

(25) Sponsors are invited to submit applications for section 202 Fund Reservation in accordance with this Notice and 24 CFR part 885.

Findings and Certifications: A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this Notice does not have potential for significant impact on the family as an institution. It does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this Notice does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The Notice merely notifies the public of the availability of direct Federal government loans to private entities seeking to build housing for the elderly.

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959 (12 U.S.C. 1701q), section 7(d); Department of Housing and Urban Development Act (42 U.S.C. 3535(d)

Dated: _____

C Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

Note: This document is being published for information only and not for effect.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OFFICE OF ASSISTANT SECRETARY FOR HOUSING

FEDERAL HOUSING COMMISSIONER

[Docket No. N-; FR-2768]

Section 202 Loans for Housing for Nonelderly Handicapped Families and Individuals; Announcement of Fund Availability Fiscal Year 1990

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of Fiscal Year 1990 loan authority under the section 202 Direct Loan Program for Housing for Nonelderly Handicapped Families and Individuals. This notice announces loan authority to be used to provide direct Federal loans for a maximum term of 40 years under section 202 of the Housing Act of 1959 to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing and related facilities to serve nonelderly handicapped residents. The

Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1990 (Pub. L. 101-144, approved November 9, 1989) (Fiscal Year 1990 Appropriations Act) requires that 25 percent of the direct loan authority appropriated for Fiscal Year 1990 shall be used only to provide housing for handicapped people, with priority for housing homeless chronically mentally ill people. Submission and review requirements are discussed below. Loan authority to support development of housing and related facilities to serve the elderly was announced in the **Federal Register** on _____ at FR _____.

DATES: The deadline date for submission of applications in response to this Notice of Fund Availability is (date to be inserted), 1990.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION: Notice is hereby given under title 24 Code of Federal Regulations part 885, that the Department of Housing and Urban Development will be accepting Applications for Fund Reservations from eligible Sponsors (see 24 CFR 885.5 for the definition of "Sponsor" and other terms) for direct loans for the construction or substantial rehabilitation of housing and related facilities for section 202 housing for nonelderly handicapped families and individuals. Applications will also be accepted for loans for acquisition, with or without moderate rehabilitation, of housing and related facilities for use as group homes.

The Assistant Secretary for Housing is assigning a portion of Fiscal Year 1990 section 202 loan authority designated for projects for nonelderly handicapped people to the HUD Regional Offices identified below. While the precise number of units to be funded depends upon the number of approvable applications received, the following distribution plan shows the estimated numbers of units and Fiscal Year 1990 loan authority under which applications may be funded in each Regional Office jurisdiction.

FISCAL YEAR 1990—SECTION 202 HOUSING FOR HANDICAPPED PEOPLE, DISTRIBUTION PLAN BY HUD REGIONAL OFFICE JURISDICTION

	Estimated No. of units	Estimated loan authority
Boston Regional Office:		
New York Regional Office:		

FISCAL YEAR 1990—SECTION 202 HOUSING FOR HANDICAPPED PEOPLE, DISTRIBUTION PLAN BY HUD REGIONAL OFFICE JURISDICTION—Continued

	Estimated No. of units	Estimated loan authority
Philadelphia Regional Office:		
Atlanta Regional Office:		
Chicago Regional Office:		
Fort Worth Regional Office:		
Kansas City Regional Office:		
Denver Regional Office:		
San Francisco Regional Office:		
Seattle Regional Office:		
National Total:		

The foregoing distribution plan is a guide for prospective Sponsors. It estimates the loan authority that is expected to be available in each HUD Regional Office jurisdiction. Each HUD Field Office will publish an Invitation for Applications for section 202 Fund Reservation (Invitation) for its jurisdiction indicating the amount of loan authority available in the Region for housing for handicapped people and the maximum number of units this amount is expected to assist. (A separate Invitation will announce the amount available for housing the elderly.)

The loan authority available in each Region will not have a specific percentage designated for use in metropolitan or nonmetropolitan areas. The emphasis of this program is primarily on the range of services provided to the handicapped residents in the projects, the opportunities for independent living and participation in normal activities, and access by the handicapped residents to the community at large and to employment opportunities. HUD believes that it is in the best interest of the program to fund the highest ranked applications designed to meet these objectives, regardless of whether the location of the project is in a nonmetropolitan or metropolitan area. Accordingly, the program regulations do not include a nonmetropolitan allocation requirement.

In accordance with the Appropriations Act reference to providing priority for homeless, chronically mentally ill people, Regional Offices will give priority in funding projects to serve this category according to instructions which will be provided by Headquarters. For this purpose, the term "homeless chronically mentally ill people" includes deinstitutionalized persons and those who are at risk of becoming homeless.

Schedule for Section 202 Invitations, Workshops and Application Deadline

To be considered for FY 1990 funding, applications for projects for nonelderly physically handicapped, developmentally disabled or chronically mentally ill people must be submitted under this Notice of Fund Availability. Sponsors must identify proposed project occupancy requirements that limit occupancy to one or more of the eligible groups. Proposals to serve more than one occupancy group in a single project require Headquarters review for approval.

Persons disabled as a result of infection with the human immunodeficiency virus (HIV), like persons with physical handicaps from any cause, are eligible occupants for projects to physically handicapped people when they meet the statutory definition of handicap provided in section 202 (d)(4). While projects for physically handicapped people cannot be limited to occupancy by persons with a particular handicap, the service plan described in paragraph (7) below may provide for special services targeted to a particular need. Persons with AIDS or HIV infection may also qualify for occupancy in a section 202 project if they have chronic mental illness, a developmental disability or a physical handicap unrelated to AIDS or HIV infection.

All applications for section 202 Fund Reservations must be filed with the appropriate HUD Field Office by eligible sponsors as defined in 24 CFR 885.5 and must contain all exhibits and additional information as required by the regulation at § 885.710.

In [date to be inserted] 1990, HUD Field Offices will publish a one-time Invitation in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. Applications must be received at the appropriate Field Office by its regular closing time on [date to be inserted], 1990 unless that time is extended by Notice published in the **Federal Register.** Applications received after that date and time will not be accepted, even if postmarked by the deadline date.

Organizations interested in applying for a section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, advise the Field Office whether they wish to attend the workshop described in the following paragraph, and secure the Housing Notice and Application Package. HUD encourages minority organizations to participant in this program as Sponsors.

Field Offices will conduct workshops during [date to be inserted] 1990 to explain the section 202 program and the Seed Money Loan program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approve nonprofit section 202 eligible Borrowers to cover certain pre-construction expenses. At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, design and cost containment guidance and required exhibits) will be discussed, and concerns such as local market conditions, building codes, environmental requirements, zoning and housing costs will be addressed. HUD strongly recommends that prospective Sponsors attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office invitation. Interested persons with

disabilities should contact the Field Office to assure that any necessary accommodations are made for them to be able to attend and participate in the workshop, i.e., accessible meeting spaces, sign language interpreters, assistive listening systems, taped or brailled materials.

Additional Information

(1) On June 20, 1989, HUD published a final rule at 54 FR 25960 implementing section 162 of the Housing and Community Development Act of 1987. This section amended section 202 of the Housing Act of 1959 as it applies to development of housing for nonelderly handicapped people. The Fiscal Year 1990 funding selections will be governed by the new regulations, codified at 24 CFR part 885, subpart C.

(2) Because of the concern expressed by Congress for homeless chronically mentally ill people, Sponsors serving primarily this population are encouraged to submit applications under the NOFA.

(3) Applications for section 202 Fund Reservations for housing for handicapped residents are evaluated on the following standard rating criteria: Sponsor's capacity and commitment to carry through to long-term operation a project for housing and related facilities, and extent of support from local community (25 points); proposed service plan (20 points); Sponsor's financial capacity and commitment (25 points); and extent of effective demand (5 points). The section 202 workshops will include discussions of this and other application requirements.

(4) Applications that meet the following optional criteria will be eligible for additional points on the standard rating format:

(a) Applications that include evidence of control of an approvable site under 885.780 will be awarded up to 10 points.

(b) Group Home applications receiving points for site control and which propose to use acquisition with or without moderate rehabilitation will receive up to five additional points.

(c) Approvable applications from Sponsors certifying participation in a research proposal to the National Institutes of Mental Health (NIMH) for funds under the Mental Health Services Demonstration Project for Homeless Mentally Ill, authorized by section 612 of Public Law 100–77, the Stewart B. McKinney Homeless Assistance Act, will receive ten additional points. (This factor replaces the Special Needs factor under which Regional Administrators awarded up to 10 points for special needs previously identified in section 213(d)(4) as criteria for award of funds from the Headquarters Reserve. There is no Headquarters Reserve for the Section 202 program this fiscal year.)

(5) HUD unit limits for housing for nonelderly handicapped people permit group homes to serve up to 15 disabled persons on one site. Independent living complexes for persons with developmental disabilities or physical disabilities may include up to 24 units serving no more than 24 households on one site. Independent living complexes for persons with chronic mental illness may be proposed for no more than 20 disabled persons per site. For purposes of this requirement, a household is a family or any individual. Two unrelated individuals sharing a two bedroom unit will be counted as two households in calculating the 24 household limit. Independent living complexes comprised of three or more bedroom units may be developed only to serve one or two parents or guardians with children; these complexes may not be developed to serve large numbers of single unrelated persons. Larger projects may be approved if criteria specified in § 885.720(b) are met.

(6) To be responsive to the Invitation, an application must not request more units in a given Region than advertised for that Region in the Invitation. Applications exceeding these limits will be rejected.

(7) Sponsors will be required to complete a Service Plan Description, describing how their proposed projects will be linked to supportive services needed to maintain their handicapped residents in the community. Since funds for such services cannot be provided from the rental assistance subsidy, evidence of other funding sources must be provided, with assurances that the funds will be secured by the time the project is ready for occupancy and will continue to be available for a reasonable time thereafter. Sponsors are advised that if at any time these supporting funds are not available, the project will have to be converted to occupancy by handicapped persons or families capable of living independently without the supportive services being provided by the Sponsor. To assist HUD in evaluating the Sponsor's capabilities with regard to supportive services for the residents of group homes or independent living complexes, HUD will invite a representative from the State Mental Health Agency (SMHA), the State Rehabilitation Agency, or the State Administrative Agency for Development Disabilities, as appropriate, to evaluate and make recommendations about the Service Plan Description.

To this end, prospective Sponsors may be required to submit a copy of the Application to the appropriate State Agency. The HUD Field Office will advise prospective Sponsors of further details in this regard. Since the review and evaluation is at the option of the State Agency, HUD will conduct its own independent review for those States that do not wish to participate.

(8) Section 202 loans may be used for the acquisition of existing housing and related facilities, with or without moderate rehabilitation ("acquisition") for group homes for the nonelderly handicapped. Proposals involving housing units already owned and operated by the Sponsor as group homes for handicapped residents at the time Applications are submitted (often referred to as "refinancing") are not eligible for acquisition or rehabilitation under the section 202 program.

(9) Where the proposed project site is being optioned or acquired from a general contractor or its affiliate, the section 202 Borrower will be prohibited from selecting that contractor to construct the project for which an Application for funding is being made. Further, the proposed contractor may not be the attorney, architect, housing consultant or management agent for the project. This prohibition extends to any firm or subsidiary having an identity-of-interest with the contractor.

(10) Religious bodies may serve as project Sponsors, but must establish a Borrower corporation as a separate legal entity to be the owner, prior to the submission of a loan Commitment Application. When the Borrower corporation is created, no reference to religion or religious purposes may be included in the Articles of Incorporation or By-Laws of that corporation. The mere recital on a Borrower's Articles of Incorporation that it is organized exclusively for religious, charitable, scientific, literary or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code will not by itself make a Borrower ineligible. However, the dissolution clause must provide that, upon dissolution or winding up of the corporation, its assets remaining after payment of all debts and liabilities shall be distributed to a nonprofit fund, foundation or corporation, other than one created for a religious purpose, which has established its tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

(11) Sponsors, including churches, must have a current IRS nonprofit tax exemption ruling.

(12) 24 CFR 885.810(i) contains a minimum capital investment requirement. This requirement applies to all section 202 projects receiving fund reservations in Fiscal Year 1990. The minimum capital investment is currently established at one-half of 1 percent (0.5%) of the total HUD-approved mortgage amount, not to exceed $10,000. Section 106(b) Seed Money Loan Funds, under 24 CFR part 271, may not be used to satisfy the minimum.

(13) In accordance with the Department of Housing and Urban Development Reform Act of 1989, sponsors must provide information regarding any related assistance expected to be made available with respect to the proposed project, including, but not limited to Federal, State or local government loans, grants, guarantees, subsidies, rebates, tax benefits or any other forms of direct or indirect assistance.

(14) On December 20, 1989, the Department published a notice at 54 FR 52070 advising recipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, generally prohibits recipients of Federal contracts, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants must provide information in accordance with OMB's guidance at 54 FR 52321 (December 20, 1989). A form containing the language for the certification and disclosure is provided there. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(15) The Drug-Free Act of 1989 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential grantee must certify that it will comply with drug-free workplace

requirements in accordance with 24 CFR part 24, subpart F.

(16) Applications missing two or more exhibits will be rejected. If Applications are found to have incomplete exhibits, the Sponsor will be advised in writing of the deficiencies and that missing documents will be accepted on or before a specified date. Further, all necessary actions (*e.g.*, adoption of corporate resolutions) must have been taken on or before the deadline date for filing applications. Sponsors may be contacted if clarification of any part of the application is needed in order to evaluate the application.

(17) HUD will make contract and budget authority under section 202(h)(4) of the Housing Act of 1959 available for successful Sponsors, subject to the availability of funds.

(18) A notice of approval will be sent to the Sponsors selected in accordance with the requirements of 24 CFR 885.750 (Review of Application for Fund Reservation) and on the basis of information furnished by the Sponsors as set forth in the Field Office Application Package.

(19) Sponsors are invited to submit applications for section 202 Fund Reservations for Housing for nonelderly handicapped persons in accordance with this notice and with 24 CFR part 885.

(20) To be considered for Fiscal Year 1990 funding, new applications must be submitted under this Notice of Fund Availability.

Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the notice will not have a significant impact on family formation, maintenance or well being.

The General Counsel, as the Designated Official under section 5(a) of Executive Order No. 12611—Federalism, has determined that the notice does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

The Catalog of Federal Domestic Assistance Program number and title is 14.157, Housing for the Elderly or Handicapped.

(Section 202, Housing Act of 1959 (12 U.S.C. 1701q as amended by section 162, Housing and Community Development Act of 1987 (Pub. L. 100-242, Feb. 5, 1988)), section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: _____.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-4999 Filed 3-5-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Steven R. Fuller, New Fairfield, CT—RT-746511

The applicant requests a permit to purchase two male and three female captive-hatched eastern indigo snakes (*Drymarchon corais couperi*) in interstate commmerce from Mr. John Brunner of Montrose, PA and Mr. Regis Opferman of Pueblo, CO for the purpose of captive propagation.

Applicant: James C. Schroeder, Schofield, WI—PRT-746510

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. David Vandamuella, Port Elizabeth, South Africa, for the purpose of enhancement of survival of the species.

Applicant: Pamela Atwood, Los Gatos, CA—PRT-746705

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd of Mr. H.V.Z. Kock, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Stanford Atwood, Los Gatos, CA—PRT-746706

The Applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd of Mr. H.V.Z. Kock, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Mr. A.L. Cuming, Watkinsville, GA—PRT-746525

The applicant requests a permit to import the following endangered species of pheasants: Two pair of Humes bar-tail (*Syrmaticus humaie*), six males and five females of brown-eared pheasant (*Crossoptilon mantchuricum*), nine males and seven females of white eared pheasant (*Crossoptilon crossoptilon*), one male Edward's pheasant (*Lophura edwardsi*), five pair of Elliot's pheasants (*Syrmaticus milado*), from South View Aviaries, British Columbia, Canada, for the purpose of captive propagation.

Applicant: Edward L. Keller, Romeo, MI—PRT-745293

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. Theo Erasmus, Kroonstad, Orange Free State, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: New York Zoological Society, Bronx, NY—PRT-746717

The applicant requests a permit to import blood samples taken from wild Simien foxes (*Canis simensis*) for the purpose of genetic analysis directed toward conservation and management of the species.

Applicant: Exotic Feline Breeding Compound, Rosamond, CA—PRT-746687

The applicant requests a permit to import one male captive-born Amur leopard (*Panthera pardus orientalis*) from the Helskini Zoo, Helskini, Finland, for propagation and Zoological display.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, VA 22203-3507.

Interested persons may comment on any of these applications on or before April 5, 1990, by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate RRT number when submitting comments.

Dated: February 28, 1990.

Susan Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-4965 Filed 3-5-90; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Paul Jensen Arctic Museum

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Parts 18).

Applicant: Paul Jensen Arctic Museum, Western Oregon State College, Monmouth, Oregon 97361—PRT-721041.

Type of Permit: Public Display.

Name of Animals: One/Walrus (*Odobenus rosmarus*).

Summary of Activity to be Authorized: The applicant proposes to acquire the hide and tusks of one male walrus, taken for subsistence by Eskimos on St. Lawrence Island in the North Bering Sea, for public display at his museum.

Source of Marine Mammals for Display: 0.

North Bering Sea, Alaska

Period of Activity: From April to June 1990 or 1991.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 3507, Arlington, VA 22203–3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 a.m. to 4:15 p.m.) at 1375 K Street, NW., room 400, Washington, DC.

Dated: March 1, 1990.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90–5061 Filed 3–5–90; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NV020-4320-02]

Winnemucca District Grazing Advisory Board; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and section 3, Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on April 17, 1990. The meeting will begin at 10 a.m., in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10 a.m.
2. District Manager's Update.
3. Status of the Fourteen Allotments under IBLA Order.
4. Range Improvement Funds: FY 90 Projects, FY 91 Projects, FY 92 Projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by March 31, 1990. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: February 26, 1990.

Ron Wenker,

District Manager.

[FR Doc. 90–5042 Filed 3–5–90; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Antietam National Battlefield General Management Plan; Intention To Prepare an Environmental Impact Statement

SUMMARY: In accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Environmental Impact Statement (EIS) for the General Management Plan (GMP) for Antietam National Battlefield, Washington County, Maryland. The draft GMP/EIS in addition to providing general management direction for the battlefield's natural and cultural resources will also address maintenance of the historic scene, visitor circulation patterns, and interpretation. Alternative visitor use patterns, and management schemes including a no action alternative will also be discussed.

Initial issues and alternatives to be addressed have been identified through a number of meetings and correspondence with State, Federal and local agencies, private organizations and the general public. Based on these discussions a scoping document has been developed in order to elicit further public comment on issues and alternatives to be addressed. Public workshops to provide additional information and answer any questions about this document were held on March 3, 1990, at Boonsboro High School, Boonsboro, Maryland.

This document can be obtained by writing the Superintendent, Antietam National Battlefield, P.O. Box 158 Sharpsburg, MD 21782. Comments on the scoping document should be addressed to the Superintendent and will be received through April 20, 1990.

The responsible official is Robert Stanton, Regional Director, National Capital Region, National Park Service. The draft GMP/EIS is expected to be released for public review in September 1990, with the final Environmental Impact Statement and Record of Decision expected to be completed by early 1991.

Dated: March 1, 1990.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 90–5067 Filed 3–8–90; 8:454 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 24, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 21, 1990.

Marilyn Nickels,

Acting Chief of Registration, National Register.

ARKANSAS

Baxter County

Cotter Bridge (Historic Bridges of Arkansas MPS), US 62, over the White River, Cotter, 90000518

North Fork Bridge (Historic Bridges of Arkansas MPS), AR 5, over North Fork of the White River, Norfolk, 90000512

Carroll County

Beaver Bridge (Historic Bridges of Arkansas MPS), AR 187, over the White River, Beaver, 90000511

Mulladay Hollow Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 61, over Mulladay Hollow Creek, Eureka Springs vicinity, 90000531

Clark County

Little Missouri River Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 179, over the Little Missouri River, Prescott vicinity 90000536

Conway County

Cedar Creek Bridge (Historic Bridges of Arkansas MPS), off AR 154, over Cedar Creek at Roosevelt Lake, Petit Jean State Park, 90000520

Craighead County

St. Francis River Bridge (Historic Bridges of Arkansas MPS), AR 18, over the St. Francis River, Lake City, 90000515

Crawford County

Lee Creek Bridge (Historic Bridges of Arkansas MPS), AR 220, over Lee Creek, Cove City vicinity, 90000504

Lee Creek Bridge (Historic Bridges of Arkansas MPS), AR 59, over Lee Creek, Natural Dan, 90000508

Garland County

South Fork Bridge (Historic Bridges of Arkansas MPS), off AR 128, over South Fork, Fountain Lake vicinity, 90000521

Greene County

Eight Mile Creek Bridge (Historic Bridges of Arkansas MPS), AR 135, over Eight Mile Creek, Paragould, 90000524

Jackson County

Newport Bridge (Historic Bridges of Arkansas MPS), US 67, over the White River, Newport, 90000503

Johnson County

Big Piney Creek Bridge (Historic Bridges of Arkansas MPS), AR 123, over Big Piney Creek, Hagersville vicinity, 90000506

Lawrence County

Cache River Bridge (Historic Bridges of Arkansas MPS), AR 25, over the Cache River, Walnut Ridge vicinity, 90000523

St. Louis-San Francisco Overpass (Historic Bridges of Arkansas MPS), US 62, over the Spring River, Imboden, 90000513

Miller County

Red River Bridge (Historic Bridges of Arkansas MPS), US 82, over the Red River, Garland City, 90000517

Newton County

Buffalo River Bridge (Historic Bridges of Arkansas MPS), AR 7, over the Buffalo River, Pruitt, 90000509

Harp Creek Bridge (Historic Bridges of Arkansas MPS), AR 7, over Harp Creek, Jasper vicinity, 90000519

Perry County

Cypress Creek Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 64, over Cypress Creek, Perry vicinity, 90000537

Polk County

Mountain Fork Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 38, over Mountain Fork Creek, Mena vicinity, 90000540

Prairie County

White River Bridge at DeValls Bluff (Historic Bridges of Arkansas MPS), US 70, over the White River, DeValls Bluff, 90000514

Pulaski County

Edgemere Street Bridge (Historic Bridges of Arkansas MPS), Edgemere St., at Lake No. 3, North Little Rock, 90000533

Lake No. 1 Bridge (Historic Bridges of Arkansas MPS), Avondale Rd., over Lake No. 1, North Little Rock, 90000534

Lakeshore Drive Bridge (Historic Bridges of Arkansas MPS), Lakeshore Dr. at Lake No. 3, North Little Rock, 90000532

Lincoln Avenue Viaduct (Historic Bridges of Arkansas MPS), AR 10, over Missour-Pacific Railraod, Little Rock, 90000525

Second Street Bridge (Historic Bridges of Arkansas MPS), Second St., over the Missouri-Pacific Railroad, Little Rock, 90000528

Randolph County

Black River Bridge (Historic Bridges of Arkansas MPS), US 67, over the Black River, Pocahontas, 90000522

St. Francis County

St. Francis River Bridge (Historic Bridges of Arkansas MPS), US 70, over the St. Francis River, Madison vicinity, 90000516

Saline County

Saline River Bridge (Historic Bridges of Arkansas MPS), Co. Hwy. 365, over the Saline River, Benton, 90000529

Sebastian County

Jenny Lind Bridge (Historic Bridges of Arkansas MPS), Howard Hill School Rd., Jenny Lind vicinity, 90000530

Milltown Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 77, 1.5 mi. W of Milltown, Milltown vicinity, 90000527

Sevier County

Little Cossatot River Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 139H, over the Little Cossatot River, Lockesburg vicinity, 90000538

Union County

Quachita River Bridge (Historic Bridges of Arkansas MPS), US 167, over the Quachita River, Calion, 90000507

Washington County

Wyman Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 38, over West Fork of the White River, Fayetteville vicinity, 90000526

White County

Judsonia Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 66, over the Little Red River, Judsonia, 90000535

Woodruff County

Augusta Bridge (Historic Bridges of Arkansas MPS), US 64, over the White River, Augusta, 90000505

Yell County

Actmun Creek Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 222, over Achmun Creek, Ola vicinity, 90000539

Spring Lake Bridge (Historic Bridges of Arkansas MPS), AR 307, over Bob Barnes Branch, Belleville vicinity, 90000510

CALIFORNIA

Sacramento County

Walnut Grove Chinese-American Historic District, Bounded by C. Tyler, and Bridge Sts., and River Rd., Walnut Grove, 90000484

Walnut Grove Chinese-American Historic District, Bounded by Winnie St., Tyler St., C St., and River Rd., Walnut Grove, 90000483

CONNECTICUT

Hartford County

South Congregational Church, 90 Main St., New Britain, 89000930

FLORIDA

Highlands County

Avon Park Historic District, Main St. from S. Delaney AVe. to US 27, Avon Park, 90000486

GEORGIA

Bulloch County

Akins, Sol, Farm, Old Register Rd. off US 301 1.2 mi. S of Statesboro, Statesboro vicinity, 90000487

Chatham County

Two Pierpont Circle, 2 Pierpont Cir., Savannah, 90000492

Toombs County

Peterson-Wilbanks House, 404 Jackson St., Vidalia, 90000491

KENTUCKY

Ballard County

Twin Mounds Site (15BA2), Address Restricted, Barlow vicinity, 90000477

Boyd County

First Christian Church of Ashland, 315 17th St., Ashland, 90000475

Caldwell County

Overby, L.B. House, 317 S. Jefferson St., Princeton, 90000476

Henderson County

O'Byrne, John, House, 317 N. Main St., Henderson, 90000485

Hickman County

Burchan Site (15WI15), Address Restricted, Clinton vicinity, 90000479

Kenton County

Kenney's Crossing, 1001 Highway Ave., Covington, 90000481

LOUISIANA

East Baton Rouge Parish

St. Joseph Catherdral, Main and Fourth Sts., Baton Rouge, 90000502

MASSACHUSETTS

Middlesex County

Boyden Hall (Hewton MRA), 2366–2370 Washington St., Newton, 90000541

MINNESOTA

St. Louis County

Aho, Elias and Lisi, Historic Farmstead (Rural Finnish Log Buildings of St. Louis County, Minnesota, 1890–1930s MPS), Off Twnshp. Rd. 358, Tower vicinity, 90000499

Hanka, Gregorius and Mary, Historic Farmstead (Rural Finnish Log Buildings of St. Louis County, Minnesota, 1890–1930s MPS), Off Twnshp. Rd. 6544, Tower vicinity, 90000500

Hill, Matt and Emma, Historic Farmstead (Rural Finnish Log Buildings of St. Louis County, Minnesota, 1890–1930s MPS), Off Twnshp. Rd. 303, Tower vicinity, 90000498

Matson, Mike and Mary, Historic Farmstead (Rural Finnish Log Buildings of St. Louis County, Minnesota, 1890–1930s MPS), Off Co. Hwy. 21, Tower vicinity, 90000497

Milimark, Erick and Kristina, Sauna (Rural Finnish Log Building of St. Louis County, Minnesota, 1890–1930s MPS), Jct. Twnshp. Rds. 615 and 21, Tower vicinity, 90000493

Saari, Andrew and Hedvig, Historic Farmstead (Rural Finnish Log Buildings of St. Louis County, Minnesota, 1890–1930s MPS), Off Twnshp. Rd. 367, Tower vicinity, 90000496

Seitaniemi, Alex, Housebarn (Rural Finnish Log Buildings of St. Louis County, Minnesota, 1890–1930s MPS), Off Twnshp. Rd. 797, Tower vicinity, 90000495

Tanttari, Waino, Field Hay Barn (Rural Finnish Log Buildings of St. Louis County, Minnesota, 1890–1930s), End of Co. Rd. 585, Tower vicinity, 90000494

MISSOURI

Franklin County

Tibbe Historic District, Bounded by Front, Market, Main, Lafayette, Second, Oak, Fifth, Cedar, Main, and Olive, Washington, 90000501

Macón County

Doneghy, John T. and Mary M., House, 301 N. Owensby St., La Plata, 90000488

OHIO

Delaware County

O'Shaughnessy Dam and Bridge, Co. Rd. 126 between OH 257 and 745, Shawnee Hills vicinity, 90000482

Mahoning County

Crandall Park—Fifth Avenue Historic District, Roughly bounded by Tod Ln., Ohio Ave., Redondo Rd., Catallina, and Guadalupe Ave., & Fifth Ave. from Cypsy to Fairgreen, Youngstown, 90000474

Ottawa County

South Bass Island Light (Light Stations of Ohio MPS), Langram Rd., on SW point of South Bass Island, South Bass Island, 90000473

Stark County

St. Peter Church, 720 Cleveland Ave., NW., Canton, 90000472

OREGON

Wasco County

The Dalles Commercial Historic District (Boundary Decrease), NW corner of Second and Union Sts. and between I-84 and the Columbia River, The Dalles, 90000542

TEXAS

Tarrant County

Fairmount—Southside Historic District, Roughly bounded by Magnolia, Hemphill, Eighth, and Jessamine, Fort Worth, 90000490

WISCONSIN

Waukesha County

Madison Street Historic District, Jct. of Madison, Randall, and Third Sts., Waukesha, 90000489

A proposed move is being considered for the following property:

SOUTH CAROLINA, Aiken County, Pickens House, 101 Gregg Ave., Aiken 83002182

MARYLAND, Harford County, Proctor House, 54 E. Gordon St., Bel Air 90000376

[FR Doc. 90-5068 Filed 3-5-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Insignia Prescription for U.S. Park Police

I hereby prescribe the example which is depicted below as the insignia of the United States Park Police, National Capital Region, National Park Service, Department of the Interior.

In making this prescription, I hereby give notice that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving, photograph or print, or any colorable imitation thereof without authorization from the United States Department of the Interior is subject to the penalties prescribed in section 701 of title 18 of the United States Code.

I concur:

Dated: February 28, 1990.

Lynn H. Herring,

Chief, United States Park Police.

James M. Ridenour,

Director, National Park Service.

I concur:

Robert Stanton,

Regional Director, National Capital Region, National Park Service.

[FR Doc. 90-5066 Filed 3-5-90; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninety-Eighth Meeting of the Board for International Food and Agricultural Development (BIFAD) on March 22 and 23, 1990..

The purposes of the Meeting are: (a) To hear reports on Resolution on Formation of University Center in A.I.D., JCARD, BIFAD Training Committee, Food and Agriculture 2000 Task Force, Sustainable Agriculture Select Committee, and CRSP Activities, (b) JMOU Evaluation Report, (c) Title XII Project Report, (d) Study on Internationalization of U.S. Universities, (e) Rural Development Programs, and (f) to hear a report on U.S. A.I.D. Programs.

The March 22–March 23, 1990, Meetings will be held in the Department of State, Room 1105, 2201 C Street, NW., Washington, DC 20523. Any interested person may attend and may present oral

statements in accordance with procedures established by the Board and to the extent the time availalbe for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of Research and University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm 309, SA-18, Washington, DC 20523, or Telephone him on (703) 875-4005.

Dated: February 28, 1990.

Lynn L. Pesson,

Executive Director, BIFAD.

[FR Doc. 90-5026 Filed 3-5-90; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 317X)]

Burlington Northern Railroad Co.; Abandoment Exemption in Buffalo County, WI, and Winona County, MN

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 0.98-mile line of railroad between milepost 0.05, near East Winona, and milepost 1.03, near Winona, in Buffalo County, WI, and Winona County, MN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandoment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 5, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 16, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by March 26, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Sarah J. Whitely, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 9, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684). Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 26, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-4964 Filed 3-5-90; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Service Order No. 1506; ICC Order No. 7]

New York, Susquehanna and Western Railway Corp., Lackawanna Valley Railroad Corp., North Shore Railroad Co. Authorized to Operate Tracks of Delaware and Hudson Railway Co., Debtor (Francis P. Dicello, Trustee); Rerouting of Traffic

On February 25, 1990, Counsel to the Trustee of the Delaware and Hudson Railway Company (DH), notified the Commission by FAX and subsequent hand delivery that the DH Trustee would resume operations of the entire DH railroad system at 11:59 p.m., February 27, 1990, pending Court approval. Counsel confirmed the Court's approval of DH's resumption of service to this office by telephone at 2:30 p.m., February 27, 1990. The Commission has confirmed DH's resumption of service with its operating staff and connecting railroads.

As required by Service Order No. 1506, the Trustee has properly notified the Commission and The New York, Susquehanna and Western Railway Corporation (NYSW) of the intended resumption of service. Additionally, the embargo applicable to the three classes of DH traffic identified in I.C.C. Order No. 7 was lifted by notice to all railroads from the Association of American Railroads. The resumption of service over the entire DH system and the lifting of the embargo removes the need for I.C.C. Order No. 7.

Considering the above, no further need presently exists for either the service order or rerouting authority.

Upon further consideration of Service Order No. 1506, and I.C.C. Order No. 7 and good cause appearing therefor:

It is ordered,

Service Order No. 1506, and I.C.C. Order No. 7 are vacated.

Effective date. This order shall be effective on March 1, 1990.

This action is taken under authority of 49 U.S.C. 11123(a) and 11124.

This order will be served on the Trustee in Bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88-342). This order shall also be served upon the Federal Railroad Administration, the Association of American Railroads, Transportation Division, as agent of the railroads

subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, DC, and by filing a copy with the Director, Office of the Federal Register.

Decided: February 28, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5033 Filed 3-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 328X)]

CSX Transportation, Inc.; Abandonment Exemption in Lincoln and Rockcastle Counties, KY

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 abandonment by CSX Transportation, Inc., of 23.8 miles of rail line between Stanford (milepost 103.5) and Mt. Vernon (milepost 127.3), in Lincoln and Rockcastle Counties, KY, subject to standard labor protective conditions and a historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 5, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 16, 1990, petitions to stay must be filed by March 21, 1990, and petitions for reconsideration must be filed by April 2, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 328X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245; [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721].

Decided: February 28, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5034 Filed 3-5-90; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket No. AB-57; Sub-No. 31X]

Soo Line Railroad Co.; Abandonment Exemption in Morrison County, MN, et 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 abandonment of a 114.01-mile line of railroad between Genola, MN, and Saunders, WI, located in Morrison, Mille Lacs, Aitkin, Pine, and Carlton Counties, MN, and Douglas Country, WI, subject to standard labor protective conditions, a historic preservation condition, and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 5, 1990. Formal expresions of intent to file an offer [1] of financial assitance under 49 CFR 1152.27(c) must be filed by March 16, 1990, petitions to stay must be filed by March 21, 1990, and petitions for reconsideration must be filed by April 2, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-57 (Sub-No. 31X) to:

(1) Office of the Secretary, Case Control Branch, Interestate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Larry D. Starns, 1000 Soo Line Building, 105 S. Fifth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245; [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interestate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Decided: February 27, 1990.

By the Commission, Chairman Philbin, Vice Chairman Philips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5032 Filed 3-5-90; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in United States v. the City of Coshocton, Ohio Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on February 23, 1990 a proposed consent decree in *United States* v. The *City of Coshocton, et al., C2-90-165* was lodged with the United States District Court for the Southern District of Ohio. This action was brought for the cleanup of the Coshocton Superfund site ("Site") located in Coshocton County, Ohio, and for the recovery of costs expended by the United States in connection with the Site.

The consent decree is entered into between plaintiff, the United States, and defendants, the City of Coshocton; General Electric Company; Edmont-Wilson Inc., a/k/a Becton-Dickinson and Company; Excello, Inc.; Steel Ceilings Division of Airtex Corporation; Stone Container Corporation; Buckeye Fabric Fisnishers Liquidating Trust, on behalf of Buckeye Fabric Finishers, Inc.; and Shaw-Barton, Inc., a/k/a Heritage Communications, Inc. (collectively "Settling Defendants"). The Settling Defendants are among the parties potentially responsible for the contamination at the Site. The Decree requires the Settling Defendants to finance, design, and perform a remedial action at the Site, which includes requiring the Settling Defendants to, *inter alia*,: (1) Perform Site grading to promote precipitation runoff and reduce

infiltration; (2) place soil/clay caps over the waste areas; (3) install a system to collect and vent gas released from the Site; (4) monitor the groundwater and surface waters on the Site; and (5) complete Site fencing, posting, and restrictions on future use. The Decree also requires the Settling Defendants to pay two-thirds of all oversight costs incurred by EPA in the future.

In addition, the Decree provides that if the monitoring wells identify further groundwater contamination, then the United States Environmental Protection Agency may require the Settling Defendants to perform further study of the groundwater at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *The City of Coshocton, et al.*, DJ Ref. # 90-11-2-214.

The proposed consent decree may be examined at the office of the United States Attorney, 85 Marconi Boulevard, room 200, Columbus, Ohio, 43215, and at the Region V Office of the Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW Washington, DC 20530. A copy of the proposed decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the decree should be accompanied by a check in the amount of $7.00 for copying costs payable to the "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-5017 Filed 3-5-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; E.I. du Pont de Nemours and Co., et al

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Partial Consent Decree in *United States* v. *E.I. du Pont de Nemours & Co., et al*, was lodged on February 20, 1990, with the United States District Court for the Northern District of California. That action was brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, pertaining to cleanup of contaminated shallow groundwater at and near the Lorentz Barrel & Drum Company facility in San Jose, California.

Under this Partial Consent Decree, a group of eleven companies agree to implement the remedial action selected by the Environmental Protection Agency ("EPA") pertaining to cleanup of contaminated groundwater in the shallow aquifer in the vicinity of the Lorentz facility. The Lorentz facility was the site of a former barrel and drum recycling operation. This work will be performed under the oversight of EPA. Numerous sample results have shown contamination of the shallow groundwater, and remedial action is necessary now to prevent the further migration of the contamination. Under the Partial Consent Decree, the settling companies will install a series of wells that will be pumped to extract the groundwater in the shallow aquifer, and this groundwater will be treated to meet acceptable levels at a treatment facility to be built at the Lorentz facility, and discharged after treatment. In addition, the companies will reimburse EPA for its costs incurred in overseeing the companies' work. EPA is continuing to perform an overall investigation of environmental conditions at the Lorentz site and will determine what other actions may be necessary at the site in the future.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Deputy Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *E.I. du Pont de Nemours & Co., et al.*, D.J. Ref. 90-11-2-467.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federal Building, 16th Floor, 450 Golden Gate Avenue, San Francisco, California 94102 and at the Region IX office of the U.S. Environmental Protection Agency, 211 Main Street, San Francisco, California. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1527, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $18 for copying costs ($0.10 per page) payable to "United States Treasurer."

George W. Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-5011 Filed 3-5-90; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC) announces that grant funds are available for advancing the provision of civil legal assistance through the Law School Civil Clinical Programs (LSCCP). The Corporation may distribute up to twenty (20) one-time non-recurring grants to geographically distributed law schools of varying sizes. Each grant will be for up to 12 months and in an amount up to $75,000 per grant. All grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) (42 U.S.C. 2996e(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended. Each applicant is required to guarantee that a substantial portion (more than 50 percent) of the total funding for its LSCCP will come from non-Federal sources and that federally funded assets and projects will not be counted as part of any in-kind service.

Proposals for grants will be solicited from all law schools that are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Each applicant must submit appropriate documentation of eligibility.

DATE: Grant proposals must be received by the Office of Field Services on or before April 20, 1990. Grant awards may be announced by June 1990.

ADDRESS: Office of Field Services, Legal Services Corporation, 400 Virginia

Avenue SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Mr. Charles T. Moses, III, Associate Director, Office of Field Services, (202) 863-1837.

SUPPLEMENTARY INFORMATION: Congress has recognized LSC support of clinical education by earmarking specific funds for law school clinical grants. This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs that address the civil legal needs of poor persons. This expansion may include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects that provide services to underserved segments of the population (e.g., Native American, handicapped, homebound, isolated, and rural residents) or filling in the gaps in existing services and resources. This year, however, since the legal needs of a large number of poor children living in single parent households are currently underserved by existing legal services programs, the Corporation will give special emphasis to LSCCP applications that propose to address the legal needs of LSC eligible clients in child support matters.

All proposals will be reviewed to ensure that each is responsive to the minimum requirements set forth in this solicitation. Final selection of grantees will be made by the President of LSC, following submission of non-binding recommendations from an advisory committee comprised of outside private experts and LSC staff. The following criteria, which have been grouped into four basic categories, will be used to assess each proposal:

I. Objectives of Legal Clinical Program Development/Expansion (25%)

The extent of the applicant's objectives (e.g., the number of clients to be served, or the complexity and number of cases to be closed by the LSCCP clinic) and quality of the applicant's objectives (e.g., the proposed provision of legal services in child support matters, or clinic characteristics that would enhance the quality of basic legal services to be provided by the clinic, such as a high level of student supervision or the availability of complementary classroom courses) will be assessed in the context of the amount of funding requested and the LSCCP grant history, if any.

II. Capability of Applicant to Accomplish Objectives (30%)

The proposed project design, management plan, staff level and experience, and clinic structure will be evaluated to determine whether the applicant can accomplish its stated objectives effectively.

The qualifications and experience of the clinic director and staff will be evaluated to determine whether they can effectively administer the proposed clinic. Time and resource allocations will also be evaluated to assess the level of supervision that will be given to students.

III. Reasonableness of Costs in Relation to LSCCP Objectives and University Commitment to the LSCCP Objectives (30%)

Each applicant will need to show that it has, or will be able to obtain, substantial (i.e., more than 50%) non-federal support for its clinical education program. In addition, if the proposed LSC-funded project is a portion of the applicant's clinical education program, a significant amount of the proposed LSC-funded project's budget must be funded from non-federal sources. In order to maximize the direct delivery of legal services through one-time grants, proposals with a higher proportion of non-federal support will be given priority.

Evidence that the university's budgetary support levels will be maintained and/or increased beyond the grant term is also needed.

Each applicant should demonstrate that it plans to make an adequate in-kind contribution to the project. Federally-funded assets and projects cannot be counted as part of the in-kind contribution. In order to maximize the delivery of legal services, indirect administrative costs may not be paid with or deducted from LSC grant funds.

IV. Community Support (15%)

We recommend that the applicants explain how the proposed LSCCP clinic activities and services will complement the civil legal services provided to low-income persons by other local entities. The extent to which a cooperative effort, if any, exists between the applicant and local courts and bar associations, and LSC-funded programs should be described. We recommend that letters of support or other evidence of support from local courts, and bar associations be attached to the proposal.

Support from the private bar that results in increased attorney participation in the LSCCP clinic is also encouraged and should be documented by each applicant.

To ensure nationwide participation and geographic distribution of the funds available, LSC/OFS has created seven regions to be used strictly for the purposes of this project. The regional boundaries are used to assure a geographic dispersion of project funds, as well as competition among a proportionate number of states and eligible law schools. Depending upon the availability of qualified applicants, at least one grantee will be chosen from each of the following seven regions:

Region #1

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Rhode Island
Vermont

Region #2

Delaware
District of Columbia
Pennsylvania
Maryland
Puerto Rico
U.S. Virgin Islands
Virginia
West Virginia

Region #3

Alabama
Arkansas
Florida
Georgia
Louisiana
Mississippi
North Carolina
South Carolina
Tennessee

Region #4

Illinois
Indiana
Michigan
Ohio
Kentucky

Region #5

Kansas
Nebraska
Iowa
Missouri
Oklahoma
Texas

Region #6

Alaska
Washington
Oregon
Idaho
Montana

Wyoming
Minnesota
South Dakota
North Dakota
Wisconsin

Region #7

Arizona
California
Colorado
Hawaii
Nevada
New Mexico
Utah
Micronesia
Guam

Dated: March 1, 1990.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 90-5035 Filed 3-5-90; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before April 20, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-86-51). Routine Weather Records.

2. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-90-5). Routine records relating to chaplain activities.

3. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-90-8). Routine records relating to Air Base Operability.

4. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-90-23). Medical Logistics record.

5. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-90-24). Reprographics records.

6. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-90-25). Routine Training Records.

7. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-90-26). Routine Management Records.

8. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-90-27). Patient Administrative Records.

9. Department of the Air Force, Directorate of Information Management and Administration (N1-AFU-90-28). Court Reporter Records.

10. Department of Agriculture, Agricultural Stabilization and Conservation Service (N1-145-90-1). Internal control documents and County Operations Reviewer Program (CORP) files.

11. Department of Agriculture, Economics Management Staff (N1-354-89-2). Routine administrative management records.

12. Department of Commerce, United States Patent and Trademark Office (N1-241-90-4). Unmatched and unidentified correspondence.

13. Department of Commerce, United States Travel and Tourism Administration (N1-377-90-1). Previously unscheduled facilitative and administrative files.

14. Department of Commerce, Minority Business Development Agency (N1-427-90-1). Previously unscheduled facilitative and housekeeping files.

15. Department of the Interior, Bureau of Indian Affairs (N1-75-89-1). Comprehensive records schedule.

16. Department of Labor, Employment Standards Administration (N1-448-90-1). Correspondence and general records of the Assistant Secretary.

17. National Aeronautics and Space Administration, Wallops Flight Facility (N1-255-90-3). Research and Development films and indexes, 1960-80, deemed by NARA to have insufficient value to warrant archival retention.

18. Department of State, Bureau of Economic Affairs (N1-59-90-2). Routine reference and background material.

19. Tennessee Valley Authority, Resource Development Group (N1-142-89-3). Correspondence of the Environmental Quality Staff relating to internal administration and housekeeping activities.

20. Tennessee Valley Authority, Nuclear Power (N1-142-89-16).

Comprehensive records schedule for the Sequoyah Nuclear Plant.

21. Department of the Treasury, Office of Information Resources Management (N1-56-90-1). Treasury Systems Review Committee files.

Dated: February 27, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-5015 Filed 3-5-90; 8:45 am]

BILLING CODE 7515-01-M

Advisory Committee on Preservation; Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation, Ad Hoc Subcommittee on Microenvironmental Research will meet on April 5-6, 1990. The meeting will be held from 10 a.m. to 4 p.m. on Thursday, April 5, 1990, and from 9 a.m. to 12 noon on Friday, April 6, 1990, in National Archives Conference Room B at 601 Pennsylvania Avenue, NW., Washington, DC.

The agenda for the meeting will be:

1. Status of microenvironmental research at National Institute of Standards and Technology.
2. Related research at other labs.
3. Possible implications on storage of archival records.
4. Additional research needs.

This meeting is open to the public. For further information, contact Alan Calmes on (202) 523-1546.

Notice of the meeting is made in accordance with the Federal Advisory Committee Act.

Dated: February 27, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-5014 Filed 3-5-90; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before April 5, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0494) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(H).

Category: Revisions

Title: Applications and Instruction Forms for the Humanities, Science and Technology Category.

Form Number: Not applicable.

Frequency of Collection: Annual.

Respondents: Humanities researchers and institutions.

Use: Application for funding.

Estimated Number of Respondents: 47.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 52 per respondent.

Estimated Total Annual Reporting and Recording Burden: 5,324 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90-5040 Filed 3-5-90; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by April 5, 1990. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1989.

The application received is as follows:

Applicant

Peter A. Jorgensen, Antarctic Support Associates, 61 Inverness Drive East, suite 300, Englewood, CO 80112.

Activity for which permit requested

Enter specially Protected Area. The applicant proposes to enter Specialty Protected Area #17, Litchfield Island, Antarctica to inspect and resupply a survival cache located on Litchfield Island. This is required for boating safety.

Location

Vicinity of Palmer Station, Antartica.

Dates

May 1990-April 1995.

Charles E. Myers,

Permit Office.

[FR Doc. 90-5016 Filed 3-5-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (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).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection: 10 CFR part 73—Physical Protection of Plants and Materials.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur.
5. Who will be required or asked to report: Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.
6. An estimate of the number of responses: 30,107.
7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 0.8 hours per response and 23.8 hours per recordkeeper annually. The total industry burden is 231,517 hours annually.
8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.
9. Abstract: 10 CFR part 73 prescribes requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0002), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 26th day of February 1990.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 90-5031 Filed 3-5-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27756; File No. SR-DTC-90-04]

Self-Regulatory Organizations; Depository Trust Company; Filing of a Proposed Rule Change Regarding a Modification of Procedures To Support the PORTAL System

March 2, 1990.

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 March 1, 1990, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-90-4) as described in Items I, II, and III below, which Items have been prepared by DTC. 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 establishes a procedure enabling DTC Participants who wish to settle through DTC's Institutional Delivery ("ID") System transactions effected in the National Association of Securities Dealers, Inc.'s ("NASD") Private Offerings, Resales and Trading through Automated Linkages ("PORTAL") system to comply with certain PORTAL rules.[1] Under this procedure, which has been developed in consultation with the NASD, any such DTC Participant, including a custodian bank which acts as an agent for institutions using the ID System, may instruct DTC to establish a separate Participant account number and associated ID System account number and authorize DTC to provide to the NASD information with respect to all transactions under such numbers. Additionally, the NASD will require institutional investors receiving and affirming ID confirmations of transactions effected in the PORTAL System to establish separate ID system account numbers. DTC plans to provide to the NASD the following reports relating to these account numbers:

Reports available daily

ID System

Confirmations

Trade Input Edit Report (DTC output report of trade confirmation data input errors whether or not such data resulted in Confirmations, including error reason codes)

Deliver Orders (both ID and non-ID Deliver Orders)

Participant's Daily Activity Statement

Reports available monthly:

ID quality Control Report (report of eligible trade confirmations for each institution along with the affirmation, deliver, and receive rates)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change 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. DTC 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

If the Commission's Proposed Rule 144A is adopted and in effect, DTC plans to make eligible for DTC's book-entry delivery services restricted securities of the type that may be resold pursuant to certain provisions of Rule 144A. The purpose of this proposed rule change is to enable DTC Participants effecting, in the Portal system, transactions in DTC-eligible securities to settle such transactions in DTC's ID System in a manner that is consistent with certain Portal rules, and to enable the NASD to monitor compliance with such rules. DTC, itself, does not undertake to monitor or enforce compliance by its Participants with Portal rules.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Securities

[1] A description of the PORTAL System is contained in NASD's filing (File No. SR-NASD-88-23), as amended.

Exchange Act of 1934, as amended (the "Act") in that it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition 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

DTC has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disappproved.

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 Room at the address above. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File Number SR-DTC-90-4 and should be submitted by March 27, 1990.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5182 Filed 3-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27745; File No. SR-NASD-90-10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Limit Order Capabilities of the Association's Small Order Execution System.

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 February 26, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("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 proposed rule change would extend until June 29, 1990 the Securities and Exchange Commission's temporary approval of the limit order capabilities of the NASD's Small Order Execution System ("SOES") which was approved for a ninety day period on January 19, 1989, and executed until February 28, 1990.

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 purpose of this filing is to extend the Commission's temporary approval of the SOES limit order system until June 29, 1990. This extension will allow the NASD to continue to monitor utilization of the system and will provide an opportunity for the Commission to consider the permanent approval of the limit order system with enhancements relative to crossing or matching of customer limit orders resident in the system. For a detailed description of the proposed limit order enhancement the NASD filed an amendment to filing No. SR-NASD-89-9, requesting permanent approval of the SOES limit order file, on December 15, 1989.[1]

The statutory basis for the further development and implementation of SOES is found in sections 11A(a)(1)(B) and (C)(i), 15A(b)(6) and 17A(a)(1) (B) and (C) of the Securities Exchange Act of 1934. Sections 11A(a)(1)(B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, 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." Sections 17A(a)(1) (B) and (C) set forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the modifications to SOES will further these ends by providing enhanced mechanisms for the efficient and economic execution and clearance of limit orders in over-the-counter securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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[1] See Securities Exchange Act Release No. 27636 (January 19, 1990), 55 FR 2723 (January 26, 1990).

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 with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause pursuant to section 19(b)(2) of the Act for approving the proposed rule change on a temporary basis prior to the thirtieth day after publication in the **Federal Register** and in any event before February 28, 1990, the date on which the temporary approval for the SOES Limit Order processing function expires. The Association believes that the enhancement to the SOES system is currently benefitting members and their public customers by providing an automated method of processing limit orders for all SOES participants that is comparable to proprietary systems now utilized by some member firms. In light of these factors, the NASD requests that the Commission approve this rule change on an accelerated basis. During the term of the extension, the Commission will have the opportunity to consider permanent approval of the system with enhancements relating to the crossing of limit orders entered between the spread while providing members and their customers with the ongoing advantage of the ability to use the SOES limit order function.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A(a)(1)(B), 15A(b)(5) and 17A(a)(1) (B) and (C) and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof in that accelerated approval will benefit public investors by continuing to provide limit order storage and execution capabilities which can result in more efficient handling of customer orders. The Commission believes that the benefits of extending the temporary rule change until June 29, 1990 outweigh any potential adverse effects during the period of the rule change's effectiveness.

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 Room. 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 March 27, 1990.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and hereby is, approved until June 29, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: February 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-4988 Filed 3-5-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Enrollment of Qualified Sureties in the Preferred Surety Bond Guarantee Program

Pursuant to title II of Public Law 100-590, the Small Business Administration (SBA) has promulgated Interim Final Regulations on November 9, 1989 at 13 CFR part 115 (54 FR 47166) setting forth the following criteria for eligibility of surety companies to participate in the Preferred Surety Bond Guarantee (PSB) Program authorized by that title:

(1) An underwriting limitation of at least one and one-quarter million dollars ($1,250,000) on the U.S. Treasury Department list of acceptable sureties;

(2) An agreement to charge small concerns bonded under PSB no more than the advisory premium rates of the Surety Association of America, whether or not such rates are approved in or accepted by the relevant jurisdiction;

(3) Premium income from contract bonds guaranteed by any government agency (Federal, State or local) does not exceed one-quarter of the total contract bond premium income of the surety;

(4) Underwriting authority for SBA guaranteed bonds is vested only in employees of the surety company;

(5) Final settlement authority for claims under the PSB program is vested in employees of a PSB surety's permanent claims department satisfactory to SBA;

(6) Number of bid and final contract bonds issued by the surety from year to year for the last five fiscal years;

(7) The rating or ranking designations assigned to the surety by recognized authority.

SBA hereby advises that it is now considering the enrollment of qualified sureties as participants in the PSB Program. Sureties enrolled will be authorized to issue, monitor and service bid payment and performance bonds, or bonds ancillary thereto, with SBA's automatic guarantee of indemnification of up to 70% of any monetary loss incurred and paid in connection with contractor default of such bonds. Interested sureties should so advise SBA by letter also stating their compliance with the foregoing eligiblity criteria and addressed to the undersigned at:

1441 L Street, NW., Room 808, Washington, DC 20416.

(Catalog of Federal Domestic Assistance, Program No. 59.016, Bond Guarantees for Surety Companies)

Dated: March 1, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-5167 Filed 3-5-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week ended February 23, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application be expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46793.

Date filed: February 20, 1990.

Due Date for Answers, Conforming Applications, of Motion to Modify Scope: March 20, 1990.

Description: Application of Aerovias, S.A. pursuant to section 402 of the Act and subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit so as to permit it to engage in foreign air transportation of persons, property and mail on a scheduled basis: (1) Between Guatemala City, on the one hand and Miami, Florida, on the other via the intermediate point Merida, Mexico. (2) Between Guatemala City, on the one hand and Los Angeles, CA., on the other.

Docket Number: 46798.

Date filed: February 23, 1990.

Due Date for Answers, Conforming Applications, of Motion to Modify Scope: March 23, 1990.

Description: Application of Tatonduck Outfitters Ltd., d/b/a Tatonduk Flying Service pursuant to Section to section 401(d)(1) of the Act the subpart Q of the Regulations, requests authority to engage in scheduled air transportation of persons, property and mail, between the points of Eagel and Fairbanks, Alaska.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-4984 Filed 3-5-90; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Notice 90-9]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 1), a location change is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Thursday, March 8, 1990, from 8:30 a.m. to 4:30 p.m. in the Columbia Ballroom of the Holiday Inn Capitol (550 C Street, SW.) in Washington, DC. This will be the eleventh meeting of the committee. The meeting will address issues as outlined in the attached agenda.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366-5770.

Stephanie Lee-Miller,

Director, Office of Commercial Space Transportation.

Dated: February 28, 1990.

Attachment

Tentative Agenda—Columbia Ballroom—Holiday Inn Capitol

March 8, 1990.

8:30 a.m.—Welcome

8:45 a.m.—Opening Remarks—Dr. Alan G. Lovelace, Chairman, Comstac

9:00 a.m.—Office of Commercial Space Transportation, Activities Report—Stephanie Lee-Miller, Director, OCST

9:15 a.m.—Status of Actions From Previous Meeting, Dr. Lovelace

9:30 a.m.—Licensing Programs Update—Norman Bowles, Associate Director, Licensing Programs, OCST

10:00 a.m.—Legislative Update—Louis Whitsett, Minority Staff Counsel, Senate Commerce, Science and Transportation Committee

10:30 a.m.—Report From Commander, Eastern Space and Missile Center—USAF Official

11:00 a.m.—Working Group Reports—Joint Report of International Competition and Technology and Innovation Working Groups

12:00 a.m.—Lunch

1:30 a.m.—Working Group Reports—Dr. Lovelace

—Procurement

—Insurance and Risk Management

—Technology

—International Competition and Cooperation

—Infrastructure

4:30 p.m.—New Business/Future Agenda

5:00 p.m.—Concluding Remarks/Adjourn

[FR Doc. 90-4985 Filed 3-5-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Charter Renewal

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of charter renewal.

SUMMARY: The charter for the National Motor Carrier Advisory Committee (NMCAC) has been renewed until January 29, 1992. The Committee acts in an advisory capacity to the Federal Highway Administration (FHWA) Administrator. It makes recommendations intended to improve the safety and productivity of the motor carrier industry and the effectiveness of FHWA's programs and policies. The Committee reviews research projects, regulations and programs including commercial motor vehicle licensing and taxation, uniformity and safety.

The Committee's Executive Director is Richard P. Landis, Associate Administrator for Motor Carriers. The Associate Administrator reports directly to the Administrator. This ensures direct communication between the Administrator and the Committee and the ability to respond to the Committee's recommendations. The FHWA benefits greatly from the NMCAC and views it as a key forum to facilitate understanding of the industry and strengthening the partnership to improve motor carrier safety and productivity.

Meetings of the Committee are open to the public and must be announced in the **Federal Register**. Copies of the Committee charter are available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, Staff Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HIA-20, Room 3104, 400 Seventh Street SW., Washington, DC 20590, (202) 366-1861. Office hours are from 7 a.m. to 3:30 p.m. e.t., Monday through Friday.

Issued on: February 26, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90-4986 Filed 3-5-90; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Fresno County, CA

AGENCY: Federal Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fresno County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Schultz, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1140.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the Fresno County Transportation Authority, will prepare an environmental impact statement (EIS) on a proposal to construct a new highway along State Route 168 from Temperance Avenue in the City of Clovis, California to Lodge Road, 2 miles east of the unincorporated community of Prather in Fresno County (post miles R8.8 to R27.4). Route 168 is a major component of the Fresno-Clovis Metropolitan Area (FCMA) circulation system and a principal travel route for recreational, commercial, and commute traffic between the FCMA and the

rapidly developing rural area to the north and east. The existing two-lane road is characterized by numerous sharp curves, narrow pavement, few shoulders, and steep grades in several areas. Average daily traffic (ADT) for the route is estimated to be as high as 25,000 by 2010. Severe congestion and safety problems may develop without improvements.

Three alternatives are being studied:

A. *No Project.* This alternative would involve no activities beyond continued routine maintenance of the existing roadway and some minor improvements.

B. *Existing Route.* This 23.2 mile alternative would involve the construction of a four-lane highway generally along the existing route. Existing public and private access would be continued. However, future access to abutting properties could be limited. Intersection improvements, drainage facilities, and necessary structures would be incorporated into the project.

C. *New Route.* This 19.0 mile alternative would involve the construction of a four-lane expressway on a totally new alignment. Access would be limited to major road intersections. Intersection improvements, drainage facilities, and necessary structures would be incorporated into the project.

An agency scoping meeting will be held on March 21, 1990, at 2:30 p.m. at Dry Creek Elementary School, 8098 N. Armstrong in Clovis. The public involvement process will include future informational open houses and at least one public hearing. To ensure the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. If you have any information regarding historical resources, endangered species, or other sensitive issues which could be affected by this project, please notify this office. Also please notify this office if you are interested in being notified at the completion of historical resource studies.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 26, 1990.

John R. Schultz,

District Engineer, Sacramento, California.

[FR Doc. 90-5013 Filed 3-5-90; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101-164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the Federal Register every 30 days of grants obligated pursuant to Sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Director, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366-2053

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

Transit property	Grant No.	Grant amount	Obligation date
Section 3 Grants			
Metropolitan Transit Development Board, San Diego, CA	CA-03-0350	$1,380,000	02/12/90
Lane Transit District, Eugene, OR	OR-03-0036	2,127,000	02/13/90
Section 9 Grants			
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X039-01	$71,161	01/19/90
Transit Authority of Northern Kentucky, Ft. Wright, KY	KY-90-X046-00	1,360,190	01/30/90
Central Ohio Transit Authority, Columbus, OH	OH-90-X127-00	4,410,955	01/31/90
Capital Metropolitan Transportation Authority, Austin, TX	TX-90-X151-00	2,826,426	01/24/90

Issued on: February 26, 1990.

Brian W. Clymer,

Administrator.

[FR Doc. 90-4987 Filed 3-5-90; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 7-90]

Treasury Notes, Series K-1995

February 23, 1990.

The Secretary announced on February 22, 1990, that the interest rate on the notes designated Series K-1995, described in Department Circular—Public Debt Series—No. 7-90 dated February 15, 1990, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-4973 Filed 3-5-90; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 6-90]

Treasury Notes, Series W-1992

February 22, 1990.

The Secretary announced on February 21, 1990, that the interest rate on the notes designated Series W-1992, described in Department Circular—Public Debt Series—No 6-90 dated February 15, 1990, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-4974 Filed 3-5-90; 8:45 am]

BILLING CODE 4810-40-M

Treasury Advisory Committee on Commercial Operations Customs Service; Meetings

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, March 23, 1990 at 9:30 a.m. in Room 4121 of the Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC. 20220. Tel.: (202) 566-8435.

SUPPLEMENTARY INFORMATION: Agenda items for the sixth meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service on March 23, 1990 will include:

I. Old Business

1. Final review and approval of the Annual Report.

II. New Business

1. Possible Renewal of the Advisory Committee for an additional two-year term.
2. Commercial operations staff and user fee funding.
3. Commercial enforcement activities of Customs.
4. Other new business.

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the building to attend the meeting, contact Dennis M. O'Connell at (202) 566-8435, no later than Friday, March 16, 1990.

Dated: February 28, 1990.

Salvatore R. Martoche,

Assistant Secretary, (Enforcement).

[FR Doc. 90-4963 Filed 3-5-90; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 44
Tuesday, March 6, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

Additions to Meeting Agenda

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 23, 1990, 55 FR 6872.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 1, 1990, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAE-1 and CAE-3 for the agenda of March 1, 1990:

Item No., Docket No., and Company

CAE-1—EL89-50-000, *et al.*, Golden Spread Electric Cooperative, Inc., v. Southwestern Public Service Company

CAE-3—EL89-53-000, Blue Ridge Power Agency, Central Virginia Electric Cooperative, Inc., and Craig-Botetourt Electric Cooperative, Inc., v. Appalachian Power Company

Lois D. Cashell,

Secretary.

[FR Doc. 90-5231 Filed 3-2-90; 3:34 pm]

BILLING CODE 6717-02-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 12, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computer equipment within the Federal Reserve System. (This item was originally announced for a closed meeting on March 5, 1990.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5230 Filed 3-2-90; 2:48 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-90-05]

TIME AND DATE: Tuesday, Mar. 13, 1990 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints: Certain Pyrethroid Insecticides (D/N 1545).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: February 28, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-5196 Filed 3-2-90; 1:45 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of March 5, 12, 19, and 26, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 5

Thursday, March 8

3:30 p.m.—Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of March 12 (Tentative)

Monday, March 12

2:00 p.m.—Briefing on the Development of LLW Disposal Capability by the Southwestern Compact (Public meeting)

Wednesday, March 14

10:00 a.m.—Periodic Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public meeting)

2:00 p.m.—Briefing on Economic Incentive Regulation of Nuclear Power Plants (Public meeting)

Thursday, March 15

3:30 p.m.—Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of March 19 (tentative)

Tuesday, March 20

10:00 a.m.—Briefing on Recommended Action for Substandard Parts (Public meeting)

Thursday, March 22

3:30 p.m.—Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of March 26 (Tentative)

Thursday, March 29

10:00 a.m.—Periodic Briefing on Progress of Resolution of Generic Safety Issues (Public meeting)

11:30 a.m.—Affirmation/Discussion and Vote (Public meeting) (if needed)

NOTE: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: March 2, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-5214 Filed 3-2-90; 2:06 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 55, No. 44
Tuesday, March 6, 1990

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.

GENERAL SERVICES ADMINISTRATION

48 CFR Part 528

[APD 2800.12A CHGE 3]

General Services Administration Acquisition Regulation; Bonds

Correction

In rule document 90-3412 beginning on page 5222 in the issue of Wednesday, February 14, 1990, make the following corrections:

§ 528.103.2 [Corrected]

1. On page 5223, in the second column, in the first line, " 528.010-2 should read "528.103-2".

528.103-3 [Corrected]

2. On the same page, in the same column, the heading of 528.103-3 should read "**528.103–3 Payment Bonds**".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1351

RIN 0980-AA11

Runaway and Homeless Youth Program

Correction

In rule document 90-3627 appearing on page 5601 in the issue of Friday, February 16, 1990, make the following correction:

On page 5601, in the third column, the EFFECTIVE DATE should read "May 15, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 517

Training Wage Provisions of Fair Labor Standards Amendments of 1989

Correction

In rule document 90-4832 beginning on page 7450 in the issue of Thursday, March 1, 1990, make the following corrections:

§ 517.102 [Corrected]

1. On page 7457, in the third column, in § 517.102, in paragraph (f), in the fifth line, "of" should read "or".

§ 517.204 [Corrected]

2. On page 7459, in the first column, in § 517.204(b)(2), in the 29th line, "total 40 hours" should read "40 total hours".

§ 517.207 [Corrected]

3. On page 7460, in the first column, in § 517.207(a), in the 17th line, "section 3(1)" should read "section 3(l)".

§ 517.401 [Corrected]

4. On page 7461, in the first column, in § 517.401(a), in the seventh line, "age" should read "wage".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-150]

RIN 1218-AAOO

Occupational Exposures to Hazardous Chemicals in Laboratories

Correction

In rule document 90-1717 beginning on page 3300 in the issue of Wednesday, January 31, 1990, make the following corrections:

§ 191.1450 [Corrected]

1. On page 3327, in the second column, in § 191.1450(a)(3)(i), in the fifth line, "subpart 2" should read "subpart Z".

Appendix B to §1910.1450 [Corrected]

2. On page 3335, in Appendix B to § 1910.1450, in the second column in the 18th line, "3." should read "4.".

BILLING CODE 1505-01-D

Federal Register

Tuesday
March 6, 1990

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program; Annual Evaluation Priorities and Applications for FY 1990; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program

AGENCY: Department of Education.

ACTION: Notice of final annual evaluation priorities.

SUMMARY: The Secretary announces annual evaluation priorities for the Handicapped Special Studies program. These studies have been selected to ensure effective use of program funds and to meet requirements of the Education of the Handicapped Act (EHA).

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3522—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

SUPPLEMENTARY INFORMATION: The Handicapped Special Studies program, authorized by section 618 of Part B of the Education of the Handicapped Act (EHA), as amended, supports studies to evaluate the impact of the Act, including efforts to provide a free appropriate public education and early intervention services to infants, toddlers, children and youth with handicaps. The results of these studies must be included in the annual report submitted to the Congress by the Department.

A notice of proposed funding priorities for fiscal year 1989 and 1990 was published in the **Federal Register** on September 29, 1988 at 53 FR 38254, which contained the following two proposed priorities for fiscal year 1989 awards:

(1) State Agency/Federal Evaluation Studies Projects; and

(2) Design Study for Obtaining National Estimates of Outcome Data on Children and Youth with Handicaps.

The "State Agency/Federal Evaluation Studies Projects" was announced as a final fiscal year 1989 priority in the **Federal Register** on March 8, 1989 (54 FR 9977) and awards for fiscal year 1989 under that priority have been made. However, in that same **Federal Register** of March 8, it was noted that "* * * due to budget constraints, the Secretary intends to award a contract in fiscal year 1990 to carry out the study described in priority 2 above."

Another notice of proposed funding priorities, but for fiscal year 1990 awards only, was published in the **Federal Register** on May 1, 1989 at 54 FR 18570. That notice contained the following two proposed priorities for the Handicapped Special Studies program:

(1) State Agency/Federal Evaluation Studies Projects; and

(2) Study of Anticipated Services for Students with Handicaps Exiting from School.

This document consolidates the one proposed priority from the September 29, 1988 **Federal Register** that was not announced in final form, and the two proposed priorities from the May 1, 1989 **Federal Register** as the three final annual funding priorities for fiscal year 1990 under the Handicapped Special Studies Program.

Analysis of Comments and Changes

In response to the Secretary's invitation in the September 29, 1988 and May 1, 1989 notice of proposed priorities three parties submitted comments on the proposed priorities. An analysis of the comments and of the changes in the priorities since publication of the proposed priorities follows.

Comment: One commenter responded to the proposed priorities and indicated that Priority #1 (of 5/1/89) "State Agency/Federal Evaluation Studies Projects" should be divided into two separate priorities. The commenter proposed that the current proposed priority should remain, but another priority should be added which would be designed to support feasibility studies. The commenter felt that there are many State agencies with promising ideas that range in their complexity, development, scope, and nature. Currently, ideas that require feasibility assessment cannot effectively compete in this competition. The commenter also indicated that Priority #2 (of 5/1/89) "Study of Anticipated Services for Students with Handicaps Exiting from School" appears to overlap with the more general priority proposed as a contract in fiscal year 1989 for fiscal year 1990 funding (September 29, 1988 at 53 FR 38254, and March 8, 1989 at 54 FR 18570), entitled "Design Study for Obtaining National Estimates of Outcome Data on Children and Youth with Handicaps." The commenter recommended that these two priorities be combined and focus on a cooperative Federal/State activity including the exchange of alternative approaches, assessment instruments, and reporting formats.

In addition, the commenter expressed the belief that a Federally dictated national assessment of outcomes would be premature, operationally infeasible, apt to result in much opposition, and could potentially engender such a negative reaction as to set back a currently positive environment on outcomes. The commenter stressed the importance of States being systemically engaged as full partners in a "national" initiative, and that a better and wiser use of Federal resources would be to capitalize and build on current and emerging State investments and momentum. The commenter further stated that a "visible entity" should be established that would provide the stability and credibility needed to facilitate cooperative functions such as the exploration and piloting of alternative assessment procedures and techniques, and secondary data analysis to maximize the use of extant data bases.

Discussion: The Secretary concurs with the recommendation that the State Agency/Federal Evaluation Studies Projects priority should be divided into two priorities with one priority designed to support feasibility studies. Expanding the priority into two priorities will permit States with promising ideas to propose topics having significant potential but that require preliminary study to determine feasibility related to design, measurement, and analysis.

The Secretary also concurs with the recommendation that the priority for "Design Study for Obtaining National Estimates of Outcome Data on Children and Youth with Disabilities" should be a cooperative agreement rather than a contract. The Secretary believes that a cooperative agreement would be more appropriate and allow the Department to be sufficiently flexible with regard to tasks, timelines, and deliverables, given the dynamic context in which the work is to be performed. However, the Secretary does not believe it should be combined with the Anticipated Services priority since the latter will produce a fairly specific set of data reports designed to meet the Education of the Handicapped Act (EHA) data requirements and the needs of State and local planners related to the EHA data requirements.

The Secretary concurs with the comment that current State efforts should be considered and used as the initial building block experiences for

developing a national comprehensive system of outcome indicators. Support for exchanges and networking among States, the Department of Education, and others actively involved or interested in outcome assessment is essential to achieving the objectives of this priority. Consideration of State initiatives must be a significant component of any national outcome assessment initiative. The Federal interest is in achieving significant comparability in outcome indicators in order to permit national estimates to be obtained.

The Secretary concurs with the recommendation that a "stable" and "visible" entity is needed to capitalize and build upon the experiences and efforts currently being undertaken by States.

Changes: The "State Agency/Federal Evaluation Studies Projects" priority has been redesigned as two priorities. The original priority remains the same, while a second priority has been added that focuses on feasibility studies.

The "Design Study for Obtaining National Estimates on Student Outcome Data on Children and Youth with Disabilities" has been substantially rewritten as a cooperative agreement instead of a contract. This modification is in recognition of the need to capitalize on the breadth and experience of current State outcome assessment initiatives. The activities prescribed reflect those to include the broader scope of endeavor and those elements that would have been clarified in the work statement of a contract. In response to comments, activities have been specified that provide for exchanges, networking, and cooperation in order to build upon current State outcome activities. In addition, secondary data analysis has been specified in order to capitalize upon extant State data bases providing information reported for another, primary purpose. Furthermore, based on comment the priority has been recast as a Center to provide for a "stable and highly visible entity." Thus, the priority will support the establishment of a single Center to carry out the activities described below.

Also, the "Study of Anticipated Services for Students with Handicaps Exiting from School" priority: (1) Specifies that a cooperative agreement will be used; and (2) has been significantly expanded to clarify the differences between the two priorities.

Comment: One of the commenters suggested that the "Study of Anticipated Services for Students with Handicaps Exiting from School" needed to examine the utility of the information being collected for State and local administrators and adult service planners. The commenter suggested the study examine the usefulness of the data for major user groups at the Federal, State and local level and identify ways to translate the data into summaries and other products with high utility for different users. The commenter asserted that the production of data reports of proven utility to State and local decision-makers would increase their commitment to providing quality data for the study.

Discussion: The Secretary agrees that the data being collected and produced by this project should be translatable and useful at the State and local level as well as at the Federal level. The Secretary further agrees that the commitment to the provision of valid data can be increased by developing summaries of the data that are useful to the providers of the data. Prior activities supported under CFDA 84.159B entitled "Study of Anticipated Services for Students Exiting From School" awarded in FY 1988 provides direction for responding to this comment. This prior inquiry examined the feasibility of using an expert system to translate and interpret student performance indicators as a means for extrapolating their adult service needs after exiting school. The use of an expert system was determined to be feasible not only as a means for translation of data, but as a tool for providing various summaries and reports relevant to providers of the data, as well as community, State and Federal agencies.

Changes: The priority has been revised to reflect the potential importance of these data to individuals at the State and local level as well as at the Federal level. The purpose of the priority was expanded to encompass the needs of multiple users. Project activities were described in greater detail to provide for the development of a data collection methodology reflecting the different types of data needed at the local, State and Federal level. The specification of an expert system was added to provide an efficient and effective means for translating performance indicators into estimates for anticipated service needs. In addition, the expert system must be designed to provide summaries and reports useful to data providers, as well as local, State and Federal agencies.

Comment: One respondent commented on the potential role of independent living centers in projects supported under the proposed priorities. This commenter suggested that applicants be required to involve practitioners from independent living centers in the development of proposals and in the implementation of the projects.

Discussion: The Secretary recognizes the important link between education and independent living. However, given the type of projects potentially fundable under these priorities, requiring the involvement of individuals with any particular background would be overly restrictive. Participation of independent living centers and their staff is allowed under all priorities addressed by the commenter.

Changes: None.

Priorities:

The Secretary establishes the following priorities for the Handicapped Special Studies Program, CFDA 84.159.

Priority 1: State Agency/Federal Evaluation Studies Projects (CFDA No. 84.159A1)

The purpose of this priority is to support cooperative agreements for evaluation studies by State agencies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act. Within this priority, the Secretary particularly invites studies that: (1) Develop descriptors for characterizing preschool children with handicaps; and (2) examine the impact of aspects of educational reform (e.g., increased graduation requirements, use of minimum competency testing to determine graduation eligibility, increased academic/curricular requirements, more rigorous promotion policies) on special education.

Priority 2: State Agency/Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness (CFDA No. 84.159A3)

The purpose of this priority is to support cooperative agreements for feasibility studies by State agencies to address the impact and effectiveness of activities assisted under the Education of the Handicapped Act. This priority is for topics having significant potential but that require preliminary study to determine feasibility related to designs, measurement, and analysis. While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, pilot tests of data collection instruments and procedures are required. At the conclusion of the feasibility study, each project must produce a report which provides a complete description of the results of the pilot tests and the implication of these results for the study design, measurement, and analysis.

Priority 3: Study of Anticipated Services For Students With Handicaps Exiting From School (CFDA No. 84.159B)

A need exists among local, State, and Federal agencies for valid data that can be used to focus attention and provide direction for planning transition services required by special education students as they exit from secondary school. Research has shown that sizable numbers of young adults with handicaps are not engaged in productive activities in the years following secondary school. Without the necessary adult services, these young people in transition may not be able to find employment or establish themselves in independent living arrangements. Adult service agencies need data on the type and quantity of service required by the approximately 240,000 students with disabilities who exit secondary school annually and who are eligible to receive adult services. These data would significantly enhance the strategic and operational planning required to improve the availability of services for young adults making the transition from school to the world of work and independent living.

The purpose of this priority is to support a cooperative agreement to develop procedures to use student performance indicators to project needs for adult services. The goal of the activity is to provide information that will be useful to community, State, and Federal agencies for improving the availability of adult services. This priority extends the inquiry initiated in FY 1988 under CDFA 84.158B, Study of Anticipated Services for Students Exiting From School. These studies explored using performance indicators of exiting students with handicaps as the basis for determining their adult service needs. This approach was adopted because of the difficulty of locating a reliable source of information for projecting the adult service needs of secondary students exiting school.

Previous attempts to collect adult service needs data from teachers found that teachers had difficulty inferring the type or nature of the adult service needed by secondary students. Teachers were unfamiliar with the services and terminology of the adult service system. An alternative approach to obtaining data for planning adult service needs is to ask school staff to provide information on student characteristics from which necessary adult services could be projected. This priority is designed to further efforts to develop effective procedures of projecting that information based on student performance indicators. These procedures must result in meaningful and useful ways to provide this information to policy-makers, special educators, and adult services planners at the local, State and Federal level.

A student performance instrument and several possible approaches to data collections have been developed. The instrumentation, the Student Performance Indicator Instrument (SPII), assesses student performance in four competency areas, Daily Living, Personal and Social Adjustment, Educational Performance, and Employment, in a variety of settings. The assumption is that the student's level of ability to function in these areas upon leaving school is directly related to the nature and amount of support or assistance that will be required to enable the individual to achieve his or her potential as a young adult. These previous studies also developed a list of adult services and corresponding definitions. To explore how best to collect these data at the local, State, and Federal level, the FY 1988 studies developed alternative strategies for collecting data on a State-by-State basis, including an analysis of sampling issues, instrument administration, data verification, and data aggregation. The FY 1988 studies also explored the feasibility of using "expert system" technology to project adult service needs from the individual student information collected by the SPII. (Support materials from these studies are available from the Rehabilitation Services Administration regional offices.)

Activities

The cooperative agreement project supported by this priority must engage in the following activities designed to continue the development of procedures for generating and providing data on adult service needs which can be used to improve the provision of services to young adults with disabilities.

1. *Development of Expert System.* This project must develop a microcomputer-based expert system for using revised SPII data to project adult service needs of students with disabilities after they exit school. The expert system must consist of a set of options for inputting the data, a set of "if-then" decision rules for relating the student performance data to needed adult services, and a variety of reporting formats of proven usefulness at the community, State, and Federal level.

The expert system must be able to use performance data from students representing the full range of disabilities and the range of severity levels. As part of this project, revised SPII data must be collected on a sufficiently large sample of secondary special education exiters to insure the application of the system to the entire range of special education exiters, including those from the diversity of economic, racial, ethnic, and linguistic backgrounds.

Possible options for inputting the data from the revised SSI could include, but are not limited to, "user-friendly" screens that allow clerical personnel to enter data directly or the use of machine readable forms. The goal of this activity must be the development of an expert system which provides local and State agencies the ready access to projections of adult service needs of students with disabilities exiting school. The expert system must be designed to minimize input requirements and resources.

The expert system must also include procedures for generating a variety of information displays and reports geared to the needs of different community-based, State and Federal agencies. The creation of displays geared to the needs of the user must provide professionals at a variety of levels with information needed for planning purposes.

2. *Instrument Refinement.* A revised version of the Student Performance Indicator Instrument must be developed based on activities completed during the project. The adequacy of the SPII to provide the information needed by the expert system must be examined and appropriate revisions developed. Also, the psychometric properties of the SPII must be examined through the data collected with the instrument as part of the development of the expert system. The activity must include an assessment of the technical adequacy, i.e., reliability and validity, of the instrument for its intended purposes. The results of the psychometric analyses must also be incorporated into a revised instrument.

3. *Refinement of Service List.* A revised service list and corresponding definitions must be developed. Revisions to the service list must be based on any problems with the current version of the list and definitions uncovered through the process of developing the expert system. Information collected as part of the evaluation under Activity 5 must also be used to revise the list.

4. *Determination of Administrative Feasibility.* The feasibility of the administrative procedures developed as part of the expert system activity must be examined. A critical focus of this priority is the provision of valid information to community, State, and Federal agencies that is useful for strategic planning purposes. Because the data have utility at a number of levels, there must be procedures established for

transferring information from one level to another. One objective of this priority is to develop and evaluate the feasibility of a set of data collection procedures to accomplish the collection and transfer of data. This activity must use the results of the preliminary field-testing of approaches to data collection that was initiated under the FY 1988 studies. Issues to be addressed include: alternatives to reduce the potential respondent burden on individual teachers with a large number of exiting students; adequacy of instructions; data collection procedures at the district level including distribution of SPIIs to the appropriate respondent and collection of completed forms; the advantages and disadvantages of sampling; and the willingness of local school system personnel to participate in a data collection of this type.

5. *Evaluation of the Utility of the System.* The reports and displays generated by the expert system must be evaluated for their perceived usefulness by community, State, and Federal administrators. The reporting procedures and displays must be revised based on the outcomes of the evaluation. In addition, the practical utility of the information resulting from the system for decisionmakers at the community, State, and Federal level must be addressed. These activities will be carried out over two phases. Each of the phases will be 18 months in length.

Products

The expected products from this priority include: (1) an expert system including input and output procedures and the decision rules for projecting the adult services needed from the SPII data; (2) documentation including the programming for the expert system; (3) a set of administrative procedures for obtaining the SPII data from schools and districts and generating summary reports; (4) a revised Student Performance Indicator Instrument; (5) a revised list of adult services and definitions; and (6) an evaluation report on the utility of the expert system.

Priority 4: Center for Outcome Assessment for Children and Youth With Disabilities (CFDA No. 84.159C)

Issue

Over the past few years, increasing attention has been focussed on the assessment of outcomes of schooling for students with disabilities, (i.e., students with handicaps as presently defined in 34 CFR 300.5). Many States have begun initiatives to obtain follow-up data on their school exiters with disabilities. State and Federal legislators and professionals have expressed concern about the educational, occupational, and independent living status of individuals with handicaps after leaving school. These groups have indicated the need to measure the educational skills and outcomes that students attain as a direct result of schooling. The National Council on Disability (1989) in its report "The Education of Students With Disabilities: Where Do We Stand?" concludes that the time has come to shift the focus from processes and procedures for assuring access to a public education to achieving advancements in quality and student outcomes.

While States are making concerted efforts to obtain the data, these initiatives are not based on similar conceptual frameworks defining a comprehensive system of outcome indicators. The absence of a comprehensive system of indicators for designing, prioritizing, planning and using outcome data results in initiatives that potentially may misdirect attention and provide little guidance for program improvement. The development of comprehensive indicator systems by States would enhance the interpretability, comparability and use of outcome data. Further, the development of comprehensive indicator systems would draw attention to the fact that indicators are only representative of complex underlying interrelationships. A contribution of that modeling is to make explicit presumed relationships and facilitate their empirical validation. The development of comprehensive indicator systems will increase the ability to integrate and use other evaluation and research findings to provide greater breadth and specificity needed to effectively explicate and interpret a parsimonious model of outcome indicators. Currently, the identification, selection and collection of indicators while able to focus attention are inadequate for guiding or designing program improvement.

The educational reform initiatives have been accompanied by raised expectations, higher standards, and increased performance accountability. The U.S. Department of Education has focused attention on assessment as a critical contributor to educational reform. Legislators and governors, as well as State and local school boards of education, have each contributed to focusing attention on outcomes. The effectiveness of special education and the status of children with disabilities are increasingly being included in these accountability initiatives. This inclusion in these assessment initiatives has raised important and penetrating questions related to expectations and outcomes, as well as a raft of technical and implementation issues.

While States and local school districts have the primary responsibility for assuring effective teaching and learning, a substantial national interest exists. It is essential that nationally we achieve equity and excellence in education for all children. Current Federal and State outcome assessment initiatives have included activities such as: follow-up or follow-along studies, educational progress assessment, mastery testing, and use of performance indicators. These activities have been characterized by different age cohorts, different constructs or indicators, varied measurement procedures, and a broad spectrum of uses. These Federal and State initiatives generally lack a comprehensive conceptual model which interrelates the various indicators and approaches.

The Office of Special Education Programs (OSEP) has supported both National and State outcome assessment studies. Based on needs assessments and meetings conducted by the Regional Resource Centers, inquiries undertaken and work groups conducted by the National Association of State Directors of Special Education, State legislative mandates, and SEA initiatives, it is evident that outcome assessment is a significant agenda item. These outcome assessment activities provide an opportunity for clarifying the educational and post-school outcomes for students with disabilities. These discussions will contribute to clarifying the contributions for children with disabilities expected from special and regular education.

A sizable body of knowledge is accumulating from this breadth of Federal and State outcome assessment activities. However, the purposes, content, procedures, accomplishments, experiences, issues and remaining needs have not been systematically ordered. Further, the various assessment indicators have not been mapped, in order for them to contribute to constructing a comprehensive system of indicators. Advancing the technical/implementation efforts characterizing current assessment efforts will require access to state-of-the-art knowledge and skills, experimentation, networking and ongoing exchanges. Strategic planning will be required by the Department and States in order to capitalize on opportunities for designing and using a comprehensive system of outcome indicators. Finally, secondary data-analysis activities can provide a means

for substantially enhancing the value of current Federal and State outcome assessment activities. By the end of this award, the activities of the project described below must have developed a comprehensive system of national outcome indicators (educational and post-school indicators); identified or developed effective measures for these indicators; provided guidance needed to resolve technical and implementation issues associated with defining, obtaining, analyzing, and interpreting that information; and determined the nature and extent of potential national comparability (feasible and desired) related to the comprehensive system of outcome indicators.

Purpose

The purpose of this priority is to support a cooperative agreement to establish a Center that will assist in the design, planning, development, implementation and use of a comprehensive system of national indicators to effectively assess outcomes for children with disabilities. The project must focus on essential elements of a comprehensive approach to advancing the progress being made to develop and implement outcome assessment initiatives. The approach must recognize the extent of current investments, the diversity and richness of knowledge and experience to be shared from these activities, and the benefits to be derived from supporting and supplementing rather than supplanting State initiatives. These elements recognize that achieving comparability across States in order to obtain a national portrait of the educational and post-school outcomes of children with disabilities is a developmental process. The approach integrates the following activities to be performed by the project.

Activities

1. *Characterize State of the Practice.* The project must develop and implement an ongoing tracking and reporting system that describes the status of the design, development, and implementation of a national comprehensive system of outcome indicators (CSI) on a State-by-State basis in order to document national progress. The tracking and reporting by the project must result in a data base which includes a description by State of: The purposes of its assessment activities, a description of who and what is being assessed, the measures used, the methods of data collection, and a description of the status and progress being made to implement a CSI. The project must update this information regularly but no less than annually. The project must maintain this data base in a manner which permits efficient access by interested parties.

2. *Conceptual Model of Indicators Assessment System.* The project must develop a conceptual framework for specifying a comprehensive system of outcome indicators. The development of the CSI must involve State education agency personnel, professional and parent organization representatives, local education agency personnel, individuals with disabilities, and other interested parties including persons from a diversity of racial, ethnic, and linguistic backgrounds. This involvement must address multi-cultural issues related to assessing educational and post-school outcomes of children with disabilities. This activity must include the identification of critical indicator variables, definition of the indicators, methods of measurement, and relationships among indicators and other variables. This model must consider the various purposes of outcomes assessment, e.g., measuring the direct effects of secondary school programming versus assessing the longer term effects of schooling in employment and independent living. The model must also distinguish special education indicators and regular education indicators to the extent necessary.

3. *Information Exchange.* The project must develop and implement communication and networking procedures which facilitate and promote the exchange of information among State education agency personnel, professional and parent organization representatives, local education agency personnel, individuals with disabilities, and other interested parties including persons from a diversity of racial, ethnic, and linguistic backgrounds interested in outcome assessment. These exchanges must be designed to effectively engage and support States and others in advancing the design and implementation of CSI activities. Information exchanges must include opportunities to identify issues, exchange solutions and experiences, and develop confidence and action plans for implementing next steps. Strategies to be employed include networking, preparation of materials which advance the design and implementation of CSI initiatives, meetings sponsored by the project, participation in meetings or conferences sponsored by others, maintenance of an electronic bulletin board through SPECIALNET, as well as other mechanisms.

4. *Solutions to Technical/Implementation Issues.* Annually, the project must identify and prioritize technical and implementation issues impeding efforts to assess outcomes of children with disabilities including outcomes of children with disabilities from the diversity of racial, ethnic, linguistic, and economic backgrounds. The project must conduct a range of activities designed to provide solutions to complex technical and implementation problems that confront States in the assessment of student outcomes. Examples of potential solutions might include the development of: Strategies for scaling; approaches for validating outcome indicators; methods for sampling students, schools, or variables; and procedures for aggregating data from samples. The conduct of these activities must include use of consultative expertise; development and piloting of solutions in cooperation with States; case studies of exemplary solutions; or other appropriate methods for providing needed solutions.

5. *Strategic Planning.* The project must design and implement an ongoing strategic planning process for advancing the development of a comprehensive system of outcome indicators for children with disabilities. This CSI must be capable of providing comparable data and allowing for the aggregation of data across States. The planning process must identify opportunities for advancing the development of a CSI, and consider impediments that hinder capitalizing on such opportunities, identify alternative actions to be taken by States and the Federal Government, identify the resources required to implement the plan, and develop a timeframe for the plan. The conduct of the strategic planning process must involve U.S. Department of Education representatives, State educational agency personnel, professional and parent organization representatives, local education agency personnel, individuals with disabilities, and other interested parties. This involvement must provide for minority participation and address multi-cultural issues related to assessing educational and post-school outcomes of children with disabilities. Annually, the project must report on the status of the implementation of this plan.

6. *Secondary Data Analysis.* The project must identify State extant data bases on student outcome measures that correspond to the conceptual framework of the CSI. Annually, the project must develop and prioritize a list of secondary analyses to be conducted on

the selected State extant data bases including, where possible, those that incorporate information on children from diverse racial, ethnic, linguistic, and economic backgrounds. The project must develop and implement all necessary procedures to: assure confidentiality and obtain required permissions in order to obtain and use the selected data bases; obtain necessary documentation to read and interpret the data files; and perform the proposed analyses. These analyses must incorporate, if possible, variables needed to clarify the interpretation of results to focus attention and guide program improvements. In addition, the project must synthesize available research findings into its reports as a means of enriching the interpretation and relevance of the secondary data analysis. These secondary data analysis activities will eliminate potentially redundant data collection, conserve resources from the very costly task of data collection, conserve resources from the very costly task of data collection, and contribute to expanding the benefits to be derived from the initial assessment activity. The use of secondary data will be the only outcome information actually analyzed as a part of this project.

Phasing

The Secretary will approve a cooperative agreement with a project period of sixty months subject to the requirements of 34 CFR 75.253(a) for annual continuation awards. For year four, the project must include a detailed analysis of the first three years progress and accomplishments, plus an assessment of the benefits to be derived from continuing the project, and if needed, any adjustments to the original work plan. In recognition that the first year level of effort is significantly less than years two–five, the year one activities of the Center will focus primarily on planning, and initiating activities.

The following documents will be produced by the end of year one:

(1) A listing for each State of the status of outcome assessment (Activity I).

(2) A conceptual framework with an initial listing of indicators that can be used to obtain input from interested organizations and individuals (Activity II).

(3) A plan for Information Exchange including target audiences, exchange methods, and a schedule for implementation (Activity III).

(4) A plan for Activity IV, Solutions to Technical/Implementation Issue.

(5) An initial strategic plan. (Activity V).

(6) A plan for Activity VI must be produced which will provide a procedure for identifying data bases, include a review of related literature for synthesis activity, and provide a schedule for implementing the plan.

(Program Authority: 20 U.S.C. 1418)

Dated: February 7, 1990.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies Program)

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DEPARTMENT OF EDUCATION

[CFDA No. 84.159]

Handicapped Special Studies Program Notice inviting applications for new awards for fiscal year 1990

Purpose of Program: To support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act, and to provide Congress and others with this information.

Applicable Regulations: (a) The Education Department General Administrative Regulation (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); (b) the regulations for this program in 34 CFR part 327; and (c) the Notice of Final Annual Evaluation Priorities published in this issue of the **Federal Register.**

HANDICAPPED SPECIAL STUDIES PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
State agency/federal evaluation studies projects (84.159A1).	April 30, 1990	$502.184	$133,000–$200,000	[1] $167,000	[3] Cooperative Agreements.	Up to 24.
State agency/federal evaluation studies projects—feasibility studies of impact and effectiveness (84.159A3).	April 23, 1990	200,000	40,000–60,000	[2] 50,000	[4] Cooperative Agreements.	Up to 18.
Study of anticipated services for students with handicaps existing from school (84.159B1).	April 27, 1990	378,000	N/A	[3] 378,000	[1] Cooperative Agreement.	Up to 36.
Center for outcome assessment for children and youth with disabilities (84.159C1).	May 7, 1990	293,000	N/A	[4] 293,000	[1] Cooperative Agreement.	Up to 60.

[1] $167,000 is the estimated average size of award for the *entire* project period (up to 24 months)

[2] $50,000 is the estimated average size of award for the *entire* project period (up to 18 months)

[3] Up to $378,000 is the estimated funding level for the first 18 months of the project. It is estimated that the second 18 month funding level will not exceed $250,000.

[4] Up to $293,000 is the estimated funding level for the first year of the project. It is estimated that the remaining four years of the project will be funded at a level not to exceed $500,000 per year.

FOR APPLICATIONS OR INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3524–M/S 2640), Washington, DC 20202. Telephone: (202) 732–1099.

Authority: 20 U.S.C 1418.

Dated: February 28, 1990.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

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federal register

Tuesday
March 6, 1990

Part III

Department of Education

Office of Special Education Programs

Applications for New Awards Under Training Personnel for the Education of the Handicapped for Fiscal Year 1990; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.029H and 84.029U]

Application Notice for New Awards Under Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Withdrawal notice.

SUMMARY: An Application Notice for fiscal year 1990 for the State Education Agency Program grants under Training Personnel for the Education of the Handicapped was published on January 3, 1990, at 55 FR 198. The published application notice (1) Set forth the State Educational Agency (SEA) allocations made by the Department pursuant to 34 CFR 319.20 (84.029H); and (2) announced the competition for the funds available to SEAs only pursuant to 34 CFR 319.21 (84.029U).

Substantial comment opposing the announcement of the 84.029U competition was provided by the limited constituency (State Education Agencies only) eligible to apply for grants under that competition. The comments indicated that the funds set aside for the 84.029U competition would be more effectively utilized if allocated across a larger number of States as is possible under the 84.029H competition.

Therefore, the notice relating to the Training Personnel for the Education of the Handicapped program (84.029H and 84.029U) at 55 FR 198 is withdrawn. A new notice regarding 84.029H is published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frank S. King, Division of Personnel Preparation, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732-1086.

Authority: 20 U.S.C. 1432.

(Catalog of Federal Domestic Assistance No. 84.029H&U: Training Personnel for the Education of the Handicapped)

Dated: February 28, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-4981 Filed 3-5-90; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education Programs

[CFDA No. 84.029H]

Applications for New Awards Under Training Personnel for the Education of the Handicapped for Fiscal Year 1990

Program Purpose: The Secretary funds a mandatory State grant program to assist State Educational Agencies in establishing and maintaining preservice and inservice training programs that prepare personnel or supervisors of such personnel to meet the needs of infants, toddlers, children, and youth with handicaps. This program is funded under section 632(a) of the Education of the Handicapped Act, as amended, and 34 CFR 319.20. Any activities assisted under this program must be consistent with the personnel needs identified in the State's comprehensive system of personnel development. Based on a distribution of funds in accordance with the national child count formula under 34 CFR 319 20(a)(1) with a minimum allocation of $75,000, as provided in 34 CFR 319.20(a)(2), individual State allocations are:

Alabama	$87,821
Alaska	75,000
Arizona	75,000
Arkansas	75,000
California	366,816
Colorado	75,000
Connecticut	75,000
Delaware	75,000
District of Columbia	75,000
Florida	176,928
Georgia	75,000
Hawaii	80,042
Idaho	75,000
Illinois	209,692
Indiana	93,470
Iowa	75,000
Kansas	75,000
Kentucky	75,000
Louisiana	75,000
Maine	75,000
Maryland	76,155
Massachusetts	128,072
Michigan	139,159
Minnesota	75,000
Mississippi	75,000
Missouri	85,658
Montana	75,000
Nebraska	75,000
Nevada	75,000
New Hampshire	75,000
New Jersey	148,902
New Mexico	75,000
New York	250,746
North Carolina	97,097
North Dakota	75,000
Ohio	170,633
Oklahoma	75,000
Oregon	75,000
Pennsylvania	181,763
Rhode Island	75,000
South Carolina	75,000
South Dakota	75,000
Tennessee	86,970
Texas	275,882
Utah	75,000
Vermont	75,000
Virginia	99,194
Washington	75,000
West Virginia	75,000
Wisconsin	75,000
Wyoming	75,000
Puerto Rico	75,000
American Samoa	75,000
Guam	75,000
Northern Marianas	75,000
Republic Of Palau	75,000
Virgin Islands	75,000

In addition to the basic grant, States may be awarded up to $50,000 (per State) in additional funds based on the quality of their application as determined by the selection criteria in 34 CFR 319.22.

Eligible applicants should use the application forms included in the application notice which was published in the **Federal Register** on January 3, 1990, at 55 FR 198.

Deadline for Transmittal of Applications: April 6, 1990.

Deadline for Intergovernmental Review: June 5, 1990.

Available Funds: $7,100,000.

Estimated Number of Awards: 57.

Project Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74, 75, 77, 79, 80, 81, and 85; and 34 CFR part 319. Final program regulations for this program were published in the **Federal Register** on January 3, 1990, at 55 FR 194.

FOR FURTHER INFORMATION CONTACT: Frank King, Division of Personnel Preparation, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3094-2651), Washington, DC 20202. Telephone: Frank King (202) 732-1086.

Authority: 20 U.S.C. 1432.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: February 28, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-4982 Filed 3-5-90; 8:45 am]

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Federal Register

Tuesday
March 6, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 13

Rules of Practice for FAA Civil Penalty Actions; Proposed Rule and Notice of Public Meeting

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Notice No. 90-8]

Rules of Practice for FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites public comment on policy issues and proposed changes to the rules of practice regarding the FAA's civil penalty authority in actions not exceeding $50,000 for a violation of the Federal Aviation Act of 1958, or any rule, regulation, or order issued thereunder. At the conclusion of a hearing before the House Subcommittee on Aviation of the Committee on Public Works and Transportation in November 1989, the FAA agreed to reexamine several objections to the rules of practice raised by individuals and by organizations representing air carriers, airport operators, and pilots. In addition to soliciting written comments, the FAA also will hold a public meeting to allow interested persons to comment orally on the issues and proposed changes raised herein. These comments will assist the FAA in its consideration of changes to the rules of practice to be applied in future and, where appropriate, pending civil penalty actions.

DATES: Written comments on the notice of proposed rulemaking must be received on or before March 30, 1990. The FAA has published concurrently with this notice, but in a separate section of the **Federal Register**, a notice providing information on the date and location of the public meeting.

ADDRESSES: Written comments, in triplicate, on this notice may be mailed or delivered to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Room 915G, Docket No. 25690, 800 Independence Avenue SW., Washington, DC 20591. Comments submitted on the notice must be marked "Docket No. 25690." Comments may be inspected in the Rules Docket (Room 915G) between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Denise Daniels Ross, Special Assistant to the Chief Counsel (AGC-3), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3773.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice of proposed rulemaking (NPRM) is issued to solicit broad public participation in rulemaking proceedings on specific areas of the rules of practice in civil penalty proceedings. Interested persons are invited to participate in this rulemaking proceeding by submitting such written data, views, or arguments as they may desire. Comments must identify the regulatory docket number or notice number of this document and must be submitted in triplicate to the address listed above. All comments received on or before the closing date for comments will be considered before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments must submit with their comments a preaddressed postcard on which the following statement is made: "Comments to Docket No. 25690." The postcard will be date and time stamped and returned to the commenter. All comments submitted in response to this notice will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel involved in this rulemaking will be filed in the docket.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On August 31, 1988, by final rule, the FAA promulgated rules of practice (53 FR 34646; Sept. 7, 1988) for civil penalty actions conducted under a statutory amendment (Pub. L. 100-223; Dec. 30, 1987) to the Federal Aviation Act of 1958 (FA Act). That amendment empowers the Administrator to assess civil penalties, not to exceed $50,000, for violations of the FA Act and the FAA's safety regulations promulgated thereunder. Under this program, a civil penalty may be assessed only after notice and an opportunity for a hearing on the record. In the final rule, the FAA invited interested persons to comment on the rules of practice.

On March 17, 1989, the FAA issued a detailed disposition of the 20 comments submitted on the rules of practice, responding to the commenters' objections to specific provisions of the rules of practice. 54 FR 11914; March 22, 1989. In the disposition of comments, the agency explained the purpose of the rules of practice and discussed its expectations of the manner in which cases would proceed under those rules.

The Air Transport Association of America (ATA) filed a petition for review in the United States Court of Appeals for the District of Columbia (No. 89-1195), challenging the agency's promulgation of the final rule and the rules of practice for civil penalty actions. Several persons in their individual capacity, the Aircraft Owners and Pilots Association (AOPA), the National Air Carrier Association (NACA), the Air Line Pilots Association (ALPA), and America West intervened in support of ATA's petition for review. Briefs have been filed in that action and oral argument was held on February 2, 1990. The agency's position on the legal issues is articulated in the brief filed with the court. This NPRM is not intended to address the legal issues or arguments involved in that case.

The House Subcommittee on Aviation of the Public Works and Transportation Committee held a hearing on November 15, 1989, to consider an extension of the FAA's authority to assess civil penalties administratively. The FAA and representatives of the aviation industry, among others, testified about the FAA's authority and the rules of practice implementing that authority. On November 22, 1989, shortly before Congress concluded its legislative session, a 4-month extension of the FAA's authority was passed (Pub. L. 101-236). The President signed that bill into law on December 15, 1989. Under that law, the FAA's authority to assess civil penalties will expire on April 30, 1990, unless further extended by Congress.

Purpose of the NPRM

This document is intended to fulfill a commitment made by the agency to the members of the House Subcommittee on Aviation of the Committee on Public Works and Transportation at the hearing held on November 15, 1989. As the FAA repeated at the hearing, the rules of practice provide significant and substantial procedural safeguards and meet all requirements governing the

procedural rights of persons and entities charged with violations. Administrative adjudication of civil penalties is an effective and expeditious means of prosecuting aviation safety and security violations, and, in particular, is a far more efficacious procedure than one in which penalties may be adjudicated only in a United States district court. The authority granted by Congress contributes to the maintenance and improvement of aviation security and safety by providing swifter, more certain enforcement and increased accountability for violations of critical safety and security regulations.

At the hearing, the rules of practice received a significant amount of criticism from the witnesses representing the aviation community. The agency acknowledges that the nature and extent of this criticism resulted in only a 4-month extension of the FAA's authority. At the conclusion of the Congressional hearing, the FAA agreed to review the objections raised by those members of the aviation community who testified at the hearing and who previously commented on the rules. This effort is not intended to provide another forum for litigating matters that are before the United States Court of Appeals. Instead, this document is intended to invite comment on changes to the rules of practice proposed herein and on the public interest and policy served by amending the rules of practice in the manner suggested by participants at the Congressional hearing. Interested persons may offer changes, different from those proposed herein by the agency, to the rules addressed in this notice; commenters are asked to justify the policy and practical benefits expected from their suggested changes.

In March 1990, the FAA anticipates that an agency-requested study of the civil penalty assessment authority and the rules of practice implementing that authority, commissioned by the Administrative Conference of the United States (ACUS), will be completed and a final report of the study will be available for review. On January 22, 1990, the FAA received a copy of a draft report prepared for ACUS. The report provides an independent evaluation of the agency's rules of practice for hearings conducted under its civil penalty assessment authority. The agency has examined the draft report in sufficient detail to propose changes to the rules of practice that address the recommended revisions to the rules of practice contained in that report. The FAA will include a copy of the draft report in the public docket for this rulemaking.

Because the authority given to the Administrator has been extended only temporarily, the FAA must proceed expeditiously with any rulemaking action that may follow this notice. Consequently, the comment period for this NPRM is relatively short. It is important that the aviation community understand that the speed with which the agency is proceeding is not intended to circumvent meaningful comment. Instead, the FAA requests the aviation community's cooperation in providing reasoned and constructive comment on the issues discussed in this notice within a relatively brief time period.

DISCUSSION: Complaints about the FAA's rules of practice in civil penalty actions under $50,000 have been advanced by a number of aviation groups, aviation attorneys, and other organizations and persons. The FAA has responded to the objections raised by the aviation community on numerous occasions, including in its disposition of comments, and in other documents directed to different audiences. The agency briefly referenced the objections in its Report to Congress on the efficacy of the Civil Penalty Assessment Demonstration Program, submitted in July 1989. The Department of Justice, on the FAA's behalf, set forth the Government's legal position on a number of these issues in its detailed brief in the litigation pending before the United States Court of Appeals. The agency also explained its rules of practice in a comprehensive response to Chairman Oberstar in preparation for the subcommittee's hearing. The FAA has included a copy of the disposition of comments, the agency's Report to Congress, the Justice Department's brief, and the agency's response to Chairman Oberstar in the public docket for review by interested persons.

At this point, the particular objections of the aviation community appear to have coalesced into discrete categories. Specifically, these complaints focus on several areas of the rules of practice perceived to be biased in favor of the prosecution, to afford less process than desired in on-the-record hearings, or simply contrary to the interests of alleged violators. Those areas in which specific questions have been raised either by the Subcommittee members, by those who have commented previously, and by those who testified at the hearing, are discussed below. Comments on the rules of practice submitted after promulgation of the final rule are contained in the public docket. The FAA also has included in the public docket a copy of a letter from the president of the Air Transport Association of America, and interlineated changes to the rules of practice supported by ATA, for comment by interested persons.

Following discussion of each of the objections that have been most commonly raised, the FAA in this notice proposes a specific revision to the rules of practice. These proposed changes are based upon the information and material submitted thus far by those persons who have commented on the rules and who testified at the Congressional hearing. While the scope of this notice is limited to specific sections of the rules of practice, commenters may propose alternatives different from those suggested by the agency and submit supporting information for their alternatives.

1. *Orders of Civil Penalty.* Section 13.202 states, in pertinent part, that an "order of civil penalty" is "an order issued after a person requests a hearing * * * and which is filed with the docket clerk as the complaint in the proceedings." Section 13.208(a) states that "* * * an order of civil penalty shall serve as the complaint * * * *"

Objections have been raised that issuing an "order of civil penalty" prior to a hearing creates an apparent presumption of guilt before any hearing has been held and may discourage alleged violators from contesting the allegations set forth in the complaint. In accordance with § 13.202 and § 13.208(a) of the rules, an order of civil penalty is issued solely to serve as the complaint containing the allegations to be proven by the agency at a hearing. This step follows the issuance initially of a notice proposing the penalty and opportunities for an informal conference and written responses to the charges. This process is identical to current practice before the National Transportation Safety Board (NTSB) but many have suggested, in effect, that the Board's procedures not be followed in this instance. While the agency does not believe that any alleged violator would suffer any adverse consequences as a result of this provision, the agency proposes in this document a change in nomenclature to allay any putative fears.

Based on the information submitted thus far, the FAA proposes to change the designation "order of civil penalty" to "complaint" throughout the rules of practice and redefine "complaint" in § 13.202, the "definitions" section of the rules of practice. Section 13.16(h) ("order of civil penalty") also would be revised to reflect that the agency will issue a "complaint" if a hearing is requested pursuant to the rules. The FAA has

included all sections of the rules that would be affected by the redesignation. Because an administrative law judge would no longer issue a decision affirming, modifying or reversing an "order," the FAA proposes to insert language providing that an administrative law judge would issue a decision "that affirms, modifies, or reverses the allegations contained, or the civil penalty sought, in a complaint." Sections 13.16(l) and 13.232(a). The FAA seeks comment on this or any other alternative that commenters believe would improve the rules of practice in this specific regard, with a discussion of benefits or other consequences expected to arise from any such change.

2. *Separation of functions.* Section 13.203(b) states, in pertinent part:

> Any agency attorney engaged in the performance of prosecutorial functions in a case shall not, in that case or a factually related case, participate in, or advise the FAA decisionmaker regarding, an initial decision or any appeal to the FAA decisionmaker* * * *

It has been noted by some that the rules of practice do not also expressly provide for the separation of investigatory and adjudicatory functions performed by agency personnel and do not expressly insulate administrative law judges from those who investigate or prosecute civil penalty actions. The present rules expressly address only the separation of prosecutorial and adjudicative functions because some personnel employed in the same office (the Office of the Chief Counsel) participate in one or the other of those functions.

In its detailed response to the Subcommittee on Aviation, the FAA advised that the agency is structured in a manner such that persons who normally investigate violations are employed within agency offices that are separate from the offices that house those who assist in the decisionmaking function. The omission of specific reference to separation of investigative and adjudicative functions was not intended to allow off-the-record communication between persons involved in those functions and the agency is aware of no instance in which separation of those functions has not been observed.

However, so that what is already true in practice is reflected in the rules, the FAA proposes to amend § 13.203 of the rules of practice. The agency proposes to include an express prohibition directed to agency employees, including inspectors or other investigators, and attorneys in the extremely rare case that they may be involved in an investigation. Thus, those persons who participate in an investigation would be prohibited from advising (as opposed to testifying in a particular case) any person who performs an adjudicatory function in a case, or a factually-similar case. Also, the FAA proposes to expand § 13.203(b), (c), and (d) to reflect the division of labor and supervisory functions that were explained in the FAA's **Federal Register** announcement regarding separation of functions. 54 FR 1335; Jan. 13, 1989. Thus, the rules of practice would show clearly the separation of those agency employees who advise the Administrator and those who investigate or prosecute civil penalty actions.

In addition, the FAA proposes to amend the rules of practice specifically to restrict communications between agency employees and administrative law judges who issue initial decisions. While this restriction now exists in the Administrative Procedure Act and has been strictly observed by agency employees and administrative law judges, the practice can be codified. Commenters are invited to address the necessity and desirability of adding such a provision.

3. *Effect of Admissions.* Some have objected to a sentence in the rules of practice (§ 13.220(l)(3)), which provides that the FAA may use, in a subsequent enforcement proceeding, formal admissions made by an alleged violator in a previous civil penalty action. The relevant sentence states:

> Any matter admitted or deemed admitted [pursuant to a written request for admission] under this section that results in a finding of violation may be used by the Administrator in a subsequent enforcement proceeding.

Objectors to this provision urge that this gives an "advantage" to the government, without a corresponding benefit to an alleged violator.

As the FAA has previously stated, the parties in these proceedings are not symmetrical and those who defend civil penalty actions are not similarly situated with the agency in these actions. So that the agency can determine whether this section should be expanded to become "symmetrical," commenters are invited to describe the circumstances under which persons charged with a violation would have a comparable need to use admissions by agency personnel made in a previous case.

In the absence of such comment, the agency is inclined simply to delete the sentence in § 13.220(l)(3) quoted above, as many commenters have already requested, and so proposes in this document. Such deletion would not appear to have a significant effect on the agency's prosecution of civil penalty actions. It also would not affect agency consideration of prior violations in future cases, so long as the agency otherwise could consider such prior violations. (See the discussion of the "compromise" issue.) The FAA requests comment on any consequences of expanding or deleting the provision.

4. *Opinion Testimony, Hearsay Testimony, and FAA Employee Testimony.* Section 13.227 states, in pertinent part:

> An employee of the agency may testify in a proceeding governed by this subpart only as to facts, within the employee's personal knowledge, giving rise to the incident or violation.

Objections to this section focus on a perceived limitation on the expert testimony of FAA employees and an apparent disparity between the government and private parties in that the rules do not similarly address the testimony of employees of private parties. While the agency has previously explained the sound basis for this section, the FAA proposes to amend this section to assuage the fears of some that the fairness of a hearing may be affected by the operation of this provision.

As to the first objection, the phrases "within the employee's personal knowledge" and "giving rise to the incident or violation" were never intended to, and do not in context, limit introduction of relevant and probative evidence. Nevertheless, the FAA acknowledges that the phrase "within the employee's personal knowledge" facially suggests the inadmissibility of hearsay testimony otherwise allowed under the rules of practice. Therefore, the FAA proposes to eliminate those phrases from the rule by deleting the second sentence of § 13.227 quoted above. Thus, FAA employees could testify as to any fact relevant to a disputed issue, and hearsay testimony by agency employees would be admissible on the same basis as hearsay testimony by any other witness. The FAA believes that the rule as revised would address the commenters' concerns about the appearance or possibility of restricting factual testimony by the agency's experts. Commenters should address the proposal posed above or suggest other alternatives. Commenters should address the policy behind whatever suggestion they propose in their comments.

Some commenters also objected to the first sentence of § 13.227, which allows agency employees to testify as experts or opinion witnesses only for the FAA.

One option to address the "disparity" objection would be to provide that the FAA may not use expert or opinion testimony from employees of an alleged violator, in accordance with its current practice. The rule then would ensure that opinion testimony of employees of private parties would only be used by those parties. However, after review of this section and the draft report to ACUS, the FAA does not believe that such a provision is necessary.

Instead, the FAA has decided to retain the narrow restriction in the rule as written. The section appropriately restricts only agency employees with respect to their expert or opinion testimony while employed by the FAA, without restricting their factual testimony and without so limiting expert or opinion testimony proferred by private parties. The FAA believes the current provision is necessary because it would be nearly impossible to distinguish "official" and "unofficial" testimony of government employees in different cases. Moreover, the FAA believes that the public interest would not be served by the confusion that might arise over an FAA employee's expert or opinion testimony.

Some commenters may object to keeping this restriction. Nevertheless, it must be observed that the limitation on expert and opinion testimony by agency employees only reflects, and was included in the rules to inform those not familiar with, longstanding rules promulgated by the Office of the Secretary of Transportation governing the testimony of all DOT employees in legal proceedings. 49 CFR 9.5(a). Therefore, while the FAA could delete this sentence from its own rules of practice in civil penalty actions, as some in effect have asked, commenters must be mindful that a similar provision would continue to exist in the rules of the Office of the Secretary, governing all employees in the Department of Transportation. Deleting this section from the rules of practice would not affect equally binding departmental rules and, thus, would not change the limitation on testimony by agency employees with respect to expert or opinion testimony.

5. *Written Arguments.* Section 13:231(a) addresses argument during a hearing and states, in pertinent part:

> During the hearing, the administrative law judge shall give the parties a reasonable opportunity to present oral arguments on the record * * * Only in a clearly complex or unusual case, the administrative law judge may request or the parties may agree to file written arguments * * *

Section 13.231(b) addresses final oral argument and states, in pertinent part:

> At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law * * * and supporting arguments * * *

Section 13.231(c) addresses posthearing briefs and states:

> Only in a clearly complex or unusual case, the administrative law judge may request or the parties may agree to file written posthearing briefs, instead of final oral argument, before the administrative law judge issues an initial decision in the proceedings.

Some have stated that the rules of practice prohibit written motions before and during a hearing and written arguments at the conclusion of a hearing except in clearly complex and unusual cases. The commenters claim that this "ban" precludes alleged violators from effectively presenting their case to the administrative law judge. The FAA notes that the sections quoted above apply only to motions during a hearing and posthearing briefs. Written motions and supporting arguments made before a hearing are covered by § 13.218, which does not distinguish between straightforward or relatively simple cases and "clearly complex or unusual" cases.

The agency included this provision in the rules to save the parties time, effort, and costs in relatively simple disputes that do not require extensive research, elaborate or detailed presentation, or legal debate. In addition, it was believed that those persons who choose to represent themselves or to appear without counsel might benefit from such a provision. The agency is concerned that the critics of this section have not focused on its benefits to such persons.

The FAA requests comment on whether submission of written briefs in support of motions made at the hearing or closing arguments might best be left entirely to the discretion of the parties, to the discretion of the administrative law judge, or to some agreement among the parties and the administrative law judge. Commenters who support submission of written briefs in all cases should address the costs and benefits that may be expected. If a commenter believes that written submissions should be allowed in some but not all cases, the commenter should describe the types of cases in which written submissions are desired and the basis for the commenter's choices. Commenters should discuss whether, if the matter were left entirely to the discretion of the administrative law judge, such discretion should be unfettered or limited by considerations of the convenience of the parties, complexity of the case, representation of a party by counsel, or the amount of a proposed civil penalty.

The FAA specifically requests comment on the extent to which an administrative law judge should be authorized to require written briefs where a party expressly waives that opportunity and, instead, wishes to present argument orally. In considering the interests of those persons who are not represented by counsel, commenters should advise whether a provision in the rules, ensuring that no adverse inference is drawn from a party's failure to file a brief, would be necessary or appropriate.

While inviting comment on the issues raised above, the FAA proposes to delete the phrase "only in a clearly complex or unusual case" in § 13.231 of the rules of practice. In its place, the FAA proposes to insert language in those sections of the rule quoted above, stating that written submissions during the hearing and posthearing briefs would be allowed only in those cases where the administrative law judge finds that written argument is necessary or required for resolution of the issues or the case. The FAA proposes to delete the phrase "only in a clearly complex or unusual case" in § 13.232(c) and to include similar language to that noted above in that section regarding written decisions by administrative law judges.

The FAA believes that the proposal would address the concerns of commenters who prefer written submissions while preserving the presumption in favor of oral argument and decisions in straightforward or routine cases. Thus, under the proposed rule, the administrative law judge may determine, within the context of a specific civil penalty action, whether written submissions in support of motions during a hearing or posthearing briefs are necessary to help resolve factual disputes or issues of law.

6. *Modification of Civil Penalty by an Administrative Law Judge.* A sentence in § 13.232(a) states:

> If the administrative law judge reduces the civil penalty contained in the order of civil penalty, the administrative law judge shall provide a basis supporting the reduction in civil penalty.

This sentence has been criticized as improperly shifting the burden of justifying a civil penalty from the agency attorney to the administrative law judge. Because administrative law judges do not increase a civil penalty proposed in

an order of civil penalty, there is no bias in the rule simply because it refers only to "reduction" of a civil penalty. Moreover, the rules of practice expressly place upon the agency prosecutor at all times the burden of proving the agency's case, which includes establishing the amount of a proposed civil penalty, by a preponderance of the evidence in the record. See § 13.223 and § 13.224 (a) and (b).

This requirement is not unique to the FAA; among other agencies with similar provisions, the FAA patterned this section after decisions of the NTSB. Indeed, the NTSB requires even more of a showing (a "clear and compelling basis"), and the agency is not aware of any previous criticism of NTSB practice that it improperly shifts the burden of proof. This section was intended to implement the requirement in section 557(c) of the Administrative Procedure Act that a decisionmaker rendering initial decisions provide an adequate explanation for a particular ruling or order, and to enable the parties, the Administrator, or a court on appeal to understand the basis for the civil penalty amount in the initial decision. Commenters should address whether it is appropriate for an administrative law judge, who finds that all the facts and violations alleged in the agency's complaint have been established, to nonetheless reduce the proposed sanction without stating any reason for such reduction.

One option would be to require an administrative law judge to issue an opinion that sets forth, in every case and in sufficient detail, an explanation for each finding, order, or decision made by the administrative law judge. The bases for each initial decision in its entirety would then be available for the parties, the Administrator on appeal, and any reviewing court of appeals. The FAA is not convinced that a detailed articulation of every decision or ruling made by an administrative law judge is required or necessary. However, commenters should feel free to address whether such a provision is desirable and whether it would have any adverse effects.

To address concerns that § 13.232(a) reverses the burden of proof and creates the appearance of bias in favor of the agency, the FAA proposes to delete the fourth sentence in § 13.232(a) that requires an administrative law judge to provide a supporting basis for a reduction of a civil penalty. In addition, based on the recommendation made in the draft report to ACUS, the FAA proposes to modify the second sentence of § 13.232(a), which now requires an administrative law judge to include in an initial decision the "* * * findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon *. * * *the reasonableness of any sanction contained in the order of civil penalty* * * *" The proposed modification would substitute for the underlined phrase the language "the amount of any civil penalty found appropriate by the administrative law judge." The proposed change would require an administrative law judge to explain the basis for adopting, modifying, or reversing the allegations contained, or the amount of a civil penalty sought, in a complaint. The agency seeks comment on any adverse effect or benefit of the proposal. It is important to emphasize here that the FAA is not seeking anything more than is contemplated under the Administrative Procedure Act. The proposal does not alter an administrative law judge's role in adjudicating the agency's complaint and is not intended to imply that only a detailed and elaborate articulation will satisfy this requirement.

7. *Compromise of Penalties.* While not directly related to the procedures adopted in the rules of practice, considerable comment has been made on the agency's current policy against civil penalty settlements that result in no formal finding of a violation by the alleged violator. Changes to the agency's policy in this regard need not necessarily result in a change to the rules of practice. Nevertheless, the FAA believes that public comment on this issue will aid the agency's review of existing settlement policy and assist in the formulation of possible changes to that policy.

Because this issue was misunderstood by some at the Congressional hearing, it bears emphasizing that the use of the word "compromise" here is distinct from the use of the word to denote a compromise of the amount of the civil penalty. The term "compromise" also is often referred to as a "settlement." A compromise or settlement of the amount of civil penalty has always been and still is available for all civil penalty cases, regardless of amount. (See § 13.16(p) for cases involving civil penalties of $50,000 or less and § 13.15(c)(3–5) for cases involving civil penalties in excess of $50,000.) In this NPRM, the word "compromise" is used to refer to resolution of a civil penalty action without a formal finding of violation. Commenters are invited to suggest other terms, both for a settlement of the amount of a civil penalty and a compromise resulting in no finding of violation, that may clarify this distinction in the agency's rules of practice.

As noted in the disposition of comments on the final rule, the agency's current practice is to issue an order under its authority assessing a civil penalty in all cases in which the agency is satisfied that a violation has occurred and that a civil penalty is appropriate. Such a policy can provide accountability for safety violations and thereby serve the public interest as a deterrent. The agency based its current policy on its reading of the statutory authority in question (i.e., authority to "assess" penalties under the program "upon written notice and finding of violation"). 49 U.S.C. App. 1475. In establishing this policy, the agency construed the statute to mean that Congress intended that the FAA exercise its authority in every instance rather than continue to accept "compromise" penalty payments without formal findings of violations.

The Chairman and other members of the Subcommittee, as well as critics of the agency's policy, have questioned whether the statute enabling the program requires, as opposed to authorizes, formal findings of violation. While the enabling language does state that the Administrator "may assess a civil penalty," it has been the agency's view that Congress intended this as general, discretionary authority to establish a program for administrative adjudication of cases under $50,000, not discretion to initiate some cases under this authority and to initiate others under the previous (and also current, as to cases in excess of $50,000) "compromise" system.

The agency is willing to consider a change in policy to allow compromises, in which it is expressly recognized that the alleged violator does not admit the allegations in a notice or complaint, but agrees to pay a penalty in order to avoid further litigation. At this time, the agency has not developed criteria to distinguish between cases involving civil penalties of $50,000 or less that could be compromised without a finding of violation and those that should not be so compromised. Nor have critics thus far offered suggestions for making such distinctions. Commenters should address whether there are particular types of cases in which the public interest would be served or disserved by such compromises, or discuss the general criteria that would be appropriate for selecting cases in which such compromises should be acceptable to the agency. Commenters should

discuss any interests, both public and private, that might be affected by such compromises. The commenters also should discuss all relevant factual or policy bases for the agency's use of such compromises.

Commenters should discuss whether such compromises would enable a party to avoid collateral use of the order assessing civil penalty (i.e., use in subsequent court and administrative proceedings) and the public and private interests in avoiding such collateral use. Or, should such compromises be considered as relevant to that person's compliance history to enable at least the FAA, and perhaps the NTSB, to take them into account in the consideration of appropriate action in the event of a future violation by that person? The FAA requests comment on whether it is in the public interest for the FAA to consider previous civil penalty payments for alleged regulatory violations in subsequent administrative or judicial proceedings involving the same person or entity. If not, why not? To what extent, if any, should previous civil penalty payments be considered relevant by FAA, DOT, NTSB, or the courts in subsequent proceedings? If so, under what circumstances, in what sort of proceedings, and what amount of weight should be accorded such payments? Commenters should discuss, in light of public and private interests, the ability of the agency to restrict, and the purpose for restricting, any future use of a compromised civil penalty.

In this regard, the FAA notes that, in economic enforcement proceedings before the Department of Transportation, counsel for the Office of the Secretary have entered into compromise or settlement agreements with alleged violators in which the latter neither admit nor deny the allegations against them. In general, these agreements state expressly that the allegations asserted therein are nevertheless considered "findings" and they will be considered by the Department in determining appropriate action for future violations by the same person or entity. The FAA could adopt a similar policy and could publish its policy by incorporating it into FAA Order 2150.3A, Compliance and Enforcement Program, or by "codifying" that policy in § 13.16 of the regulations.

For example, § 13.16(p) could include a subsection or a statement to the effect that the agency may accept the payment of money and enter into "a civil penalty compromise agreement, in which a person charged with a violation does not admit the allegations contained in a notice of proposed civil penalty, if such an agreement is in the public interest." Commenters are encouraged to discuss the merits of including such language in § 13.16. Commenters also are asked to discuss whether an amendment of § 13.16 should state in which cases the agency could consider such agreements or whether such a description would unduly limit the agency's authority to enter into such agreements. Commenters also may describe the compromise or settlement policies of other Federal agencies that the commenters believe should be considered by the FAA.

Of considerable interest to the agency is how accountability for violations of safety regulations could be preserved or enhanced by payment of a civil penalty without any adjudication or finding. How could the agency ensure that the payment of money without a finding of violation will not be treated by large commercial aviation entities as merely a cost of doing business? The authority to assess civil penalties was not sought initially by the FAA and has never been used as a means of collecting money. The challenge facing the agency is to ensure that payments of small civil penalties, without more, serve the objective of deterrence as effectively as civil penalty payments that contain findings of violations. The FAA specifically requests comment on whether compromises, in which there are only allegations and not findings of violations, contribute to a system of accountability for past violations and deterrence of future violations. Commenters are invited to suggest any alternatives to current FAA policy that achieve both the agency's interest in ensuring accountability and a party's interest in resolution of a case upon payment of civil penalty, but without an admission of guilt or a finding of violation.

In order to facilitate agency consideration of a policy to provide for some sort of compromise of civil penalties, commenters are encouraged to address the details or mechanics of their proposals so that the agency can formulate and evaluate an appropriate policy. For example, should the agency consider an offer to compromise only if it is made at certain times (e.g., any time before a hearing; before a hearing is requested and the administrative process has been invoked by a respondent; at the discretion of the FAA; any time in the proceedings, including before or after an administrative law judge issues an initial decision or the Administrator issues a final agency order)? Should the agency revise the definition or the title of an "order assessing civil penalty" so that this document could encompass a compromised civil penalty action? Or should the agency issue a separate and different document in compromised civil penalties? If so, what kind of document should the agency issue, and what title should be given to that document, in cases that have been compromised to reflect payment of a civil penalty but also to show that a respondent has not admitted the allegations contained in a notice?

8. *Conforming amendments and editorial changes.* Several sections of the rules of practice, other than those to which specific objections and comments have been directed, have been set forth in this NPRM. Some sections of the rules have been included herein so that the rules will be consistent internally. For example, the definition of "party" and "respondent" would be changed to reflect the proposed redesignation of an "order of civil penalty" as a "complaint." Those sections of the rules that would be affected by the proposed redesignation have been set forth completely in the NPRM. Similarly, the definition of an "agency attorney" and the delegation of authority to initiate and assess civil penalties in § 13.16(c) would be revised to mirror the proposed changes to § 13.203 (separation of functions).

In several other sections, the FAA is proposing several editorial and conforming amendments to clarify the rules of practice and to reflect accurately the agency's statutory authority in certain matters. For example, the authority citation for part 13 would be revised to incorporate a recent statutory amendment to the FA Act. On November 18, 1988, the President signed the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (Pub. L. 100–690). That amendment, among other things, empowers the Administrator to initiate and assess civil penalties not exceeding $50,000 for violations of title V of the FA Act, or a rule, regulation, or order issued thereunder, related to aircraft registration or recordation of title documents. The Administrator's authority in these civil penalty actions is identical to the authority granted under section 905 (the Civil Penalty Assessment Demonstration Program) except that it is permanent. Title V already was referenced in § 13.16(a); however, although not excluded under § 13.201 (the applicability section for the rules of practice), the authority to bring these civil penalty actions was not referenced specifically in the authority citation. In order to implement that statutory authority at the earliest

possible opportunity, the FAA proposes to reference the statutory amendment in the authority citation.

In addition, Congress in 1986 increased to $10,000 the maximum civil penalty applicable where a person who boards or attempts to board any aircraft in air transportation or intrastate air transportation with a concealed deadly or dangerous weapon on or about his or her person or property that would be accessible in flight. 49 U.S.C. App. 1471(d). While the agency has clear authority to seek a penalty up to $10,000 for such a violation, § 13.16 and the rules of practice should accurately reflect this authority. The FAA proposes simply to delete the reference to "$1000" in § 13.16(a)(1), believing that reference to a specific dollar amount in that section is not necessary. Accordingly, any statutory civil penalty which is sought by the agency under its civil penalty assessment authority would be subject to the rules of practice in subpart G, as amended.

The FAA requests comment on the proposed conforming and editorial changes discussed above. However, it must be emphasized that the FAA does not want to delay the rulemaking action that would address the objections to the specific rules of practice that have been raised by the aviation community. Commenters should note any problems with the proposed conforming or editorial changes that might unduly delay adoption of the other changes proposed herein.

Regulatory Evaluation and Economic Consequences

The FAA has determined that this notice of proposed rulemaking is not a major rule under the criteria of Executive Order 12291; thus, the FAA is not required to prepare a draft Regulatory Impact Analysis under either the Executive Order or the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

In nonmajor rulemaking actions, the DOT Regulatory Policies and Procedures require the FAA to prepare a draft regulatory evaluation, analyzing the economic consequences of proposed regulations and quantifying, to the extent practicable, the estimated costs and anticipated benefits and impacts of proposed regulations. This notice invites comment on policy issues and proposes changes to the agency's rules of practice. If adopted, the FAA believes that the proposed changes to the rules of practice discussed in this NPRM, aimed more at perception than at substance, would not significantly alter the basic process by which civil penalties not exceeding $50,000 are adjudicated within, and assessed by, the agency. Instead, these proposals would address only those sections of the rules of practice that have been the subject of criticism and specific comment by the aviation industry. For example, the proposals discussed in this NPRM would change the designation of a document filed in civil penalty actions, expand certain sections of the rules to comport with existing statutes or regulations, eliminate several sentences that are perceived to favor the agency, and expand the discretion of an administrative law judge regarding submission of certain written documents in civil penalty actions.

Preliminarily, the FAA has not identified any specific economic consequences that would be attributed to the procedural changes discussed in this notice. Moreover, the FAA does not anticipate that the proposed changes would result in any significant costs or substantial benefits to respondents or the agency. If there are any costs or benefits associated with the changes to specific sections of the rules, the FAA expects that the any economic consequences or impacts would be minimal under the criteria of applicable Executive Orders, statutes, or regulations. If that expectation is accurate, the FAA would not be required to prepare a full regulatory evaluation of the changes adopted in any final rulemaking document.

Nevertheless, the agency will analyze the economic consequences, if any, of the proposed changes to the rules of practice. So that the FAA may prepare, if necessary, a full regulatory evaluation of changes to the rules of practice or the agency's policies, commenters are encouraged to submit for the agency's review any data regarding potential costs or expected benefits and impacts of any suggested changes made by the agency or proposals made by the commenters.

Commenters should discuss any significant economic impact, positive or negative, on small entities, as those terms are defined in the Regulatory Flexibility Act of 1980, that may arise from adopting the proposals in this notice. Commenters also should note any expected impact on trade opportunities for U.S. firms operating outside the United States or foreign firms operating within the United States. At this point, the FAA believes that neither small entities nor trade opportunities for businesses would be affected if the proposed changes were adopted. It is the FAA's preliminary opinion that the proposals in this NPRM do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment under the criteria of Executive Order 12612. Commenters should identify and discuss any Federalism issues that may be adversely affected if the proposals are adopted.

Conclusion

The FAA has determined that the NPRM is not a major regulation under the criteria of Executive Order 12291 and, thus, this action does not warrant preparation of a draft Regulatory Impact Analysis. The FAA also expects that the proposals in this NPRM, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the FAA has been unable to identify any economic consequences associated with the proposals in this NPRM, the agency has not prepared a full draft regulatory evaluation for this rulemaking. The FAA anticipates that there would be little or no economic cost or benefit associated with adoption of these proposals; thus, preparation of a full regulatory evaluation would not be required if the proposed changes are adopted. Because of the interest expressed by the public on the rules of practice, the FAA has determined that this notice of proposed rulemaking is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

The Proposed Amendments

Accordingly, the FAA proposes to amend part 13 of the Federal Aviation Regulations (14 CFR part 13) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 is revised to read as follows:

Authority: 49 U.S.C. App. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1428, 1471, 1475, 1481, 1482(a), (b), and (c), and 1484–1489, 1523 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1471(a)(3) (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); 49 U.S.C. App. 1475 (Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act, as revised, 49 U.S.C. 106(g)); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and

Capacity Expansion Act of 1987); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR 1.47(f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.16 is amended by revising the title of the section and revising paragraphs (a)(1), (c), (e)(3), (g)(3), (h), (l), and (m) to read as follows:

§ 13.16 Civil Penalties: Federal Aviation Act of 1958, as amended, involving an amount in controversy not exceeding $50,000; Hazardous Materials Transportation Act.

(a) * * *

(1) Any person who violates any provision of Title III, V, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

* * * * *

(c) The authority of the Administrator, under sections 901 and 905 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act, to initiate and assess civil penalties for a violation of those Acts, or a rule, regulation, or order issued thereunder, is delegated to the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center. The authority of the Administrator to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of assessed civil penalties, is delegated to the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center.

(e) * * *

(3) The person shall request a hearing, pursuant to paragraph (i) of this section, in which case a complaint shall be issued and shall be filed with the hearing docket clerk.

* * * * *

(g) * * *

(3) The person shall request a hearing, pursuant to paragraph (i) of this section, in which case a complaint shall be issued and shall be filed with the hearing docket clerk.

(h) *Complaint.* A complaint shall be issued if the person charged with a violation requests a hearing in accordance with paragraph (e)(3) or paragraph (g)(3) of this section.

* * * * *

(l) *Hearing.* If the person charged with the violation requests a hearing pursuant to paragraph (e)(3) or paragraph (g)(3) of this section, a complaint shall be issued and shall be filed with the hearing docket clerk. The procedural rules in subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the administrative law judge shall issue, either orally on the record or in writing, an initial decision, including the reasons for the decision, that affirms, modifies, or reverses the allegations contained, or the civil penalty sought, in the complaint. If the administrative law judge affirms or modifies the allegations contained, or the civil penalty sought, in a complaint, the initial decision issued by the administrative law judge shall become an order assessing civil penalty if a party does not appeal the administrative law judge's initial decision to the FAA decisionmaker.

(m) *Appeal.* Either party may appeal the administrative law judge's initial decision to the FAA decisionmaker pursuant to the procedures in subpart G of this part. If a party files a notice of appeal pursuant to § 13.233 of subpart G, the effectiveness of the initial decision is stayed until a final decision and order of the Administrator has been entered on the record. The FAA decisionmaker shall review the record and issue a final decision and order of the Administrator that affirms, modifies, or reverses the initial decision. The FAA decisionmaker shall not assess a civil penalty in an amount greater than the amount stated in the complaint.

* * * * *

3. Section 13.201 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 13.201 Applicability.

(a) * * *

(1) A civil penalty action in which a complaint has been issued for an amount not exceeding $50,000 for a violation arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), or a rule, regulation, or order issued thereunder.

(2) A civil penalty action in which a complaint has been issued for a violation arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*) and the Hazardous Materials Transportation Act (49 U.S.C. 1801, *et seq.*), or a rule, regulation, or order issued thereunder.

* * * * *

4. Section 13.202 is amended by removing the definition "Order of Civil Penalty" and by revising the definitions "Agency attorney," "Complaint," "Party," and "Respondent" to read as follows:

§ 13.202 Definitions.

"Agency attorney" means the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Assistant Chief Counsel for a region or center, or an attorney on their staff who prosecutes a civil penalty action. An agency attorney shall not include the Chief Counsel, the Assistant Chief Counsel for Litigation, or any attorney on their staff who advises the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker or who is supervised by a person who provides such advice in a civil penalty action.

* * * * *

"Complaint" means a document issued by an agency attorney pursuant to the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder, or the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder, which has been filed with the Hearing Docket after a hearing has been requested pursuant to § 13.16(e)(3) or § 13.16(g)(3) of this subpart.

* * * * *

"Party" means the agency attorney, or the respondent named in a complaint.

* * * * *

"Respondent" means a person to whom a civil penalty is directed and who has received a complaint.

5. Section 13.203 is revised to read as follows:

§ 13.203 Separation of functions.

(a) Civil penalty proceedings, including hearings, shall be prosecuted by an agency attorney.

(b) An FAA employee engaged in the performance of investigative or prosecutorial functions in a civil penalty action shall not, in that case or a factually-related case, participate or give advice in a decision by the administrative law judge or by the FAA decisionmaker on appeal, except as counsel or a witness in the public proceedings. The prohibition described in this paragraph shall begin at the time that a notice of proposed civil penalty is issued.

(c) The Chief Counsel, the Assistant Chief Counsel for Litigation, and attorneys on their staff will advise the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker.

6. Section 13.208 is amended by revising paragraph (a) to read as follows:

§ 13.208 Complaint.

(a) The agency attorney shall serve the original complaint on the person requesting the hearing.

* * * * *

7. Section 13.209 is amended by revising paragraphs (a), (d), and (f) to read as follows:

§ 13.209 Answer.

(a) *Writing required.* A person who receives a complaint shall file a written answer to the complaint, or a motion pursuant to § 13.218(f)(1–4) of this subpart, not later than 30 days after service of the complaint. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten.

* * * * *

(d) *Specific denial of allegations required.* A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny each allegation in each numbered paragraph of the complaint. A general denial of the complaint is deemed a failure to file an answer. Any statement or allegation contained in the complaint that is not specifically denied in the answer is deemed an admission of the truth of that allegation.

* * * * *

(f) *Failure to file answer.* A person's failure to file an answer without good cause is deemed an admission of the truth of each allegation contained in the complaint and an order assessing civil penalty shall be issued.

8. Section 13.218 is amended by revising paragraphs (f) (1), (2), and (3) to read as follows:

§ 13.218 Motions.

* * * * *

(f) * * *

(1) *Motion to dismiss for insufficiency.* A party may file a motion to dismiss the complaint for insufficiency instead of an answer. If the administrative law judge denies the motion to dismiss the complaint for insufficiency, the party who received the complaint shall file an answer not later than 10 days of service of the administrative law judge's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder, or a violation of the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder.

(2) *Motion to dismiss.* A party may file a motion to dismiss a complaint instead of an answer, specifying the grounds for dismissal.

(ii) * * *

(ii) If the administrative law judge grants a motion to dismiss and terminates the proceedings with a hearing, the agency attorney may file an appeal pursuant to § 13.233 of this subpart. If the administrative law judge grants a motion to dismiss in part, the agency attorney may appeal the administrative law judge's decision to dismiss part of the complaint under the provisions of § 13.219(c) of this subpart. If required by the decision on appeal, the respondent shall file an answer with the administrative law judge and shall serve a copy of the answer on each party not later than 10 days after service of the decision on appeal.

(3) *Motion for more definite statement.* A party may file a motion for more definite statement of any pleading which requires a response under this subpart. A party shall set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and shall submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A party may file a motion requesting a more definite statement of the allegations contained in the complaint instead of an answer. If the administrative law judge grants the motion, and the agency attorney does not supply a more definite statement not later than 15 days after service of the order granting the motion, the administrative law judge shall strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent shall file an answer with the administrative law judge and shall serve a copy of the answer on each party not later than 10 days after service of the order of denial.

(ii) *Answer.* A party may file a motion requesting a more definite statement if an answer fails to clearly respond to the allegations in the complaint. If the administrative law judge grants the motion, the respondent shall supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge shall strike those statements in the answer to which the motion is directed. A party's failure to supply a more definite statement is deemed a failure to answer and the unanswered allegations in the complaint are deemed admitted.

9. Section 13.219 is amended by revising paragraph (c)(4) to read as follows:

§ 13.219 Interlocutory appeals.

* * * * *

(c) * * *

(4) A ruling by the administrative law judge granting, in part, a respondent's motion to dismiss a complaint pursuant to § 13.218(f)(2)(b).

10. Section 13.220 is amended by revising paragraph (l)(3) to read as follows:

§ 13.220 Discovery.

* * * * *

(l) * * *

(3) *Effect of admission.* Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

11. Section 13.227 is revised to read as follows:

§ 13.227 Testimony by agency employees.

An employee of the agency may not testify as an expert or opinion witness, for any party other than the agency, in any proceeding governed by this subpart.

12. Section 13.231 is revised to read as follows:

§ 13.231 Argument before the administrative law judge.

(a) *Arguments during the hearing.* During the hearing, the administrative law judge shall give the parties a reasonable opportunity to present oral arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request or the parties may agree to file written arguments during the hearing where the administrative law judge finds that written argument is necessary or required for resolution of the issues or the case.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Posthearing briefs.* The administrative law judge may request or the parties may agree to file written posthearing briefs, instead of final oral argument, before the administrative law

judge issues an initial decision in the proceedings where the administrative law judge finds that written argument is necessary or required for resolution of the issues or the case. If a party files a written posthearing brief, the party shall include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge shall give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

13. Section 13.232 is revised to read as follows:

§ 13.232 Initial decision.

(a) *Contents.* The administrative law judge shall issue an initial decision at the conclusion of the hearing and may affirm, modify, or reverse the allegations contained, or the civil penalty sought, in the complaint. In each oral or written decision, the administrative law judge shall include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, the amount of any civil penalty found appropriate by the administrative law judge, and a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge shall make copies of that initial decision available to all parties and the FAA decisionmaker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge shall issue the initial decision and order orally on the record.

(c) *Written decision.* The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief where the administrative law judge finds that a written initial decision is necessary or required for resolution of the issues or the case. The administrative law judge shall serve a copy of the written initial decision on each party.

(d) *Order assessing civil penalty.* If the administrative law judge affirms or modifies the allegations contained, or the civil penalty sought, in a complaint, the initial decision issued by the administrative law judge shall become an order assessing civil penalty.

Issued in Washington, DC on February 28, 1990.

Gregory S. Walden,
Chief Counsel.

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BILLING CODE 4910-13-M

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14 CFR Part 13

[Docket No. 25690]

Rules of Practice for FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting to provide an opportunity for public comment on proposed changes and policy issues related to the FAA's rules of practice implementing the civil penalty authority in actions not exceeding $50,000 for a violation of the Federal Aviation Act of 1958, or any rule, regulation, or order issued thereunder. At the conclusion of a hearing before the House Subcommittee on Aviation of the Committee on Public Works and Transportation in November 1989, the FAA agreed to reexamine several objections to the rules of practice raised by individuals and by organizations representing air carriers, airport operators, and pilots. In addition to this public meeting, the FAA is soliciting written comments on the matters raised in a notice of proposed rulemaking published concurrently with this notice. The written comments and the comments received at this meeting will assist the FAA in its consideration of potential changes to the rules of practice to be applied in future and, where appropriate, pending civil penalty actions.

DATES: The public meeting will be held on March 12, 1990, from 9:00 a.m. to 4:00 p.m. Written comments on the notice of proposed rulemaking must be received on or before March 30, 1990.

ADDRESSES: The public meeting will be held in the FAA Auditorium, Federal Aviation Administration, 800 Independence Avenue, SW., 3rd Floor, Washington, DC 20591.

Comments on the notice of proposed rulemaking should be submitted, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Room 915G, Docket No. 25690, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted on the notice of proposed rulemaking must be marked "Docket No. 25690." Comments may be inspected in the Rules Docket (Room 915G) between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Denise Daniels Ross, Special Assistant to the Chief Counsel (AGC-3), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3773.

SUPPLEMENTARY INFORMATION

Background

The House Subcommittee on Aviation of the Public Works and Transportation Committee held a hearing on November 15, 1989, to consider an extension of the FAA's authority to assess civil penalties administratively. The FAA and representatives of the aviation industry, among others, testified about the FAA's authority and the rules of practice implementing that authority. At the hearing, the rules of practice received a significant amount of criticism from the witnesses representing the aviation community.

On November 22, 1989, shortly before Congress concluded its legislative Session, a 4-month extension of the FAA's authority was passed (Public Law 101-236). The President signed that bill into law on December 15, 1989. Under that law, the FAA's authority to assess civil penalties now will expire on April 30, 1990 unless further extended by Congress.

At the conclusion of the Congressional hearing, the FAA agreed to review objections raised by those members of the aviation community who testified at the hearing and who previously commented on the rules. The FAA issued a notice of proposed rulemaking (NPRM) on February 28, 1990, published in a separate part of today's **Federal Register**.

In the NPRM, the agency discussed the most widespread objections to specific rules of practice. Specifically, these complaints focused on several areas of the rules of practice perceived to be biased in favor of the prosecution, to afford less process than desired in on-the-record hearings, or simply contrary to the interests of alleged violators. In the NPRM, the agency requested comment on possible changes to the

rules and a discussion of the public interest and policy served by amending the rules of practice in the manner suggested by participants at the Congressional hearing.

Purpose of the Public Meeting

The NPRM issued on February 28, 1990, is intended to fulfill a commitment made by the agency to the members of the House Subcommittee on Aviation of the Committee on Public Works and Transportation at the hearing held on November 15, 1989. In furtherance of that commitment, this public meeting affords an additional opportunity for interested persons to comment on the proposed changes, the policy and practical effect of the proposals, and to offer and justify other specific changes to the rules. Consistent with the agency's stated position in the NPRM, the FAA is not seeking comment at this public meeting on the legal issues contained in a petition for review filed by the Air Transport Association of America, currently pending before the United States Court of Appeals for the District of Columbia.

Because the authority given the Administrator has been extended only temporarily, the FAA must proceed expeditiously with this rulemaking action. Consequently, the comment period for the NPRM and the notice provided for this meeting are relatively short. As stated in the NPRM, it is important that the aviation community understand that the speed with which the agency is proceeding is not intended to circumvent meaningful comment. Instead, the FAA requests the aviation community's cooperation in providing reasoned and constructive comment on the policies discussed in the NPRM within a relatively brief time period. The purpose of this meeting is to provide for the expeditious collection of widest possible public comment on the issues raised in the notice. The FAA intends to issue a final rulemaking document soon after the comment period for the NPRM closes.

Meeting Procedures

The meeting will be informal in nature and will be conducted by officials of the FAA. The meeting will be open to all persons on a space-available basis. There will be no admission fee or charge to attend the meeting.

Any person wishing to make a presentation to the FAA will be asked to sign an attendance list and to estimate the amount of time needed for any presentation. This procedure will permit allocation of an appropriate amount of time for each speaker. The FAA may allocate the time available for each presentation in order to accommodate all speakers. The FAA will make every effort to see that each person on the attendance list has an opportunity to address the panel of FAA officials. The FAA may adjourn the meeting at any time if all persons present have had the opportunity to speak.

Any person who wishes to present a position paper or written comments dealing with the issues raised in the NPRM to the panel is encouraged to submit those comments to the docket prior to the meeting but may present the comments to the panel at the meeting. The meeting will be recorded to ensure that each speaker's oral comments are noted accurately. A copy of the transcript of the oral comments and any written comments received at the hearing will be placed in the public docket for this rulemaking.

Issued in Washington, DC on February 28, 1990.

Gregory S. Walden,

Chief Counsel.

[FR Doc. 90-4976 Filed 3-1-90; 10:00 am]

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federal register

Tuesday
March 6, 1990

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27, 29, and 133
Airworthiness Standards; Rotorcraft Regulatory Review Program Amendment No. 4; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27, 29, and 133

[Docket No. 25570, Amdts. 27-26, 29-30, and 133-12]

RIN 2120-AA29

Airworthiness Standards; Rotorcraft Regulatory Review Program Amendment No. 4

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts new and revised airworthiness standards for certification of airframe and related equipment on both normal and transport category rotorcraft. In addition, one amendment changes an operating rule affecting external load operators. These amendments grew out of a rotorcraft regulatory review program and the recognition by both government and industry that updated safety standards are needed. These amendments provide a high level of safety in design requirements, while removing certain unnecessary existing burdens and better utilizing the unique characteristics and capabilities of rotorcraft.

EFFECTIVE DATE: April 5, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Major, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0111, telephone (817) 624-5117.

SUPPLEMENTARY INFORMATION:

Background

These amendments are the last in a series of amendments issued as a part of the Rotorcraft Regulatory Review Program. The first of the series of amendments in this program addressed applicability and icing certification standards and was published in the **Federal Register** on January 31, 1983 (48 FR 4374). The second of the series of amendments dealt with rotorcraft flight characteristics and systems and equipment and was published in the **Federal Register** on November 6, 1984 (49 FR 44422). The third in the series upgraded operation and maintenance rules and was published in the **Federal Register** on November 7, 1986 (51 FR 40692). The fourth in the series involved the powerplant, rotor drive mechanism, and their associated support systems, and was published in the **Federal Register** on September 2, 1988 (53 FR 34198).

These amendments are based on Notice of Proposed Rulemaking (NPRM) No. 88-7 published in the **Federal Register** on March 21, 1988 (53 FR 9190). In addition, a correction notice, containing minor editorial changes, was published in the **Federal Register** on April 5, 1988 (53 FR 11162).

All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of nonsubstantive changes and minor changes of an editorial and clarifying nature have been made to the proposals based upon relevant comments received and upon further review by the FAA. Except as indicated herein, the proposals contained in the notice have been adopted without change.

A total of six commenters responded to the notice. The commenters represented airframe manufacturers, airworthiness authorities of other countries, rotorcraft owners and operators, and individuals. A majority of the commenters agree with the substance of the NPRM and, in addition, recommend several changes. These recommendations and their dispositions are contained in the following discussion.

Discussion of Comments

Sections 27.307-29.307 Proof of Structure

The notice proposed to clarify these sections by revising paragraph (a) of each section to require proof of compliance with the strength and deformation requirements of subpart C (parts 27 and 29) for the environmental conditions that the structure will experience in operation. These standards apply to metallic as well as composite (nonmetallic) structures.

One commenter supports the proposal for § 29.307 and notes that the requirement also applies to metal components, since the strength of bonded joints in metal structures can be susceptible to temperature and humidity. Another commenter, commenting on both §§ 27.307 and 29.307, agrees with accounting for potential environmental effects but recommends a change to ensure that mandatory full-scale environmental tests would not be required unless necessary. Rather than the wording "in the environment," the commenter recommends "accounting for the environment" to allow coupon/element environmental tests or analysis when based on proper substantiation. The FAA agrees, and the proposals are adopted with this change. In addition, an editorial change is made to both standards. The word "structures" is added after "those" in the second sentence of each paragraph (a) to clarify the use of structural analysis.

Sections 27.337/29.337 Limit Maneuvering Load Factor

The notice proposed to clarify these standards by revising paragraphs (a) and (b) and adding new subparagraphs (b)(1) and (b)(2) to § 27.337.

The revisions, which also make the two sections parallel, reflect present certification practice in the application of each of these sections. One commenter questions whether the proposal for § 29.337 clarifies the standard, but provided no alternate wording. Therefore, these amendments are adopted as proposed.

Sections 27.351/29.351 Yawing Conditions

The notice proposed to add a new § 27.351 for normal category rotorcraft yawing conditions. Rotorcraft manufacturers have advocated yawing standards for part 27, and several designs have been voluntarily substantiated for yawing conditions. This amendment ensures that objective and limited yawing conditions are considered and uniformly applied for structural design of normal category rotorcraft. No comments were received on the proposal for § 27.351.

The notice also proposed to revise § 29.351 to establish a maximum sideslip angle of 15° at V_{NE} (never-exceed speed) or V_H (maximum speed in level flight with maximum continuous power), whichever is less, and 90° at 0.6 V_{NE}. The design sideslip angle for airspeeds between these two speed points must vary directly with the airspeed. Smaller sideslip angles may be used when substantiated. One commenter was not certain that the specific figure of 15° sideslip at V_{NE} will always be conservative but recommended no other value. Fifteen degrees has been used in the past, and experience shows that it provides a safe structural design standard for rotorcraft.

Therefore, these proposals are adopted without change.

Sections 27.391/29.391 Control Surface and System Loads, General

References to new §§ 27.427 and 29.427 concerning unsymmetrical loads on the horizontal stabilizer need to be added to §§ 27.391 and 29.391 on control surfaces. In addition, a previous

omission is corrected by adding § 27.399 to the reference list in § 27.391. No comments were received, and these amendments are adopted as proposed.

Sections 27.395/29.395 Control System

The notice proposed to divide paragraph (b) of these sections into three subparagraphs for clarification of control boost or actuation systems and to add a new paragraph (b)(4) that contains an increase in minimum design load. The increase in design load accounts for possible jamming, ground gusts, control inertia, or friction.

One comment was received on § 29.395 supporting the proposal. These amendments are adopted as proposed.

Sections 27.427/29.427 Unsymmetrical Loads

The notice proposed to add new and identical §§ 27.427 and 29.427 requiring application of unsymmetrical loads when evaluating horizontal stabilizing surfaces on normal and transport category rotorcraft. Design loads derived from a rational analysis or the proposed empirical design load distributions may be used.

One commenter addressed the proposal for new § 29.427 for transport rotorcraft and agrees that unsymmetrical load distribution on the rotorcraft empennage is different from airplanes due to the unique configuration of rotorcraft. The commenter also agrees with the necessity for a standard but notes that the requirements of paragraph (b)(1) are arbitrary and may not be conservative for certain designs. In the absence of more data, the commenter recommends that the load on the empennage should be related to the maximum loads obtained from all the symmetrical design conditions that have been used to design the rotorcraft as a whole, rather than the proposed loading case.

The FAA has evaluated this comment for both the normal and transport category rotorcraft proposals and disagrees with the suggestion to omit the proposed design loads. Specified design loads are a viable means of achieving safe structural aircraft designs. Further, the specified load distribution is conservative in comparison to the existing standard for small airplanes. The commenter does not provide a substantive argument or recommend an additional factor or design loads to eliminate the alleged lack of conservatism of the design loads or conditions proposed in the notice. The proposal for §§ 27.427 and 29.427 are, therefore, adopted without change.

Sections 27.501/29.501 Ground Loading Conditions: Landing Gear with Skids

The notice proposed to reduce the inward- and outward-acting sideload standard by 50 percent for skid landing gear on normal and transport category rotorcraft. In addition, the notice proposed to distribute the special empirical skid tube, mid-point obstruction design loads evenly.

One commenter supports the proposal for § 29.501 as being a more realistic design requirement. These standards are adopted as proposed.

Section 29.519 Hull type rotorcraft: Water Based and Amphibian

The notice proposed to remove the reference to "limited amphibian" from this section since limited amphibian configurations are obsolete. The notice also proposed to require consideration of wave profiles and the most critical wave and further proposed to define a reference line for the vertical descent velocity.

One comment was received. The commenter supports the proposal and offers an editorial suggestion of inserting the conjunction "and" between the words "hull" and "auxiliary" in paragraph (a). The FAA agrees, and the proposal is adopted with this change.

Sections 27.563/29.563 Structural Ditching Provisions

The notice proposed extensive revisions to these sections to add new standards that would provide a consistent basis for design and evaluation of rotorcraft ditching configurations.

Three commenters responded to these proposals.

One commenter does not recommend a change in the proposals but notes that guidance material for yaw attitude and forward velocity contained in Advisory Circulars (AC) 27-1, Certification of Normal Category Rotorcraft, dated August 29, 1985, and 29-2A, Certification of Transport Category Rotorcraft, dated September 16, 1987, is not consistent with the proposal. The FAA recognizes this, and future changes to the advisory circulars will reflect these amendments.

Another commenter recommends a change to the introductory text of § 27.563 to include an evaluation of survival equipment operation as well as the rotorcraft structure for a particular sea state. The commenter strongly believes that sea state considerations should be an integral part of rotorcraft ditching certification; however, a specific sea state was not recommended.

These standards concern structural strength of the rotorcraft and the associated aircraft flotation devices and not the use or application of the survival equipment. The operating rules are the proper place for such equipment rules. To add either an evaluation of survival equipment operation or a specific seat state to the standard is beyond the scope of the notice. However, guidance material, such as that found in AC's 27-1 and 29-2A, refers to Sea State 4, as defined by the World Meteorological Organization, as an appropriate sea state to consider in pursuing ditching configuration approvals under §§ 27.801 and 29.801.

A third commenter, responding to § 29.563, agrees with adopting a structural design standard for rotorcraft ditching. The commenter notes that one-engine failure and a resulting "ditching" are not as likely as a total power failure or other failure that results in an autorotational landing or ditching at sea. In the comenter's view, the requirement should reflect "an autorotational descent" not a "one-engine-out touchdown." Further, due to "difficulty in achieving accurate control over an autorotational landing," the commenter suggests a forward velocity at touchdown of up to two-thirds of the best autorotational descent speed (V_y) rather than the 30 knots or a lower descent speed as proposed. The commenter further recommends a 6.5 feet per second limit vertical descent speed based on the landing gear design standard rather than the proposed 5 feet per second limit descent velocity which is derived from the minor crash conditions of §§ 27.561(b)(3) and 29.561(b)(3).

Adopting these additional recommendations is beyond the scope of the notice. An editorial change was made to clarify paragraph (b)(1) in each standard by revising the last sentence to read "* * * the float deployed airspeed operating limit multiplied by 1.11." rather than "1.11 of the float deployed airspeed operating limit." Therefore, these proposals are adopted with the editorial change to paragraph (b)(1).

Sections 27.571/29.571 Fatigue Evaluation of Flight Structure

The notice proposed to revise the introductory text of paragraph (a) and paragraph (a)(4) of § 27.571 to require fatigue evaluation of the landing gear, assessment of the effects of the ground-air-ground cycle on the entire rotorcraft, and assessment of the effects of external cargo operations on the rotorcraft whenever approval of an external cargo configuration is requested.

As stated in the notice, a note may be added to the rotorcraft type certification data sheet to convey that an external cargo configuration (which is optional) was not presented for evaluation and approval. However, the type certificate applicant would normally present this type of a configuration for approval, and such a note would be unlikely.

One comment was received on § 27.571. The commenter recommends changes to the proposal to consider the operators who either do not conduct external load lift operations or who only conduct such operations infrequently. The commenter states that the proposal, if adopted without change, would place an undue burden (or penalty) on certain operators. In addition, the commenter states that it is possible to establish a factor that conservatively reduces the basic service life of affected components for each external load lift.

The proposal addressed optional configurations such as external cargo (load lift) operations and other high frequency, high power cycle operations. The FAA believes that this standard can be applied equitably to all operators. The comment relates more to the application of the proposed standard than to the standard itself, and application of the standard can be more appropriately addressed by examples in advisory material. Related draft advisory material for transport category rotorcraft fatigue evaluation was published in Draft AC 29.571-X, Fatigue Evaluation of Transport Category Rotorcraft Structure (51 FR 45424; December 18, 1986). Similar advisory material addressing types of operations and loading spectrum will be developed, if necessary, for normal category rotorcraft. The proposal for § 27.571 is, therefore, adopted as proposed.

The notice also proposed to amend § 29.571 in a manner similar to that proposed for § 27.571 to require fatigue evaluation of the landing gear, assessment of the effects of the ground-air-ground cycle on the entire rotorcraft (not just the landing gear), and assessment of the effects of applicable external cargo operations on a transport category rotorcraft. The FAA has proposed to amend § 29.571 in Notice 86-13, Rotorcraft Structural Fatigue and Damage Tolerance (51 FR 33704; September 22, 1986) by adding a requirement for flaw tolerance to the fatigue evaluation of transport category rotorcraft structure. Notice 86-13 includes the requirement proposed in Notice 88-7. Therefore, the proposal to amend § 29.571 in this rulemaking is not adopted.

Sections 27.613/29.613 Material Strength Properties and Design Values

The notice proposed to amend §§ 27.613 and § 29.613 to include material property design standards for rotorcraft materials that parallel the airplane standards, and to correct an address. Material property design standards are not affected by the aircraft type or category.

One commenter responded to the proposal to amend § 29.613 and notes that the proposed revision to paragraph (b) eliminates the need for a directive verb in proposed paragraph (d). The commenter recommends "may" instead of "must" in paragraph (d) to signify that applicants may use materials which meet published design values or which are otherwise satisfactory. The FAA agrees, and since this comment also applies to § 27.613, both sections have been changed. Except for the wording change in paragraph (d), the standards are adopted as proposed.

Sections 27.629/29.629 Flutter

The notice proposed to remove the word "part" and insert the words "aerodynamic surface" in these sections. These revisions prevent any misunderstanding since flutter is an aeroelastic phenomenon associated with aerodynamic surfaces, such as stabilizers, fins, control surfaces, wings, and rotor blades.

One comment was received on the proposal for § 29.629. The commenter contends that the proposed requirement is inadequate but did not submit a counterproposal. The commenter provides arguments and procedures for an analysis but concludes by recommending advisory material to encompass procedures, criteria, and concerns. The commenter's recommendation will be considered and may be included in future advisory material, but it is not appropriate for an objective design standard such as § 29.629. These proposals are, therefore, adopted without change.

Sections 27.663/29.663 Ground Resonance Prevention Means

The notice proposed to amend paragraph (a) of § 27.663 to include failure assessment and allow the use of analysis or tests to prove that a malfunction or failure of a single means will not result in ground resonance of the rotorcraft (dynamic instability of the rotorcraft while in contact with the ground). No comments were received on § 27.663, and this section is adopted as proposed.

In addition, the notice proposed to revise paragraph (a) of § 29.663 to include failure assessment and to allow the use of analysis or tests to prove that a malfunction or failure of a single means will not cause ground resonance of the rotorcraft. The notice also proposed to revise paragraph (b) to result in a standard parallel to present § 27.663(b).

One comment was received on § 29.663. The commenter recommends adding a specific level of reliability in paragraph (a) or initiating guidance material. The FAA will consider adding a reliability value to advisory material as the commenter recommends, but amending the standard is beyond the scope of the notice. It is noted that compliance with the standard may be achieved by means other than reliability methods; e.g., by showing that malfunction or failure of a single means will not cause ground resonance. In this way, a deterministic method rather than a probability assessment method may be employed. This section is adopted as proposed.

Sections 27.674/29.674 Interconnected Controls

The notice proposed to add new §§ 27.674 and 29.674 for interconnected controls. These proposed standards would require continued operation of the flight control systems after malfunction, failure, or jamming of an interconnected flight control or engine control for normal and transport category rotorcraft. These standards specifically include primary flight controls such as the cyclic and collective controls, if interconnected.

One commenter contends that these proposals are unrealistic and unnecessary in light of the present flight control design standards and the excellent service experience of primary flight controls, even for those that are interconnected. The commenter also states that safe flight is generally impossible after a malfunction, failure, or jam of a primary control. The commenter proposes to limit the standard to consideration of malfunctions of auxiliary controls when connected to primary flight controls since current state-of-the-art flight control system designs can address malfunctions of an auxiliary control when connected to a primary control. These systems allow continued safe flight and landing after such malfunctions. The FAA agrees, and the comment is incorporated.

Another comment was received on § 29.674 that applies equally to § 27.674. The commenter suggests inserting the word "primary" between "each" and "flight" for clarity and further suggests

that the examples given in the last clause of the proposal are confusing and should be deleted.

The FAA agrees with the commenter's recommendations and further agrees that the present standards provide for reliable primary control systems. Therefore, proposed §§ 27.674 and 29.674 are revised to apply to each primary flight control when connected to an auxiliary control, and the last clause, which contains examples, is removed. Advisory material will be used to provide examples. The amendments are also clarified by adding the words "and landing" after "safe flight." This completes the last and final phase of a safe flight. In addition, an editorial change to § 29.674 reverses the words "independently operate" to "operate independently" to agree with § 27.674. The amendments to §§ 27.674 and 29.674 are adopted with the changes discussed.

Section 27.685 Control System Details

The notice proposed to amend the standard for control system details by adding a new paragraph (d) for cable control system standards and new paragraphs (e) and (f), identical to § 29.685 (e) and (f) for control system bearing standards. This amendment adds design standards for a cable control system that are similar to those for transport rotorcraft control system found in § 29.685(d). No comments were received. The proposal is adopted without change.

Sections 27.727/29.727 Reserve Energy Absorption Drop Test

The notice proposed to clarify these sections by adding a definition for the collapse of any type landing gear on normal and transport category rotorcraft. One comment was received in support of these proposals. The proposals are adopted without change.

Section 29.755 Hull Buoyancy

The notice proposed to remove paragraph (b), which contains superfluous standards for limited amphibian hull buoyancy, and to remove the designator "(a)" from paragraph (a). Present §§ 29.519 and 29.803 for rotorcraft ditching configurations are sufficient. See the discussions of §§ 29.519 and 29.803 for further information. No comments were received, and the proposal is adopted without change.

Sections 27.783/29.783 Doors

The notice proposed to revise paragraph (b) of § 27.783 by removing the word "disc" following "rotor" to avoid possible confusion between rotorcraft rotors and turbine engine rotor discs. For passenger protection, the notice proposed to further revise paragraph (b) to require consideration of engine intakes, exhausts, and propellers so that the requirements parallel those of proposed § 29.783(b). No comments were received on § 27.783, and it is adopted as proposed.

The notice also proposed to revised paragraphs (b) and (c) of § 29.783 to clarify the standard and improve protection of passengers and other persons who use rotorcraft doors. Two commenters were received.

One commenter suggests retaining the sentence from present § 27.783(b) for the standard to require the location of passenger doors way from any rotor disc. The commenter, however, would rely on door operating procedures only when the door could not be located away from any rotor disc. The commenter supports the remaining aspects of the proposal. The FAA believes the amendment, as adopted, achieves the overall objective of the comment, but further advisory material may be developed, as necessary, to explain the standard concerning door location and/or procedures related to the potential hazards that are listed in the amendment.

Another commenter proposes adding a new pargraph (h) to refer to § 29.783(e) and exclude cargo, baggage, and service doors that are not suitable or approved as passenger exits. The FAA disagrees. As stated in the notice proposal for § 29.783, the FAA intends to require that "each external door" not "just the passenger doors" be included in the evaluation. Rotorcraft cargo and baggage doors are commonly loaded or unloaded with the engines running and rotors turning.

No commenters object to adding the phrase "persons crowding against doors, including inward opening doors" to paragraph (c). However, as an editorial oversight, the phrase "with the rotorcraft on the ground" was dropped from the second sentence in paragraph (c) in the notice. Other than adding this phrase back into the amendment as an editorial change to paragraph (c), § 29.783 is adopted as proposed.

Section 29.803 Emergency Evacuation

The notice proposed to remove and reserve paragraph (c) concerning limited amphibians (current helicopters are designed for ditching rather than limited amphibious operations) and to add new paragraphs (d) and (e). New paragraph (d) addresses and evacuation demonstration for certain rotorcraft designs, and paragraph (e) allows a combination of analysis and tests or demonstrations, as prescribed. The explanation in the notice contained a sequence for use in determining when a demonstration is required. Appendix D to part 29, adopted herein, contains the demonstration procedures.

One commenter contends that the proposal is confusing and does not achieve the objective expressed in the explanation. The commenter also raises questions about the standard, as related to exits, exit size, and the number of passengers, and suggests that a cabin seating capacity of less than 40 seats may be more critical than higher capacity arrangements. In addition, the commenter recommends an evacuation demonstration of all larger rotorcraft, while resting on one side, as an objective measurement of compliance with § 29.807(c)(1). The NPRM proposed an evacuation demonstration for rotorcraft resting on their sides for configurations that have only side exits and a maximum seating capacity of 10 or more passengers. The commenter states that a single, small roof exit complies with the present standard and the proposed standard but contends it may not suffice for rapid evacuation of the rotorcraft. The commenter also contends that the proposal would allow provision of a roof exit to exempt the rotorcraft from an evacuation demonstration. The commenter further suggests that demonstration criteria be related to 10 or more passengers per exit and suggests that the number of passengers should be related to the exit size.

The FAA disagrees with the commenter. The present certification standards for interior arrangements and exits have provided an acceptable level of safety for transport rotorcraft. The present exit locations and size, as related to the number of passengers, have proven satisfactory. The amendment adds explicit demonstration requirements rather than relying on the application of design standards alone. The amendment addresses the concerns for "dense" interior arrangements for either smaller or larger transport rotorcraft designs. An evacuation demonstration of every transport rotorcraft design has not been required in the past and is unnecessary. A second commenter requests that the FAA withdraw the proposals for paragraph (d)(3) of § 29.803, paragraph (c)(2) of § 29.807, and associated paragraph (b) of the new Appendix D that would require evacuation demonstrations with rotorcraft resting on their side for certain configurations. The commenter recommends a standard similar to current § 29.807(c). The commenter contends that a mandatory rollover evacuation demonstration is not

justified by service history and that the cost of such a demonstration would unduly restrain rotorcraft design flexibility without contributing to passenger safety. The commenter states that an evacuation demonstration with the rotorcraft resting on its side would cost from $500,000 to $800,000, disregarding liability insurance costs. This is significantly higher than the $125,000 to $300,000 cost range estimate in Notice 88–7 for the one-time evacuation demonstration with the rotorcraft upright. Since the concerns of the second commenter are beyond the scope of the notice, separate rulemaking will be necessary to achieve the intent of the commenter's proposal. Accordingly, proposed paragraph (d)(3) of § 29.803 is not adopted. Other than this change, the amendment is adopted as proposed. For comments on related changes, see § 29.807 and Appendix D.

Section 29.805 Flightcrew Emergency Exits

The notice proposed to amend the standard to ensure that crew exits are not obstructed in the event of a "ditching." One comment was received which supports the proposal. An editorial change is made to the first sentence of paragraph (c) by removing "may" and inserting "must." The proposal is adopted with this editorial change.

Sections 27.807/29.807 Passenger Emergency Exits

The notice proposed to amend paragraph (c) of § 29.807 to add options allowing approval of smaller transport rotorcraft designs having only side-of-fuselage exits. These options include (1) an evacuation demonstration; (2) design features to allow evacuation of rotorcraft having nine or less passengers with the rotorcraft on its side; or (3) design features that minimize the probability of the rotorcraft coming to rest on its side. One comment was received in support of this part of the proposal. As noted in the comments for § 29.803, a commenter objects to requiring an evacuation demonstration with the rotorcraft resting on its side and requests that proposed § 29.807 (c)(2) and (c)(3) be withdrawn. For the reasons stated in the discussions for § 29.803, the FAA agrees, and proposed paragraphs § 29.807 (c)(2) and (c)(3) are not adopted.

In addition, the notice proposed to amend the "ditching" exit standards in both §§ 27.807(d) and 29.807(d) to ensure the exits are not blocked during the conditions or obstructions noted.

One commenter responded to the proposals for both §§ 27.807(d) and 29.807(d). The commenter recommends changes (exit threshold below the water line) which would allow water to enter the cabin interior, thereby reducing the rotorcraft height above the water, improving the stability, and reducing the probability of capsizing in rough seas. The commenter acknowledges that stability on the water must be approved with the exits open and water inside the cabin.

The commenter justifies the recommendation by stating that the helicopter's stability on water can be significantly improved by reducing its center of gravity height above the water level. This improvement in stability compensates for the inconvenience of water over the threshold and inside the cabin, which cannot be avoided in rough seas anyway. Positive stability characteristics are essential for safety. The commenter suggests that larger ditching exits should be used to accommodate passengers who wear life jackets or survival clothing.

A commenter submitted an interpretation of the phrase "be above the water line" for the transport rotorcraft exit standard. The commenter states that operators, especially North Sea operators, support the interpretation to allow water above the exit threshold. The comment was directed at advisory material and not to the standard.

The FAA agrees that capsize stability would be improved by adopting these recommendations; however, they far exceed the scope of the notice to ensure that exits are usable. The commenters did not otherwise disagree with the proposal. The proposals for §§ 27.807(d) and 29.807(d) are, therefore, adopted without change.

Section 29.809 Emergency Exit Arrangement

The notice proposed to amend this standard for exit arrangement to include consideration of descent provisions with the landing gear damaged or the rotorcraft resting on its side and to provide specific criteria for the slide currently required for a floor level exit. The notice also proposed to allow a rope or other means to assist descent instead of the slide, provided an evacuation demonstration is successfully completed.

One comment was received. The commenter agrees with the intent to provide for damaged or disarranged landing gear in the demonstration but questions that necessity for a slide at a floor level exit when the exit threshold is less than 6 feet from the ground. Contrary to the commenter's statement, none is required by the standard. The commenter expresses concern with potential problems in complying with the proposal whenever the rotorcraft is resting on its side, but this concern is adequately addressed by the requirements of §§ 29.803 and 29.807. In addition, the commenter opposes use of a rope in place of a slide. Since the use of a rope is restricted to helicopters having 30 seats or fewer and requires an evacuation demonstration to validate the effectiveness of using the rope, the FAA disagrees.

Finally, the commenter suggests consideration of the words "appropriate assist means" rather than "slide" for paragraph (f). The FAA does not agree. The word "slide" is more appropriate and is derived from a similar standard, § 25.809(f)(1), for airplanes.

The proposal is, therefore, adopted without change.

Section 29.811 Emergency Exit Marking

The notice proposed to allow a 2-inch colored band outlining each exit release lever or device of each exit if the exit is also normally used for entering and leaving the rotorcraft. One comment was received which supports the proposal. The proposal is adopted without change.

Section 29.855 Cargo and Baggage Compartments

The notice proposed to amend the standard to allow small, accessible cargo and baggage compartments to be lined with passenger compartment materials rather than fire resistant materials.

One comment was received. The commenter believes protective breathing equipment should be required. The FAA disagrees because rotorcraft are typically unpressurized, have simple ventilation systems, fly at altitudes of 3,000 feet or less above the ground, and do not have integral supplemental oxygen systems. For rotorcraft with small, accessible compartments of 200 cubic feet or less, protective breathing equipment for appropriate crewmembers is unnecssary as an airworthiness standard. Protective breathing equipment, typically portable, may be imposed by the applicable operating rules when necessary for certain rotorcraft cargo operations. Therefore, the proposal is adopted without change.

Sections 27.861/29.861 Fire Protection of Structures, Controls, and Other Parts

The notice proposed to amend §§ 27.861 and 29.861 to allow use of fireproof material parts in areas affected by powerplant fires, in normal category and transport Category B rotorcraft,

without further proof or qualification. One comment was received on both proposals. The commenter notes that the definition of "fireproof" in § 1.1 of part 1 does not specify the temperature and time interval for which a fireproof part must continue to perform its intended function.

The commenter provided a hypothetical case which assumes a steel drive shaft is exposed to a 2,000 °F fire for 30 minutes. In the case, the steel drive shaft could sustain sufficient loss of stiffness to affect airworthiness adversely. The FAA finds the hypothetical case overly conservative and unreasonable. The FAA currently accepts use of fireproof parts, without further proof, in areas affected by aircraft powerplant fires as stated in §§ 23.865 and 25.865 for airplanes and § 29.861(d) for transport category A rotorcraft. The level of safety for § 27.861 is, in general, increased by adoption of the proposal, not decreased.

Also, the specific extreme case presented by the commenter may be adequately addressed, when necessary, by application of § 21.21(b)(2). The definition of fireproof advocated by the commenter agrees with the FAA-accepted definition such as that found in AC 23–2, "Flammability Tests," dated August 20, 1984; i.e., 2,000 °F exposure for 15 minutes. Specific design features for future rotorcraft designs may be evaluated, as they have in the past, by use of fireproof materials in conjunction with any other design consideration under § 21.21(b)(2).

Notwithstanding the concern of the commenter, the standards cited for airplanes and transport rotorcraft have been found to provide safe aircraft. The equivalent standard should be extended to normal category and transport category B rotorcraft as an option within the standards proposed in the notice. The proposals are, therefore, adopted without change.

Sections 27.865/29.865 External Load Attaching Means

The notice proposed to amend §§ 27.865 and 29.865 to allow use of a design factor less than 2.5 g's, provided the lower load factor is not likely to be exceeded by virtue of the rotorcraft characteristics and capability. It also proposed to exclude fatigue evaluation of the cargo attaching means except as stated in the requirements.

Two comments were received that apply to both sections. One commenter recommends significant changes to the proposal to address both a "vertical" type of Class B rotorcraft-load combination and a "nonvertical" type of Class C rotorcraft-load combination such as wire pulling or stringing. The commenter recommends removing the sections referenced in the proposal and adding phrases to allow use of a reduced design load factor, since the application of the specific sections does not implement the objective of the proposal. In addition, for the nonvertical type load (Class C or noncargo hook), the external load is primarily horizontal and the maximum maneuver load factor is well below 2.5 g's.

The commenter recommends a standard allowing use of a design "load factor due to flight and design characteristics for which authorization is requested * * *" In conjunction with the reduced load factor, the load direction would be "in any direction for which there is a possibility of loading."

The citation of the standards is essential to establish the rational design load factor, which is less than 2.5 g's. The commenter's recommendation may have merit, but the present standard and its predecessor have been used successfully for both vertical and nonvertical types of loads. Further, to reduce the design load factor below 2.5 g's, other than as proposed, is beyond the scope of the notice.

Another commenter agrees with the proposal but further recommends amending the driveshaft standard of § 27.935, Shafting joints, to require the applicant to list the maximum driveshaft misalignment angle and further prove that this angle will not be exceeded for all types of operation for which certification is requested. This recommendation is beyond the scope of the notice and is, therefore, not adopted. Additional advisory material may address the driveshaft misalignment problem encountered in certain external cargo operations.

One commenter recommends an editorial change to remove the word "of" and insert "times" in place thereof to clarify that the maximum external load is multiplied by the factor in the standard. The FAA agrees; however, instead of the word "times," the words "multiplied by" are being inserted to clarify the standard even further.

One additional comment was submitted specifically for proposed § 29.865. The commenter expresses dissatisfaction with the proposed reduction in the design limit load factor below 2.5 g's. The FAA notes that the reduction in load factor is related to the characteristics and capability of the rotorcraft design approved under the standards referenced. (For example, reduced load factors below 2.5 g's are already provided for in current § 29.337.) The commenter further notes fatigue substantiation is not required for the attaching means, and rotorcraft use in "external cargo" service results in temporary, high loads for the reasons cited by the commenter. Fatigue evaluation of external cargo attaching means was not proposed in the notice; failure of the attaching means is not considered a hazard to the rotorcraft because "emergency" release of the cargo is a typical feature and requirement.

The commenter also states that the effect of the external load and operations on the whole rotorcraft must be determined. The commenter offered examples such as swinging loads. However, the commenter would consider the proposal to amend § 29.865 acceptable if the fatigue substantiation proposal to amend § 29.571 were adopted. As noted above, the FAA has not adopted proposed § 29.571. The fatigue substantiation of the whole rotorcraft for certain heavy-lift operations has been proposed in Notice 86–13, and the issue raised by the commenter will be addressed in that proceeding, if adopted.

Therefore, the proposals to amend §§ 27.865 and 29.865 are adopted without change.

Section 29.1415 Ditching Equipment

The notice proposed to revise the equipment standard of § 29.1415 for ditching equipment to agree with the operating rules. The operating rules require enough liferafts to accommodate the occupants of the aircraft. The amendment to paragraph (b)(1) requires at least two liferafts to accommodate all occupants.

Two commenters responded, and both disagree with the proposal. One recommends changing the operating rules instead of the airworthiness standards, and the other suggests that the airworthiness standards supplement the operating rules cited.

The FAA notes that the operating rules supplement or complement the airworthiness standards and that they also apply to airplanes. Consideration of the loss of a liferaft is not in operating rules such as FAP parts 91 and 135, which are typically used for helicopter operations. Changing the operating rules is beyond the scope of the notice.

One commenter further states that rotorcraft have a higher probability of ditching and should have more stringent requirements such as those contained in present § 29.1415(b)(1). The commenter's experience in actual ditchings is that loss of liferafts can be expected, and asserts that the standard should not be relaxed; i.e., sufficient liferafts should be required to provide for all occupants if

one liferaft is lost. The FAA disagrees. Experience under current operating rules has shown that excess capacity of liferafts beyond the rated capacity has been sufficient without also requiring excess liferafts. Therefore, the proposal is adopted without change.

Appendix D to Part 29—Criteria for Demonstration of Emergency Evacuation Procedures Under § 29.803

The notice proposed to add a new appendix D that contains the provisions, criteria, or conditions for compliance with the emergency evacuation demonstration standards required by § 29.803, as amended. One commenter supports the proposal.

Notice 89–23 (54 FR 37414; September 8, 1989), proposes, in part, to change the age and sex distribution of participants for use in the evacuation demonstration of transport airplanes having 44 or more passengers. This proposed change would avoid the risk of injury to participants over 60 years of age and prevent violation of state child labor laws while complying with airplane evacuation demonstration standards. The proposed change to part 25 was considered "comparable to * * * current (part 25 rules") (i.e., the new distribution of age and sex for the mixture of demonstration participants is expected to give results comparable to those demonstrations with the current age and sex distribution of participants). Since the age and sex distribution proposed in Notice 89–23 for transport airplanes is different from the distribution proposed in Notice 88–7 for rotorcraft, possible final rulemaking action resulting from Notice 89–23 will be evaluated to determine if additional rulemaking is warranted for transport rotorcraft. Adopting the age and sex distribution proposals of Notice 89–23 at this time is beyond the scope of Notice 88–7.

Another commenter responding to § 29.803 requests that the FAA withdraw the proposals related to an evacuation demonstration with the rotorcraft resting on its side, and the FAA agrees. Because of the resulting changes to § 29.803, corresponding changes are also necessary to appendix D. Therefore, appendix D is revised by deleting paragraph (b), by deleting the title and designator for paragraph (a), and by redesignating the remaining paragraphs respectively. This proposal is adopted with the changes discussed.

Section 133.43 Structure and Design

The notice proposed to amend this operating rule to allow use of restricted category (military) rotorcraft cargo hook systems that have a primary and manual load release device. No comments were received, and the proposal is adopted without change.

Regulatory Evaluation Summary

Introduction

This is a summary of the industry cost impact and benefit assessment for RRRP Amendment No. 4. This amendment adds new standards, amends existing airframe and related equipment standards in parts 27 and 29, and amends external cargo standards in part 133.

Summary

The estimates of economic impacts for the changes to parts 27 and 29, and the change to part 133, are based on the best information currently available to the FAA. This information indicates that the great majority of the amendments update the FAR to reflect current technology and, therefore, would have negligible or no cost.

The amendment to § 29.803(d)(3) expected to have some economic impact is related to the added emergency evacuation demonstration required for two categories of rotorcraft: (1) Those with a seating capacity of more than 44 passengers and (2) those with 10 or more passengers per exit, no main aisle to each row of seats, and access to each passenger exit by virtue of design features of seats, such as folding or break-over seat backs or folding seats. The evacuation demonstration is to be conducted with the rotorcraft in an upright position. Although few rotorcraft are now included in these categories, future certifications are possible.

The FAA requested detailed information on evacuation demonstration costs from interested persons, including rotorcraft manufacturers, in Notice No. 88–7. However, such costs were not provided during the comment period. The FAA's own estimates, based on evacuation demonstrations or tests conducted with small airplanes having 10 or more passengers, indicate one-time discounted certification costs ranging from $61,470 to $102,450 in 1989 dollars.

The expected benefit of requiring demonstrations is the assurance that the emergency exits allow rapid evacuation in the event of an incident or accident. Available data of past transport rotorcraft accidents do not identify whether an insufficient number of, or difficult to reach, emergency exits contributed to injuries or fatalities in otherwise survivable accidents, but it is possible that this could occur if emergency egress is not assured for certain transport rotorcraft designs. In terms of dollar benefits, the evacuation demonstration requirement will be cost beneficial if only one life were saved over the operating life of the rotorcraft design (assumed to be 20 years).

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the amendments to parts 27, 29, and 133 will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." Significant economic impact on a small manufacturer, one with fewer than 75 employees, means annualized net compliance costs greater than or equal to the threshold value of $15,340, in 1988 dollars. A substantial number of small entities means a number which is not less than 11 and which is more than one-third of the small entities subject to a proposed or existing rule, or any number of small entities affected which is substantial in the judgment of the rulemaking official. Only 2 of the 10 rotorcraft manufacturers that are subject to the amendments to parts 27 and 29 have fewer than 75 employees, neither one of which would incur costs by an amount in excess of the threshold cost value as a result of these amendments.

International Trade Impact Statement

The FAA believes that the certification costs that may be imposed by the amendments will not result in a competitive trade disadvantage for U.S. manufacturers in domestic or foreign markets. This conclusion is based on the fact that foreign manufacturers must comply with the certification standards of parts 27 and 29 as a condition of entry into the U.S. market, which is the largest segment of their export market. The FAA further believes that to remain competitive in overseas markets, foreign vendors will export similarly equipped rotorcraft to both the United States and other countries. Foreign and U.S. rotorcraft manufacturers are expected to pass the new certification costs on to consumers.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that these amendments do not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. These amendments are considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the amendments, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects:

14 CFR Parts 27 and 29

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

Part 133

Aircraft, Narcotics, Pilots, Drugs, Mail.

Adoption of the Amendments

Accordingly, parts 27, 29 and 133 of the Federal Aviation Regulations (14 CFR parts 27, 29, and 133) are amended as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 27.307 is amended by revising paragraph (a) to read as follows:

§ 27.307 Proof of structure.

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition accounting for the environment to which the structure will be exposed in operation. Structural analysis (static or fatigue) may be used only if the structure conforms to those structures for which experience has shown this method to be reliable. In other cases, substantiating load tests must be made.

* * * * *

3. Section 27.337 is revised to read as follows:

§ 27.337 Limit maneuvering load factor.

The rotorcraft must be designed for—

(a) A limit maneuvering load factor ranging from a positive limit of 3.5 to a negative limit of −1.0; or

(b) Any positive limit maneuvering load factor not less than 2.0 and any negative limit maneuvering load factor of not less than −0.5 for which—

(1) The probability of being exceeded is shown by analysis and flight tests to be extremely remote; and

(2) The selected values are appropriate to each weight condition between the design maximum and design minimum weights.

4. A new § 27.351 is added to read as follows:

§ 27.351 Yawing conditions.

(a) Each rotorcraft must be designed for the loads resulting from the maneuvers specified in paragraphs (b) and (c) of this section with—

(1) Unbalanced aerodynamic moments about the center of gravity which the aircraft reacts to in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces; and

(2) Maximum main rotor speed.

(b) To produce the load required in paragraph (a) of this section, in unaccelerated flight with zero yaw, at forward speeds from zero up to 0.6 V_{NE}—

(1) Displace the cockpit directional control suddenly to the maximum deflection limited by the control stops or by the pilot force specified in § 27.395(a);

(2) Attain a resulting sideslip angle or 90°, whichever is less; and

(3) Return the directional control suddenly to neutral.

(c) To produce the load required in paragraph (a) of this section, in unaccelerated flight with zero yaw, at forward speeds from 0.6 V_{NE} up to V_{NE} or V_H, whichever is less—

(1) Displace the cockpit directional control suddenly to the maximum deflection limited by the control stops or by the pilot force specified in § 27.395(a);

(2) Attain a resulting sideslip angle or 15°, whichever is less, at the lesser speed of V_{NE} or V_H;

(3) Vary the sideslip angles of paragraphs (b)(2) and (c)(2) of this section directly with speed; and

(4) Return the directional control suddenly to neutral.

5. Section 27.391 is revised to read as follows:

§ 27.391 General.

Each auxiliary rotor, each fixed or movable stabilizing or control surface, and each system operating any flight control must meet the requirements of §§ 27.395, 27.397, 27.399, 27.401, 27.403, 27.411, 27.413, and 27.427.

6. Section 27.395 is amended by revising paragraph (b) to read as follows:

§ 27.395 Control system.

* * * * *

(b) Each primary control system, including its supporting structure, must be designed as follows:

(1) The system must withstand loads resulting from the limit pilot forces prescribed in § 27.397.

(2) Notwithstanding paragraph (b)(3) of this section, when power-operated actuator controls or power boost controls are used, the system must also withstand the loads resulting from the force output of each normally energized power device, including any single power boost or actuator system failure.

(3) If the system design or the normal operating loads are such that a part of the system cannot react to the limit pilot forces prescribed in § 27.397, that part of the system must be designed to withstand the maximum loads that can be obtained in normal operation. The minimum design loads must, in any case, provide a rugged system for service use, including consideration of fatigue, jamming, ground gusts, control inertia, and friction loads. In the absence of rational analysis, the design loads resulting from 0.60 of the specified limit pilot forces are acceptable minimum design loads.

(4) If operational loads may be exceeded through jamming, ground gusts, control inertia, or friction, the system must withstand the limit pilot forces specified in § 27.397, without yielding.

7. A new § 27.427 is added following § 27.413 and before the heading, Ground Loads, to read as follows:

§ 27.427 Unsymmetrical loads.

(a) Horizontal tail surfaces and their supporting structure must be designed for unsymmetrical loads arising from yawing and rotor wake effects in combination with the prescribed flight conditions.

(b) To meet the design criteria of paragraph (a) of this section, in the absence of more rational data, both of the following must be met:

(1) One hundred percent of the maximum loading from the symmetrical flight conditions in § 27.413 acts on the surface on one side of the plane of symmetry, and no loading acts on the other side.

(2) Fifty percent of the maximum loading from the symmetrical flight conditions in § 27.413 acts on the surface on each side of the plane of symmetry but in opposite directions.

(c) For empennage arrangements where the horizontal tail surfaces are supported by the vertical tail surfaces, the vertical tail surfaces and supporting structure must be designed for the combined vertical and horizontal surface loads resulting from each prescribed flight condition, considered separately. The flight conditions must be selected so the maximum design loads are obtained on each surface. In the absence of more rational data, the unsymmetrical horizontal tail surface loading distributions described in this section must be assumed.

8. Section 27.501 is amended by revising paragraphs (d)(3) and (f)(2)(ii) to read as follows:

§ 27.501 Ground loading conditions: Landing gear with skids.

* * * * *

(d) * * *

(3) The total sideload must be applied equally between the skids and along the length of the skids.

* * * * *

(f) * * *

(2) * * *

(ii) Distributed equally over 33.3 percent of the length between the skid tube attachments and centrally located midway between the skid tube attachments.

9. Section 27.563 is revised to read as follows:

§ 27.563 Structural ditching provisions.

If certification with ditching provisions is requested, structural strength for ditching must meet the requirements of this section and § 27.801(e).

(a) *Forward speed landing conditions.* The rotorcraft must initially contact the most critical wave for reasonably probable water conditions at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes. The rotorcraft limit vertical descent velocity may not be less than 5 feet per second relative to the mean water surface. Rotor lift may be used to act through the center of gravity throughout the landing impact. This lift may not exceed two-thirds of the design maximum weight. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out touchdown.

(b) *Auxiliary or emergency float conditions*—(1) *Floats fixed or deployed before initial water contact.* In addition to the landing loads in paragraph (a) of this section, each auxiliary or emergency float, of its support and attaching structure in the airframe or fuselage, must be designed for the load developed by a fully immersed float unless it can be shown that full immersion is unlikely. If full immersion is unlikely, the highest likely float buoyancy load must be applied. The highest likely buoyancy load must include consideration of a partially immersed float creating restoring moments to compensate the upsetting moments caused by side wind, unsymmetrical rotorcraft loading, water wave action, rotorcraft inertia, and probable structural damage and leakage considered under § 27.801(d). Maximum roll and pitch angles determined from compliance with § 27.801(d) may be used, if significant, to determine the extent of immersion of each float. If the floats are deployed in flight, appropriate air loads derived from the flight limitations with the floats deployed shall be used in substantiation of the floats and their attachment to the rotorcraft. For this purpose, the design airspeed for limit load is the float deployed airspeed operating limit multiplied by 1.11.

(2) *Floats deployed after initial water contact.* Each float must be designed for full or partial immersion perscribed in paragraph (b)(1) of this section. In addition, each float must be designed for combined vertical and drag loads using a relative limit speed of 20 knots between the rotorcraft and the water. The vertical load may not be less than the highest likely buoyancy load determined under paragraph (b)(1) of this section.

10. Section 27.571 is amended by revising the introductory text of paragraph (a) and paragraph (a)(4) to read as follows:

§ 27.571 Fatigue evaluation of flight structure.

(a) *General.* Each portion of the flight structure (the flight structure includes rotors, rotor drive systems between the engines and the rotor hubs, controls, fuselage, landing gear, and their related primary attachments), the failure of which could be catastrophic, must be identified and must be evaluated under paragraph (b), (c), (d), or (e) of this section. The following apply to each fatigue evaluation:

* * * * *

(4) The loading spectra must be as severe as those expected in operation including, but not limited to, external cargo operations, if applicable, and ground-air-ground cycles. The loading spectra must be based on loads or stresses determined under paragraph (a)(3) of this section.

* * * * *

11. Section 27.613 is amended by revising paragraphs (b) and the introductory text of (d) and by adding a new paragraph (e) to read as follows:

§ 27.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraphs (d) and (e) of this section, compliance with this paragraph must be shown by selecting design values that assure material strength with the following probability—

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component, 99 percent probability with 95 percent confidence; and

(2) For redundant structure, those in which the failure of individual elements would result in applied loads being safely distributed to other load-carrying members, 90 percent probability with 95 percent confidence.

* * * * *

(d) Design values may be those contained in the following publications (available from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120) or other values approved by the Administrator:

* * * * *

(e) Other design values may be used if a selection of the material is made in which a specimen of each individual item is tested before use and it is determined that the actual strength properties of that particular item will equal or exceed those used in design.

§ 27.629 [Amended]

12. Section 27.629 is amended by removing the word "part" and inserting in place thereof the words "aerodynamic surface."

13. Section 27.663 is amended by revising paragraph (a) to read as follows:

§ 27.663 Ground resonance prevention means.

(a) The reliability of the means for preventing ground resonance must be shown either by analysis and tests, or reliable service experience, or by showing through analysis or tests that malfunction or failure of a single means will not cause ground resonance.

* * * * *

14. A new § 27.674 is added to read as follows:

§ 27.674 Interconnected controls.

Each primary flight control system must provide for safe flight and landing and operate independently after a malfunction, failure, or jam of any auxiliary interconnected control.

15. Section 27.685 is amended by adding new paragraphs (d), (e), and (f) to read as follows:

§ 27.685 Control system details.

* * * * *

(d) Cable systems must be designed as follows:

(1) Cables, cable fittings, turnbuckles, splices, and pulleys must be of an acceptable kind.

(2) The design of the cable systems must prevent any hazardous change in cable tension throughout the range of travel under any operating conditions and temperature variations.

(3) No cable smaller than three thirty-seconds of an inch diameter may be used in any primary control system.

(4) Pulley kinds and sizes must correspond to the cables with which they are used. The pulley cable combinations and strength values which must be used are specified in Military Handbook MIL-HDBK-5C, Vol. 1 & Vol. 2, Metallic Materials and Elements for Flight Vehicle Structures, (Sept. 15, 1976, as amended through December 15, 1978). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. section 552(a) and 1 CFR part 51. Copies may be obtained from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania, 19120. Copies may be inspected at the FAA, Rotorcraft Standards Staff, 4400 Blue Mount Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

(5) Pulleys must have close fitting guards to prevent the cables from being displaced or fouled.

(6) Pulleys must lie close enough to the plane passing through the cable to prevent the cable from rubbing against the pulley flange.

(7) No fairlead may cause a change in cable direction of more than 3°.

(8) No clevis pin subject to load or motion and retained only by cotter pins may be used in the control system.

(9) Turnbuckles attached to parts having angular motion must be installed to prevent binding throughout the range of travel.

(10) There must be means for visual inspection at each fairlead, pulley, terminal, and turnbuckle.

(e) Control system joints subject to angular motion must incorporate the following special factors with respect to the ultimate bearing strength of the softest material used as a bearing:

(1) 3.33 for push-pull systems other than ball and roller bearing systems.

(2) 2.0 for cable systems.

(f) For control system joints, the manufacturer's static, non-Brinell rating of ball and roller bearings must not be exceeded.

16. Section 27.727 is amended by revising paragraph (c) to read as follows:

§ 27.727 Reserve energy absorption drop test.

* * * * *

(c) The landing gear must withstand this test without collapsing. Collapse of the landing gear occurs when a member of the nose, tail, or main gear will not support the rotorcraft in the proper attitude or allows the rotorcraft structure, other than the landing gear and external accessories, to impact the landing surface.

17. Section 27.783 is amended by revising paragraph (b) to read as follows:

§ 27.783 Doors.

* * * * *

(b) Each external door must be located where persons using it will not be endangered by the rotors, propellers, engine intakes, and exhausts when appropriate operating procedures are used. If opening procedures are required, they must be marked inside, on or adjacent to the door opening device.

18. Section 27.807 is amended by revising paragraph (d) to read as follows:

§ 27.807 Emergency exits.

* * * * *

(d) *Ditching emergency exits for passengers.* If certification with ditching provisions is requested, one emergency exit on each side of the fuselage must be proven by test, demonstration, or analysis to—

(1) Be above the waterline;

(2) Have at least the dimensions specified in paragraph (b) of this section; and

(3) Open without interference from flotation devices whether stowed or deployed.

19. Section 27.861 is revised to read as follows:

§ 27.861 Fire protection of structure, controls, and other parts.

Each part of the structure, controls, rotor mechanism, and other parts essential to a controlled landing that would be affected by powerplant fires must be fireproof or protected so they can perform their essential functions for at least 5 minutes under any foreseeable powerplant fire conditions.

20. Section 27.865 is amended by revising the introductory text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 27.865 External load attaching means.

(a) It must be shown by analysis or test, or both, that the rotorcraft external load attaching means can withstand a limit static load equal to 2.5, or some lower factor approved under §§ 27.337 through 27.341, multiplied by the maximum external load for which authorization is requested. The load is applied in the vertical direction and in any direction making an angle of 30° with the vertical, except for those directions having a forward component. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(d) The fatigue evaluation of § 27.571(a) does not apply to this section except for a failure of the cargo attaching means that results in a hazard to the rotorcraft.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

21. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

22. Section 29.307 is amended by revising paragraph (a) to read as follows:

§ 29.307 Proof of structure.

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition accounting for the environment to which the structure will be exposed in operation. Structural analysis (static or fatigue) may be used only if the structure conforms to those structures for which experience has shown this method to be reliable. In

other cases, substantiating load tests must be made.

* * * * *

23. Section 29.337 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 29.337 Limit maneuvering load factor.

* * * * *

(a) A limit maneuvering load factor ranging from a positive limit of 3.5 to a negative limit of −1.0; or

(b) Any positive limit maneuvering load factor not less than 2.0 and any negative limit maneuvering load factor of not less than −0.5 for which—

* * * * *

24. Section 29.351 is revised to read as follows:

§ 29.351 Yawing conditions.

(a) Each rotorcraft must be designed for the loads resulting from the maneuvers specified in paragraphs (b) and (c) of this section, with—

(1) Unbalanced aerodynamic moments about the center of gravity which the aircraft reacts to in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces; and

(2) Maximum main rotor speed.

(b) To produce the load required in paragraph (a) of this section, in unaccelerated flight with zero yaw, at forward speeds from zero up to 0.6 V_{NE}—

(1) Displace the cockpit control suddenly to the maximum deflection limited by the control stops or by the maximum pilot force specified in § 29.395(a);

(2) Attain a resulting sideslip angle or 90°, whichever is less; and

(3) Return the directional control suddenly to neutral.

(c) To produce the load required in paragraph (a) of the section, in unaccelerated flight with zero yaw, at forward speeds from 0.6 V_{NE} up to V_{NE} or V_H, whichever is less—

(1) Displace the cockpit directional control suddenly to the maximum deflection limited by the control stops or by the pilot force specified in § 29.395(a);

(2) Attain a resulting sideslip angle or 15°, whichever is less, at the lesser speed of V_{NE} or V_H;

(3) Vary the sideslip angles of paragraphs (b)(2) and (c)(2) of this section directly with speed; and

(4) Return the directional control suddenly to neutral.

25. Section 29.391 is revised to read as follows:

§ 29.391 General.

Each auxiliary rotor, each fixed or movable stabilizing or control surface, and each system operating any flight control must meet the requirements of §§ 29.395 through 29.403, 29.411, 29.413, and 29.427.

26. Section 29.395 is amended by revising paragraph (b) to read as follows:

§ 29.395 Control system.

* * * * *

(b) Each primary control system, including its supporting structure, must be designed as follows:

(1) The system must withstand loads resulting from the limit pilot forces prescribed in § 29.397;

(2) Notwithstanding paragraph (b)(3) of this section, when power-operated actuator controls or power boost controls are used, the system must also withstand the loads resulting from the limit pilot forces prescribed in § 29.397 in conjunction with the forces output of each normally energized power device, including any single power boost or actuator system failure;

(3) If the system design or the normal operating loads are such that a part of the system cannot react to the limit pilot forces prescribed in § 29.397, that part of the system must be designed to withstand the maximum loads that can be obtained in normal operation. The minimum design loads must, in any case, provide a rugged system for service use, including consideration of fatigue, jamming, ground gusts, control inertia, and friction loads. In the absence of a rational analysis, the design loads resulting from 0.60 of the specified limit pilot forces are acceptable minimum design loads; and

(4) If operational loads may be exceeded through jamming, ground gusts, control inertia, or friction, the system must withstand the limit pilot forces specified in § 29.397, without yielding.

27. A new § 29.427 is added following § 29.413 and before the heading, Ground Loads, to read as follows:

§ 29.427 Unsymmetrical loads.

(a) Horizontal tail surfaces and their supporting structure must be designed for unsymmetrical loads arising from yawing and rotor wake effects in combination with the prescribed flight conditions.

(b) To meet the design criteria of paragraph (a) of this section, in the absence of more rational data, both of the following must be met:

(1) One hundred percent of the maximum loading from the symmetrical flight conditions in § 29.413 acts on the surface on one side of the plane of symmetry, and no loading acts on the other side.

(2) Fifty percent of the maximum loading from the symmetrical flight conditions in § 29.413 acts on the surface on each side of the plane of symmetry, in opposite directions.

(c) For empennage arrangements where the horizontal tail surfaces are supported by the vertical tail surfaces, the vertical tail surfaces and supporting structure must be designed for the combined vertical and horizontal surface loads resulting from each prescribed flight condition, considered separately. The flight conditions must be selected so that the maximum design loads are obtained on each surface. In the absence of more rational data, the unsymmetrical horizontal tail surface loading distributions described in this section must be assumed.

28. Section 29.501 is amended by revising paragraphs (d)(3) and (f)(2)(ii) to read as follows:

§ 29.501 Ground loading conditions: Landing gear with skids.

* * * * *

(d) * * *

(3) The total sideload must be applied equally between skids and along the length of the skids.

* * * * *

(f) * * *

(2) * * *

(ii) Distributed equally over 33.3 percent of the length between the skid tube attachments and centrally located midway between the skid tube attachments.

29. Section 29.519 is amended by revising the section heading and by revising paragraphs (a), (b), and (c) to read as follows:

§ 29.519 Hull type rotorcraft: Water-based and amphibian.

(a) *General.* For hull type rotorcraft, the structure must be designed to withstand the water loading set forth in paragraphs (b), (c), and (d) of this section considering the most severe wave heights and profiles for which approval is desired. The loads for the landing conditions of paragraphs (b) and (c) of this section must be developed and distributed along and among the hull and auxiliary floats, if used, in a rational and conservative manner, assuming a rotor lift not exceeding two-thirds of the rotorcraft weight to act throughout the landing impact.

(b) *Vertical landing conditions.* The rotorcraft must initially contact the most critical wave surface at zero forward speed in likely pitch and roll attitudes

which result in critical design loadings. The vertical descent velocity may not be less than 6.5 feet per second relative to the mean water surface.

(c) *Forward speed landing conditions.* The rotorcraft must contact the most critical wave at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes and with a vertical descent velocity of not less than 6.5 feet per second relative to the mean water surface. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out landing.

* * * * *

30. Section 29.563 is revised to read as follows:

§ 29.563 Structural ditching provisions.

If certification with ditching provisions is requested, structural strength for ditching must meet the requirements of this section and § 29.801(e).

(a) *Forward speed landing conditions.* The rotorcraft must initially contact the most critical wave for reasonably probable water conditions at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes. The rotorcraft limit vertical descent velocity may not be less than 5 feet per second relative to the mean water surface. Rotor lift may be used to act through the center of gravity throughout the landing impact. This lift may not exceed two-thirds of the design maximum weight. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out touchdown.

(b) *Auxiliary or emergency float conditions.*—(1) *Floats fixed or deployed before initial water contact.* In addition to the landing loads in paragraph (a) of this section, each auxiliary or emergency float, or its support and attaching structure in the airframe or fuselage, must be designed for the load developed by a fully immersed float unless it can be shown that full immersion is unlikely. If full immersion is unlikely, the highest likely float buoyancy load must be applied. The highest likely buoyancy load must include consideration of a partially immersed float creating restoring moments to compensate the upsetting moments caused by side wind, unsymmetrical rotorcraft loading, water wave action, rotorcraft inertia, and probable structural damage and leakage considered under § 29.801(d). Maximum roll and pitch angles determined from compliance with § 29.801(d) may be used, if significant, to determine the extent of immersion of each float. If the floats are deployed in flight, appropriate air loads derived from the flight limitations with the floats deployed shall be used in substantiation of the floats and their attachment to the rotorcraft. For this purpose, the design airspeed for limit load is the float deployed airspeed operating limit multiplied by 1.11.

(2) *Floats deployed after initial water contact.* Each float must be designed for full or partial immersion prescribed in paragraph (b)(1) of this section. In addition, each float must be designed for combined vertical and drag loads using a relative limit speed of 20 knots between the rotorcraft and the water. The vertical load may not be less than the highest likely buoyancy load determined under paragraph (b)(1) of this section.

31. Section 29.613 is amended by revising paragraph (b) and the introductory text of paragraph (d) and by adding a new paragraph (e) to read as follows:

§ 29.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraphs (d) and (e) of this section, compliance with this paragraph must be shown by selecting design values that assure material strength with the following probability—

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component, 99 percent probability with 95 percent confidence; and

(2) For redundant structures, those in which the failure of individual elements would result in applied loads being safely distributed to other load-carrying members, 90 percent probability with 95 percent confidence.

* * * * *

(d) Design values may be those contained in the following publications (available from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120) or other values approved by the Administrator:

* * * * *

(e) Other design values may be used if a selection of the material is made in which a specimen of each individual item is tested before use and it is determined that the actual strength properties of that particular item will equal or exceed those used in design.

§ 29.629 [Amended]

32. Section 29.629 is amended by removing the word "part" and inserting in place thereof the words "aerodynamic surface."

33. Section 29.663 is revised to read as follows:

§ 29.663 Ground resonance prevention means.

(a) The reliability of the means for preventing ground resonance must be shown either by analysis and tests, or reliable service experience, or by showing through analysis or tests that malfunction or failure of a single means will not cause ground resonance.

(b) The probable range of variations, during service, of the damping action of the ground resonance prevention means must be established and must be investigated during the test required by § 29.241.

34. A new § 29.674 is added to read as follows:

§ 29.674 Interconnected controls.

Each primary flight control system must provide for safe flight and landing and operate independently after a malfunction, failure, or jam of any auxiliary interconnected control.

35. Section 29.727 is amended by revising paragraph (c) to read as follows:

§ 29.727 Reserve energy absorption drop test.

* * * * *

(c) The landing gear must withstand this test without collapsing. Collapse of the landing gear occurs when a member of the nose, tail, or main gear will not support the rotorcraft in the proper attitude or allows the rotorcraft structure, other than landing gear and external accessories, to impact the landing surface.

§ 29.755 [Amended]

36. Section 29.755 is amended by removing the designator "(a)" from paragraph (a) and by removing paragraph (b).

37. Section 29.783 is amended by revising paragraphs (b) and (c) to read as follows:

§ 29.783 Doors.

* * * * *

(b) Each external door must be located, and appropriate operating procedures must be established, to ensure that persons using the door will not be endangered by the rotors,

propellers, engine intakes, and exhausts when the operating procedures are used.

(c) There must be means for locking crew and external passenger doors and for preventing their opening in flight inadvertently or as a result of mechanical failure. It must be possible to open external doors from inside and outside the cabin with the rotorcraft on the ground even though persons may be crowded against the door on the inside of the rotorcraft. The means of opening must be simple and obvious and so arranged and marked that it can be readily located and operated.

* * * * *

38. Section 29.803 is amended by removing and reserving paragraph (c) and by adding new paragraphs (d) and (e) to read as follows:

§ 29.803 Emergency evacuation.

* * * * *

(d) Except as provided in paragraph (e) of this section, the following categories of rotorcraft must be tested in accordance with the requirements of appendix D of this part to demonstrate that the maximum seating capacity, including the crewmembers required by the operating rules, can be evacuated from the rotorcraft to the ground within 90 seconds:

(1) Rotorcraft with a seating capacity of more than 44 passengers.

(2) Rotorcraft with all of the following:

(i) Ten or more passengers per passenger exit as determined under § 29.807(b).

(ii) No main aisle, as described in § 29.815, for each row of passenger seats.

(iii) Access to each passenger exit for each passenger by virtue of design features of seats, such as folding or break-over seat backs or folding seats.

(e) A combination of analysis and tests may be used to show that the rotorcraft is capable of being evacuated within 90 seconds under the conditions specified in § 29.803(d) if the Administrator finds that the combination of analysis and tests will provide data, with respect to the emergency evacuation capability of the rotorcraft, equivalent to that which would be obtained by actual demonstration.

39. Section 29.805 is amended by adding a new paragraph (c) to read as follows:

§ 29.805 Flightcrew emergency exits.

* * * * *

(c) Each exit must not be obstructed by water or flotation devices after a ditching. This must be shown by test, demonstration, or analysis.

40. Section 29.807 is amended by revising paragraph (d) (introductory text); and by adding a new paragraph (d)(3) to read as follows:

§ 29.807 Passenger emergency exits.

* * * * *

(d) *Ditching emergency exits for passengers.* If certification with ditching provisions is requested, ditching emergency exits must be provided in accordance with the following requirements and must be proven by test, demonstration, or analysis unless the emergency exits required by paragraph (b) of this section already meet these requirements.

* * * * *

(3) Flotation devices, whether stowed or deployed, may not interfere with or obstruct the exits.

* * * * *

41. Section 29.809 is amended by revising paragraph (f) and by adding new paragraphs (g), (h), and (i) to read as follows:

§ 29.809 Emergency exit arrangement.

* * * * *

(f) Except as provided in paragraph (h) of this section, each land-based rotorcraft emergency exit must have an approved slide as stated in paragraph (g) of this section, or its equivalent, to assist occupants in descending to the ground from each floor level exit and an approved rope, or its equivalent, for all other exits, if the exit threshold is more that 6 feet above the ground—

(1) With the rotorcraft on the ground and with the landing gear extended;

(2) With one or more legs or part of the landing gear collapsed, broken, or not extended; and

(3) With the rotorcraft resting on its side, if required by § 29.803(d).

(g) The slide for each passenger emergency exit must be a self-supporting slide or equivalent, and must be designed to meet the following requirements:

(1) It must be automatically deployed, and deployment must begin during the interval between the time the exit opening means is actuated from inside the rotorcraft and the time the exit is fully opened. However, each passenger emergency exit which is also a passenger entrance door or a service door must be provided with means to prevent deployment of the slide when the exit is opened from either the inside or the outside under nonemergency conditions for normal use.

(2) It must be automatically erected within 10 seconds after deployment is begun.

(3) It must be of such length after full deployment that the lower end is self-supporting on the ground and provides safe evacuation of occupants to the ground after collapse of one or more legs or part of the landing gear.

(4) It must have the capability, in 25-knot winds directed from the most critical angle, to deploy and, with the assistance of only one person, to remain usable after full deployment to evacuate occupants safely to the ground.

(5) Each slide installation must be qualified by five consecutive deployment and inflation tests conducted (per exit) without failure, and at least three tests of each such five-test series must be conducted using a single representative sample of the device. The sample devices must be deployed and inflated by the system's primary means after being subjected to the inertia forces specified in § 29.561(b). If any part of the system fails or does not function properly during the required tests, the cause of the failure or malfunction must be corrected by positive means and after that, the full series of five consecutive deployment and inflation tests must be conducted without failure.

(h) For rotorcraft having 30 or fewer passenger seats and having an exit threshold more than 6 feet above the ground, a rope or other assist means may be used in place of the slide specified in paragraph (f) of this section, provided an evacuation demonstration is accomplished as prescribed in § 29.803(d) or (e).

(i) If a rope, with its attachment, is used for compliance with paragraph (f), (g), or (h) of this section, it must—

(1) Withstand a 400-pound static load; and

(2) Attach to the fuselage structure at or above the top of the emergency exit opening, or at another approved location if the stowed rope would reduce the pilot's view in flight.

42. Section 29.811 is amended by revising paragraph (f)(1) to read as follows:

§ 29.811 Emergency exit marking.

* * * * *

(f) * * *

(1) There must be a 2-inch colored band outlining each passenger emergency exit, except small rotorcraft with a maximum weight of 12,500 pounds or less may have a 2-inch colored band outlining each exit release lever or device of passenger emergency exits which are normally used doors.

* * * * *

43. Section 29.855 is amended by revising paragraph (a) to read as follows:

§ 29.855 Cargo and baggage compartments.

(a) Each cargo and baggage compartment must be construced of or lined with materials in accordance with the following:

(1) For accessible and inaccessible compartments not occupied by passengers or crew, the material must be at least fire resistant.

(2) Materials must meet the requirements in § 29.853(a)(1), (a)(2), and (a)(3) for cargo or baggage compartments in which—

(i) The presence of a compartment fire would be easily discovered by a crewmember while at the crewmember's station;

(ii) Each part of the compartment is easily accessible in flight;

(iii) The compartment has a volume of 200 cubic feet or less; and

(iv) Notwithstanding § 29.1439(a), protective breathing equipment is not required.

* * * * *

44. Section 29.861 is amended by revising paragraph (b) to read as follows:

§ 29.861 Fire protection of structure, controls, and other parts.

* * * * *

(b) For Category B rotorcraft, fireproof or protected so that they can perform their essential functions for at least 5 minutes under any foreseeable powerplant fire conditions.

45. Section 29.865 is amended by revising the introductory text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 29.865 External load attaching means.

(a) It must be shown by analysis or test, or both, that the rotorcraft external load attaching means can withstand a limit static load equal to 2.5, or some lower factor approved under §§ 29.337 through 29.341, multiplied by the maximum external load for which authorization is requested. The load is applied in the vertical direction and in any direction making an angle of 30° with the vertical, except for those directions having a forward component. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(d) The fatigue evaluation of § 29.571(a) does not apply to this section except for a failure of the cargo attaching means that results in a hazard to the rotorcraft.

46. Section 29.1415 is amended by revising paragraph (b)(1) to read as follows:

§ 29.1415 Ditching equipment.

* * * * *

(b) * * *

(1) Provide not less than two rafts, of an approximately equal rated capacity and buoyancy to accommodate the occupants of the rotorcraft; and

* * * * *

47. A new Appendix D is added to part 29 to read as follows:

Appendix D—Criteria for Demonstration of Emergency Evacuation Procedures Under § 29.803

(a) The demonstration must be conducted either during the dark of the night or during daylight with the dark of night simulated. If the demonstration is conducted indoors during daylight hours, it must be conducted inside a darkened hangar having doors and windows covered. In addition, the doors and windows of the rotorcraft must be covered if the hangar illumination exceeds that of a moonless night. Illumination on the floor or ground may be used, but it must be kept low and shielded against shining into the rotorcraft's windows or doors.

(b) The rotorcraft must be in a normal attitude with landing gear extended.

(c) Safety equipment such as mats or inverted liferafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the rotorcraft's emergency evacuation equipment may be used to aid the participants in reaching the ground.

(d) Except as provided in paragraph (a) of this appendix, only the rotorcraft's emergency lighting system may provide illumination.

(e) All emergency equipment required for the planned operation of the rotorcraft must be installed.

(f) Each external door and exit and each internal door or curtain must be in the takeoff configuration.

(g) Each crewmember must be seated in the normally assigned seat for takeoff and must remain in that seat until receiving the signal for commencement of the demonstration. For compliance with this section, each crewmember must be—

(1) A member of a regularly scheduled line crew; or

(2) A person having knowledge of the operation of exits and emergency equipment.

(h) A representative passenger load of persons in normal health must be used as follows:

(1) At least 25 percent must be over 50 years of age, with at least 40 percent of these being females.

(2) The remaining, 75 percent or less, must be 50 years of age or younger, with at least 30 percent of these being females.

(3) Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger, except for a total passenger load of fewer than 44 but more than 19, one doll must be carried. A doll is not required for a 19 or fewer passenger load.

(4) Crewmembers, mechanics, and training personnel who maintain or operate the rotorcraft in the normal course of their duties may not be used as passengers.

(i) No passenger may be assigned a specific seat except as the Administrator may require. Except as required by paragraph (1) of this appendix, no employee of the applicant may be seated next to an emergency exit, except as allowed by the Administrator.

(j) Seat belts and shoulder harnesses (as required) must be fastened.

(k) Before the start of the demonstration, approximately one-half of the total average amount of carry-on baggage, blankets, pillows, and other similar articles must be distributed at several locations in the aisles and emergency exit access ways to create minor obstructions.

(l) No prior indication may be given to any crewmember or passenger of the particular exits to be used in the demonstration.

(m) The applicant may not practice, rehearse, or describe the demonstration for the participants nor may any participant have taken part in this type of demonstration within the preceding 6 months.

(n) A pretakeoff passenger briefing may be given. The passengers may also be advised to follow directions of crewmembers, but not be instructed on the procedures to be followed in the demonstration.

(o) If safety equipment, as allowed by paragraph (c) of this appendix, is provided, either all passenger and cockpit windows must be blacked out or all emergency exits must have safety equipment to prevent disclosure of the available emergency exits.

(p) Not more than 50 percent of the emergency exits in the sides of the fuselage of a rotorcraft that meet all of the requirements applicable to the required emergency exits for that rotorcraft may be used for demonstration. Exits that are not to be used for the demonstration must have the exit handle deactivated or must be indicated by red lights, red tape, or other acceptable means placed outside the exits to indicate fire or other reasons why they are unusable. The exits to be used must be representative of all the emergency exits on the rotorcraft and must be designated by the applicant, subject to approval by the Administrator. If installed, at least one floor level exit (Type I; § 29.807(a)(1)) must be used as required by § 29.807(c).

(q) All evacuees must leave the rotorcraft by a means provided as part of the rotorcraft's equipment.

(r) Approved procedures must be fully utilized during the demonstration.

(s) The evacuation time period is completed when the last occupant has evacuated the rotorcraft and is on the ground.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

48. The authority citation for part 133 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

49. Section 133.43 is amended by removing the "or" at the end of paragraphs (a)(2) and (b)(1); by

removing the period at the end of paragraphs (a)(3) and (b)(2); by inserting "; or" at the end of paragraphs (a)(3) and (b)(2); and by adding new paragraphs (a)(4) and (b)(3) to read as follows:

§ 133.43 Structures and design.

(a) * * *

(4) Section 21.25 of this chapter.

(b) * * *

(3) Section 21.25 of this chapter, except the device must comply with §§ 27.865(b) and 29.865(b), as applicable, of this chapter.

* * * * *

Issued in Washington, DC, on February 12, 1990.

James B. Busey,

Administrator.

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March 6, 1990

Part VI

Department of Transportation

14 CFR Part 382

49 CFR Part 27

Nondiscrimination on the Basis of Handicap in Air Travel and in Federally Assisted Programs; Final and Proposed Rules

14 CFR Parts 121 and 135

Exit Row Seating; Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

[Docket No. 45657; Amdt. 382-3]

RIN 2105-AA18

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is issuing a final rule to implement the Air Carrier Access Act of 1986. The rule prohibits discrimination by air carriers on the basis of handicap, consistent with the safe carriage of all passengers. It includes general and administrative provisions and provisions concerning physical facilities and services to be provided to passengers with disabilities.

EFFECTIVE DATE: This rule is effective April 5, 1990.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD).

SUPPLEMENTARY INFORMATION:

Other Documents Being Published With This Rule

This final rule is part of a package of rulemaking documents being published today, which collectively address issues relating to air travel for persons with disabilities. The other documents include a notice of proposed rulemaking (NPRM) to amend the Department's section 504 rule pertaining to federally-assisted airports (49 CFR 27.71), a supplemental notice of proposed rulemaking (SNPRM) concerning additional issues raised by comments to the Air Carrier Access Act rulemaking docket, and an advance notice of proposed rulemaking (ANPRM) requesting additional data about certain issues on which the Department lacked sufficient information to make a final decision in this rule. In addition, the Federal Aviation Administration is publishing its final rule on the subject of exit row seating.

Summary of Contents of Final Rule

For the convenience of readers, the following is a short summary of the highlights of this final rule:

- The rule applies to all air carriers providing air transportation. This does not include foreign air carriers. Indirect air carriers are not covered by certain provisions that concern the direct provision of air transportation services.
- A "qualified handicapped individual" is defined as a handicapped individual who validly obtains a ticket, comes to the airport for the flight, and meets nondiscriminatory contract of carriage requirements that apply to everyone. In conjunction with the provisions of the rule concerning refusal of transportation and requirements for attendants, this definition is fully consistent with the relevant provisions of the 1982 Civil Aeronautics Board rule on this subject, as Congress intended.
- Carriers must obtain an assurance of compliance from contractors who provide services to passengers.
- New aircraft (30 or more seats) must have movable aisle armrests on half the aisles in the aircraft.
- New widebody aircraft must have accessible lavatories. The ANPRM seeks more data on accessible lavatories for smaller aircraft.
- New aircraft (100 or more seats) must have priority space for storing a wheelchair in the cabin.
- Aircraft (60 or more seats) with an accessible lavatory must have an on-board chair. For flights on aircraft that do not have accessible lavatories, handicapped passengers who can use an inaccessible lavatory but need an on-board wheelchair to reach the lavatory can, with 48 hours' advance notice, have an on-board wheelchair on their flight.
- New aircraft requirements apply to planes ordered after the effective date of the rule or delivered more than two years after the effective date. No retrofit is required (although on-board wheelchairs will have to be provided within two years). However, as existing planes are refurbished, accessibility features would be added.
- Facilities and services at airports which carriers own or operate would have to meet the same accessibility standards that Federally-assisted airport operators must meet.
- Carriers may not refuse transportation to people on the basis of handicap. By Federal statute, carriers may exclude anyone from a flight if carrying the person would be inimical to the safety of the flight. If a carrier excludes a handicapped person on safety grounds, the carrier must provide a written explanation of the decision.
- Carriers may not limit the number of handicapped persons on a flight.
- Carriers may not require advance notice that a handicapped person is traveling. Carriers may require up to 48 hours advance notice for certain accommodations that require preparation time.
- Carriers may not require a handicapped person to travel with an attendant, except in certain very limited circumstances. If a handicapped person and the carrier disagree about whether these circumstances exist, the carrier may require the attendant, but the carrier cannot charge for the transportation of the attendant.
- Carriers may not keep anyone out of a seat on the basis of handicap, or require anyone to sit in a particular seat on the basis of handicap, except to comply with an FAA safety rule. FAA's final rule on exit row seating, being published today, allows carriers to place in exit rows only persons who can perform a series of functions necessary in an emergency evacuation.
- Carriers are required to provide boarding assistance, except that they need not hand-carry a person on board a small plane for which a lift, boarding chair, or other device will not work in the present state of technology. Assistance within the cabin is also required (but not extensive personal services).
- Disabled passengers' items stored in the cabin must conform to FAA carry-on baggage rules. Wheelchairs and other assistive devices have priority for in-cabin storage space over other passengers' items brought on board at the same airport, if the disabled passenger chooses to preboard.
- Wheelchairs and other assistive devices have priority over other items for storage in the baggage compartment.
- Carriers must accept battery-powered wheelchairs, including the batteries, packaging the batteries in hazardous materials packages when necessary. The carrier provides the packaging.
- Carriers may not charge for providing accommodations required by the rule.
- Other substantive provisions concern treatment of mobility aids and assistive devices, passenger information, accommodations of persons with hearing impairments, security screening, communicable diseases and medical certificates, and service animals.
- Training is required for carrier and contractor personnel who deal with the traveling public.
- Major and national carriers, and their code-sharing partners, must submit their procedures for complying with the rule to DOT for review.
- Carriers must establish their own compliance procedures, including provision for "complaints resolution officials" and responding to written

complaints. A DOT enforcement mechanism is also available.

Background

Air carrier policies and practices concerning disabled passengers have long been a troublesome and controversial subject. Many disabled passengers have objected to airline policies that they view as inconvenient, unnecessary, and discriminatory. Disabled passengers have also expressed concern about the seeming inconsistency of airline policies, asserting that it is often difficult for them to know, from one airline to the next or even from one terminal or flight crew to the next on the same airline, what conditions will be imposed on their ability to travel. Air carriers, on the other hand, have defended some of these policies as being necessary for safety, for economic reasons, or for the convenience of passengers.

In 1982, the Civil Aeronautics Board (CAB) promulgated 14 CFR part 382, a regulation intended to prohibit discrimination on the basis of handicap by certificated air carriers (i.e., the larger airlines) and commuter air carriers. The regulation was divided into subpart A (a general prohibition of discrimination), subpart B (specific requirements for service to disabled passengers) and subpart C (recordkeeping, reporting, and enforcement provisions). Only subpart A applied to all certificated and commuter carriers. Subparts B and C applied only to those carriers who received a direct Federal subsidy under the Essential Air Service program.

The legal authority for the regulation included section 504 of the Rehabilitation Act of 1973, as amended (which prohibits discrimination on the basis of handicap in Federally-assisted programs), section 404(a) of the Federal Aviation Act of 1958 (FA Act), as amended (which requires carriers to provide "safe and adequate" service), and section 404(b) of the latter Act (which prohibited "unjust discrimination" in air transportation; this subsection has since lapsed).

The Paralyzed Veterans of America (PVA) sued the CAB, arguing that even nonsubsidized carriers receive significant Federal assistance in the form of Federal Aviation Administration (FAA) air traffic control services and airport and airway improvement grants. Consequently, PVA said, all portions of the rule should apply to all carriers under section 504. The U.S. Court of Appeals for the District of Columbia agreed. *Paralyzed Veterans of America* v. *Civil Aeronautics Board*, ("*PVA* v. *CAB*"), 752 F.2d 694 (D.C. Cir., 1985). After its review of the case, the Supreme Court decided, in June 1986, that nonsubsidized carriers did not receive Federal financial assistance and, therefore, were not covered by section 504. *Department of Transportation* v. *Paralyzed Veterans of America* ("*DOT* v. *PVA*"), 477 U.S. 597 (1986). The result of this decision was to leave part 382 in effect, without change.

In specific response to the Supreme Court decision, Congress enacted the Air Carrier Access Act of 1986 (ACAA), which President Reagan signed into law on October 2, 1986. Congress enacted the statute with support from disability groups, airline industry groups, the Department of Transportation, and the Department of Justice. The Act amended section 404 of the FA Act to prohibit discrimination on the basis of handicap by all air carriers (the ACAA has been codified as section 404(c) of the FA Act, 49 U.S.C. 1374(c)). The text of the ACAA follows:

> Section 404 of the Federal Aviation Act of 1958 (49 U.S.C. 1374) is amended by adding at the end thereof the following new subsection:
>
> "PROHIBITION ON DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS
>
> "(c)(1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.
>
> "(2) For the purposes of paragraph (1) of this subsection the term 'handicapped individual' means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.
>
> "Sec. 3.1 Within one hundred and twenty days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations to ensure nondiscriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers."

The legislative history of this statute stressed three major themes. First, the statute was enacted in response to the Supreme Court decision in *DOT* v. *PVA* that subparts B and C of the existing part 382 could apply only to carriers directly receiving Federal financial assistance. Second, the legislation responded to Congress' concern about leaving "handicapped air travelers subject to the possibility of discriminatory, inconsistent and unpredictable treatment on the part of air carriers." (Sen. Rept. 99–400 at 2 (1986)).

Third, the legislative history discussed the relationship between nondiscrimination and safety. The statute itself directs the Department to promulgate rules to ensure nondiscriminatory treatment of qualified handicapped individuals "consistent with the safe carriage of all passengers on air carriers." The Senate Report noted that the statute "does not mandate any compromise of existing DOT or Federal Aviation Administration (FAA) safety regulations." (*Id.* at 2).

In a floor statement, Senator Dole, the primary sponsor of the bill in the Senate, said that—

> Our intent * * * is that so long as the procedures of each airline [concerning the transportation of disabled passengers] are safe as determined by the FAA, there should be no restrictions placed upon air travel by handicapped persons. Any restrictions that the procedures may impose must be only for safety reasons found necessary by the FAA. Beyond this, the Secretary of Transportation should review each airline's procedures in light of the regulations to be promulgated pursuant to [the Act] to ensure that the procedures of each airline do not contain discriminatory requirements. (132 Cong. Rec. 21771, August 15, 1986.)

The legislative history of the ACAA is discussed in greater detail below as it applies to specific legal issues or specific sections of the final regulation.

In August 1986, in response to correspondence from blind individuals and Members of Congress, and prior to the enactment of the ACAA, the Department published an informational notice requesting comment on a series of issues of concern to blind air travelers. The Department received several hundred comments on that notice, which have been taken into account in the development of the ACAA rule.

Originally, the Department considered an interim final rule making the old part 382 applicable to all carriers, followed by a subsequent rulemaking to address changes in the rule and additional issues that parties wished to raise. However, the Department was urged by groups representing persons with disabilities to use the regulatory negotiation technique to develop proposed and final regulations, rather than publishing an interim final rule. In agreeing to use this technique, the Department and the parties were aware that the Department could not meet the statutory deadline for issuing final regulations. However, the disability groups involved preferred this approach even though it would delay the issuance of a notice of proposed rulemaking (NPRM).

In regulatory negotiation, the Department convenes an advisory committee under the Federal Advisory Committee Act. The committee consists of representatives of interests affected by the rulemaking. In this case, disability groups represented on the

committee included the Paralyzed Veterans of America (PVA), the National Council on Independent Living, the American Council of the Blind, National Federation of the Blind (NFB), National Association of Protection and Advocacy Systems, National Association of the Deaf, and the Society for Advancement of Travel for the Handicapped. Air travel industry representatives included the Air Transport Association (ATA), Regional Airline Association (RAA), National Air Carrier Association, National Air Transportation Association, Airport Operators Council International/ American Association of Airport Executives, and the Association of Flight Attendants. In addition to the Department, the Architectural and Transportation Barriers Compliance Board (ATBCB) represented the Federal Government's interest. A neutral mediator from the Federal Mediation and Conciliation Service chaired the committee.

The advisory committee met from June through November 1987. The group tentatively agreed on a substantial number of issues and produced draft consensus recommendations for proposed regulatory language on these points. Substantial progress was made, and differences narrowed, on several other issues. The negotiations were not completed, however, due to an impasse over the issue of exit row seat restrictions. As a result of this impasse, the parties never came to a formal vote or consensus (i.e., a sign-off) on the entire package. Consequently, while the Department used the results of the process as an important resource for developing the NPRM, the NPRM represented the Department's own proposals, since there were not final advisory committee recommendations on which to base the proposal.

The NPRM was published June 22, 1988 (53 FR 23574), with an initial comment closing date of September 20, 1988. Both disability groups and airline industry groups asked for a 90-day extension of the comment period (the ATA asked for an additional 30-day reply period as well). The Department granted these requests, and the comment and reply periods ended January 19, 1989.

The Department received over 300 comments on the NPRM. The lengthy comments submitted by the ATA, for the carriers, and PVA, on behalf of a large number of disability organizations, were the most comprehensive expressions of the views of the air carrier industry and disability community, respectively, that the Department received. These comments pertain to every section of the regulation. Other comments that addressed many of the provisions of the proposed rule were submitted by such parties as the RAA and NFB. The positions of these commenters are typically identified by name throughout the remainder of the preamble. The Department also took the comments of other parties fully into account; these comments (which often make the same substantive points as the ATA or PVA comment) are not always identified by the name of the commenter, however. The subsequent portions of the preamble discuss issues or regulatory provisions by summarizing the positions of the commenters and indicating the Department's response to those comments, as incorporated in the final rule.

Legal and Other General Issues

Commenters brought up five major legal or general issues in connection with the rulemaking, in addition to their comments on specific provisions of the NPRM. These issues concern the standard to be applied to accessibility modifications of aircraft and facilities (i.e., equal access vs. section 504 standard and what constitutes an undue burden), the relationship between the safety and nondiscrimination aspects of the ACAA and its effect on carrier discretion, the basis in the record for the rulemaking, preemption of state law, and whether carriers discriminate on the basis of handicap.

1. Equal Access/504 Standard Comments

Comments—PVA says that the purpose of the ACAA is to require "equal access." To fulfill this purpose, "DOT must require air carriers to adapt all feasible accommodations necessary for equal access," which means that DOT "must focus on making air carriers fully accessible, except where flight safety is clearly compromised or where accommodations would be technically impossible or would cost so much to threaten the existence of an air carrier." Equal access is a different, and more stringent, standard than required by section 504.

This equal access standard emerges, in PVA's view, from the legislative history of the ACAA. PVA cites statements by Senator Dole (that the purpose of the ACAA is "to provide equal access to air transportation," (132 *Cong. Rec.* 21770 (August 15, 1986)) and Senator Metzenbaum (that "all Americans should be treated equally when they [use] commercial air carriers" (*Id.* at 21772), for this proposition. Along similar lines, Senator Cranston said that "full access is vital to millions of individuals' pursuit of business and personal matters." (*Id*). PVA also cites statements in the House by Rep. Snyder and Rep. Ackerman to the effect that the bill is intended to prevent handicapped persons from being "second class citizens when it comes to air travel." (130 *Cong. Rec.* 24070–71, September 18, 1986.) PVA also cites statements by various members, discussed later in this preamble, saying that restrictions on handicapped passengers may be imposed only for safety purposes, and argues that this means that access can be limited only for safety reasons.

ATA argues that it is clear from the legislative history that the ACAA was intended to circumvent the decision of the Supreme Court in *DOT* v. *PVA* that section 504 did not apply to nonsubsidized carriers, since there are not recipients of Federal financial assistance. ATA cites statements to this effect by Senator Dole (*Id.* at 21770) and in the Senate Report on the bill (S. Rept. No. 99–400 at 2 (1986)), and could have cited numerous other such statements. ATA mentions that Senator Dole also commented that the bill incorporated "compromise definitions which rely heavily on language and precedents from the Rehabilitation Act." (132 *Cong. Rec.* 21770, August 15, 1986).

PVA rejoins that even if one assumes that 504 standards apply, 504 requires affirmative steps to accommodate persons with disabilities. PVA cites *Dopico* v. *Goldschmidt* 687 F.2d 644 (2d Cir., 1982) and *APTA* v. *Lewis*, 655 F.2d 272 (D.C. Cir., 1981) for this proposition. The issue, PVA says, is the extent of the accommodation required. While "undue financial and administrative burdens" are not required, *Southeastern Community College* v. *Davis*, 442 U.S. 392, 413 (1979), it is appropriate to look at the overall size of the program, including the size of facilities and budget; the type of operation; the nature and cost of the accommodations needed; and the effect of making the accommodations on the program's accomplishments.

PVA says that the 1987 air carrier operating revenues were $57 billion with $2.5 billion annual earnings. The industry's assets total about $54 billion, including more than $35 billion in flight equipment. Against this, DOT's extended 20-year cost projection of $393.4 million for accessible lavatories, on-board wheelchairs, movable armrests and training is far from an undue burden—less than one percent of the industry's annual operating revenues for a single year. Carriers could pay for

it by a ten-cent surcharge on each ticket. This is far from an undue burden, in PVA's view. PVA also cites *ADAPT* v. *Dole*, 676 F. Supp. 635 (E.D. Pa., 1988) for the proposition that it is inconsistent with section 504 to arbitrarily limit requirements to spend money for accessibility.

ATA views costs differently. It emphasizes case law (e.g., *Southeastern Community College; APTA; Alexander* v. *Choate*, 469 U.S. 287 (1985); *Handicapped Action Committee* v. *Rhode Island Transit Authority*, 718 F.2d 490 (1st Cir., 1985)) which discusses limits on the reach of section 504 where cost burdens or fundamental alterations of programs are involved. ATA distinguishes cases cited by PVA by pointing to the fact that most construe not only section 504 but also section 16 of the Urban Mass Transportation Act, which calls for "special efforts" to accommodate handicapped persons and requires specific service criteria. Moreover, ATA's cost projections show an $80 million dollar annual cost for the key NPRM requirements, which would amount to 36 percent of the industry's average annual net profits of $221 million. This is clearly an undue burden, ATA argues. Congress did not contemplate that the ACAA would involve such a burden. For this proposition, ATA cites statements by Rep. Hammerschmidt (that the bill would not "impose any financial burdens on the airlines," 132 *Cong. Rec.* 24016, September 18, 1986) and in the Senate Report ("the net effect of the regulations * * * will not significantly increase the regulatory burden imposed on air carriers." (S. Rept. 99–400 at 3 (1986)).

DOT Response—It is clear that Congress intended section 504 standards to apply to implementation of the ACAA. The context of the passage of the ACAA and all the legislative history that addresses the subject make clear that Congress intended the ACAA to put the ACAA in the place of Section 504, which the Supreme Court in *DOT* v. *PUT* had said did not apply to non-subsidized carriers. Floor comments about "equal access" and "second class citizenship" do not evince an intent by Congress to create a new, separate standard for accessibility, beyond that of section 504. The language of the statute is essentially similar to that of Section 504, and, even considered in light of the legislative history, does not give rise to an inference that a stricter-than 504 standard is established by the statute. Even recent case law in the transit area (see *ADAPT* v. *Skinner*, 881 F.2d 1184 (3d Cir., *en banc*, 1989)) does not claim to find a right of equal access under section 504.

Given that section 504 standards apply to this ACAA rule, it follows that the regulations may not impose "undue financial or administrative burdens" (see *Southeastern Community College* and *APTA*) or require fundamental changes in the carriers' programs (see *Southeastern Community College* and *Alexander*). This leaves the difficult question of what constitutes an "undue" burden. The term clearly carries the implication that some burdens are "due," while others are not. Neither statutes nor case law provide any "bright line" between the two.

To PVA, virtually any burden is "due," since costs of accommodations are small compared to carrier assets, operating revenues, or annual earnings. To ATA, the NPRM proposes "undue" burdens because costs would represent a large percentage of net profits. Neither view is complete. In a private sector industry (as contrasted to public enterprises, like most mass transit authorities), the ability of enterprises to make a profit is an important consideration, which it would not be reasonable to ignore. On the other hand, the overall magnitude of the industry is also a relevant consideration, since the total resources available to accommodate handicapped persons are significant in an industry of this size.

The Department is not adopting any specific view of what must constitute a "due" or "undue" burden. Rather, the Department has evaluated the need for various proposed accommodations and the cost of these accommodations. The regulation is intended to strike a reasonable balance between disability groups' concerns about sufficient accommodations being provided and carriers' concerns about the costs of those accommodations. Such a balance, we believe, is fully consistent with—indeed, mandated by—section 504 principles which apply to the ACAA.

2. Safety, Nondiscrimination and Discretion

Comments—ATA argues that several provisions of the NPRM (e.g., definition of qualified handicapped individuals, refusals of service, attendants) clash with Federal Aviation Act prinicples. Under the FA Act, FAA rules are "minimum standards" (49 U.S.C. 1421(a)) and FAA rules are to take into account the duty of air carriers to perform their functions "with the highest degree of safety" (49 U.S.C. 1421(b)). ATA notes that the Supreme Court has recognized these provisions. *U.S.* v. *Variq Airlines*, 467 U.S. 797 (1984). ATA understands these provisions to mean that carriers are intended to be able to exceed FAA safety rules and that "some discretionary decision making on the part of airline personnel is inevitable" when dealing with disabled passengers. *PVA* v. *CAB*, 752 F. 2d at 720–21.

ATA cites several cases in which courts have permitted air carriers or other transportation employers to restrict employment in the interest of safety. *Usuery* v. *Tamiami Trail Tours*, 531 F. 2d 224 (5th Cir., 1976); *Harriss* v. *Pan American Airways*, 437 F. Supp. 413 (N.D. Cal., 1977)), *aff'd* 649 F.2d 670 (9th Cir., 1980); *Levin* v. *Delta Air lines*, 730 F.2d 994 (5th Cir, 1984); *Murnare* v. *American Airlines*, 667 F.2d 98 D.C. Cir., 1981; and *Johnson* v. *American Airlines*, 745 F.2d 988 (5th Cir., 1984). These cases involved older drivers, pilots and flight engineers (*Useury, Murnare* and *Johnson*) or pregnant flight attendants (*Harriss* and *Levin*). The courts found that they could be denied employment on *bona fide* occupational qualification/business necessity grounds related, at least in part, to safety considerations.

ATA also cited cases in which courts upheld carriers' discretion in imposing restrictions on disabled passengers. *Anderson* v. *USAir*, 619 F. Supp. 1191 (D.D.C., 1985), *aff'd on other grounds* 818 F.2d 49 (D.C. Cir. 1987) and *Adamsons* v. *American Airlines*, 444 N.E. 2d 21 (N.Y., 1982). *Anderson* involved a blind passenger evicted from an exit row. The District Court found that the carrier's policy was consistent with section 504, part 382, and FAA regulations. The Court of Appeals did not consider the section 504 claim, but found for the carrier on the basis that there was no private right of action under section 404(a) of the FA Act. The court explicitly did not decide what effect the ACAA might have had on the case, since it was enacted after the incident in question. *Adamsons* involved a refusal to provide transportation to a passenger who was paralyzed from the waist down by a recent undiagnosed spinal hematoma, was crying out from evident severe pain, and was using a catheter and disposal bag. The court held that the carrier did not abuse its discretion under section 1111 of the FA Act (49 U.S.C. 1511), which allows carriers to deny passage when, in the opinion of the carrier, such transportation would or might be inimical to safety of flight.

In its comment on this issue, ATA did not discuss the language or legislative history of the ACAA. PVA, on the other hand, focused its argument there. PVA quoted Senator Dole:

> our intent in [the ACAA] is that so long as the procedures of each airline are safe as determined by the FAA, there should be no

restrictions placed upon air travel [by] handicapped persons. Any restrictions that the procedure may impose must be only for safety reasons found necessary by the FAA. (132 *Cong. Rec.* 21771, August 15, 1986.)

PVA also cites similar statements by Rep. Mineta (132 *Cong. Rec.* 24070, September 18, 1986) and other members of Congress. In PVA's view, unless FAA, through rulemaking, has found a particular restriction to be necessary, the ACAA precludes a carrier from imposing it.

PVA also refers to FAA's history of action under 14 CFR 121.586. This regulatory provision tells carriers to file procedures with FAA for dealing with passengers who may need assistance in an emergency evacuation. As stated in *Southwest Airlines Enforcement Proceeding* (DOT Docket No. 42425), this rule imposes "an affirmative obligation upon the Administrator to respond when a safety * * * problem may exist with [the airline policies.]" If FAA has not affirmatively acted to nullify or change a carrier policy, then that policy must be considered to be safe, and more restrictive policies are not "necessary" for safety. PVA then points to a number of relatively liberal carrier policies which FAA has not required to be changed in areas like number limits and attendants. As in *Southwest Airlines*, PVA says that more restrictive policies are contrary to nondiscrimination requirements.

PVA denies that any of the cases cited by FAA held that "concern for safety must prevail". It distinguishes the employment discrimination cases ATA cites on the ground that carriers can properly impose more stringent conditions on their employees than upon passengers, and points out that, even in the employment discrimination area, the proponents of a discriminatory requirement must meet a burden of proof as to its necessity; mere assertion of a safety rationale is not enough. Under *Usuery*, PVA argues, a carrier must be able to demonstrate the likelihood of injury or death to make this showing.

In addition, employment discrimination law requires objective evidence (not subjective assumptions) to establish a basis for a facially discriminatory restriction and provides that, if acceptable, less restrictive means are available, they must be used. *Wright* v. *Olin*, 697 F.2d 1172, 1190–91 (4th Cir., 1982).

PVA objects to carrier "discretion," which it views as the heart of inconsistent and arbitrary treatment that handicapped persons have suffered over the years. Detailed rules remove the need for carrier discretion, PVA argues.

DOT Response—This regulation is for the purpose of implementing a statute. The ACAA mandates that carriers not discriminate in providing air transportation. The statute also requires that DOT's rules be consistent with the safe carriage of all passengers. As a statutory matter, DOT is required to achieve both objectives.

On this subject, the Senate Report says the legislation "does not mandate any compromise of existing * * * FAA safety regulations." It says that carriers are intended not to impose upon handicapped travelers "any regulations or restrictions unrelated to safety * * *" Senator Dole stated that any restrictions that carriers impose "must be only for safety reasons found necessary by the FAA. Beyond this, the Secretary should review each airline's procedures to ensure that [they] do not contain discriminatory procedures."

In the House, Representative Mineta said that the Department should ensure that carriers "impose only those restrictions necessary for safety." Legislators said that DOT should review carrier policies to ensure they conform with the regulations promulgated under the ACAA (Representatives Mineta and Hammerschmidt; Senators Metzenbaum and Dole). They also said a purpose of the rule was to ensure consistency in carrier policies (Senator Cranston; Representatives Mineta and Snyder).

To review carrier procedures against the criteria of a nondiscrimination rule and to ensure consistency among carrier procedures clearly implies the power to constrain carrier discretion. DOT has this authority under the ACAA and will exercise it in promulgating and implementing this rule.

In doing so, the Department is not mandated to alter existing FAA safety regulations. We will not do so. When FAA "finds" that a restriction is "necessary" for safety, that is a legitimate ground for a carrier imposing a restriction. FAA can be said to have made a "finding" that a restriction is "necessary" for safety only when it issues a regulation mandating that specific restriction. FAA advice or suggestions, or carrier practices which FAA has not found to be unsafe, are not equivalent to FAA findings that a restriction is "necessary for safety."

This view is consistent with the provisions of 49 U.S.C. 1421(a). FAA safety regulations are "minimum standards," i.e., they constitute a "bottom line" that FAA has found necessary for safety. The regulations establish what carriers "need to have" to be safe. Absent other legal constraints, carriers have the discretion to impose additional requirements intended to enhance safety. Doing so, in the absence of other legal constraints, is also consistent with carrier's common law obligation to ensure the highest level of safety.

The ACAA is precisely such a legal constraint on the carrier's discretion to impose additional requirements, above the "minimum standards" found to be necessary for safety by the FAA, where the additional requirements affect handicapped persons in a way differently from other passengers. Where a restriction required as necessary for safety by an FAA rule mandates different treatment, the ACAA does not stand in its way. Where an optional carrier action, not mandated by an FAA safety rule, would require different treatment, the ACAA prohibits it.

ATA is correct in saying that 49 U.S.C. 1421(b) refers to maintaining "the highest degree of safety." This statement, which in context refers to a consideration that the FAA is to take into account in developing its safety rules, does not constitute a legal basis on which carriers may ignore nondiscrimination requirements. Nor, realistically, can it be read as a legal mandate that carriers take every action that would arguably enhance safety. Newer aircraft may well be safer than older aircraft. More experienced pilots may well be safer than less experienced pilots. It may be safer never to carry any children or elderly persons, and to concentrate on carrying only ablebodied adults. It is probably safer to refuse to transport any carry-on items in the cabin. Yet no one, least of all ATA, would argue that carriers must ground their old planes and young pilots. Carriers have discretion, under FAA's "minimum standard" carry-on baggage rule, to ban carry-on baggage completely, but few if any do so. Carriers regularly carry large numbers of children and elderly passengers. All these carrier actions are sensible, and fully consistent with law. 49 U.S.C. 1421(b) is not a mandate to the contrary in these areas, any more than it is a mandate to impose restrictions on handicapped passengers that are not necessary for safety, as determined by an FAA rule.

The several employment practices cases ATA cites do not stand for the proposition that an assertion of a safety rationale for a carrier practice must necessarily triumph over nondiscrimination requirements. They simply stand for the proposition that there are some fact situations that lead

courts to conclude that a particular carrier practice involves a *bona fide* occupational qualification or business necessity. That a court believes that a carrier has shown a sufficient safety rationale to establish that a 62 year old flight engineer or a pregnant flight attendant should not be employed does not demonstrate that DOT is legally precluded from implementing the ACAA in a way that constrains carrier discretion.

Where courts have directly considered a carrier's treatment of handicapped passengers, the results are mixed. Sometimes (e.g., *Anderson* and *Adamsons, supra*) carrier actions are upheld. Other times (e.g., *Angel* v. *Pan American World Airways*, 519 F. Supp. 1173 (D.D.C., 1981); *Jacobson* v. *Delta Airlines*, 742 F. 2d 1202 (9th Cir., 1984)) carriers actions are rejected. In all these cases, carriers asserted safety rationales for imposing restrictions on handicapped passengers. In all cases, the courts examined these rationales on their merits; they did not simply determine that the assertion of a safety concern ended the inquiry.

The decisions in all four of these cases are consistent with this final rule. The final rule permits carriers to exercise their discretion under 49 U.S.C. 1511 to exclude passengers who would or might be inimical to the safety of flight (*Adamsons*). It defers to an FAA rule permitting restrictions on exit row seating (*Anderson*). It would prohibit attendant requirements for persons who can assist in their own evacuation (*Angel*) and administrative requirements for handicapped passengers that are not required for all passengers (*Jacobson*).

Consistent with the Department's decision in the *Southwest Airlines* case, the Department also determines that if the FAA has not concluded that less restrictive carrier procedures are inconsistent with safety, then carrier requirements which are more restrictive of handicapped passengers would not be necessary for safety, and are therefore inconsistent with the ACAA.

ATA relies on language in *PVA* v. *CAB* for the proposition that airlines must have "decisional discretion" in many aspects of providing service to handicapped passengers. That decision pointed out, however, that the old Part 382 significantly limited the discretion of airline personnel. 752 F. 2d at 720–21. Carriers were not to have "unbridled discretion." *Id.* at 721. Clearly, the decision does not stand for the proposition that an agency rule may not limit carrier discretion in any way. The only argument is over what the constraints are. Against the background of the ACAA (see discussion below under "Carrier Discrimination"), the Department is amply justified in concluding that constraints differing from those of the CAB version of Part 382 are well within the scope of the ACAA, since these constraints are necessary in order to solve the kinds of problems which the statute addresses.

In discussing the CAB's resolution of these issues, the court in *PVA* v. *CAB* said that it could not say that "the agency's decision * * * manifests a clear error in judgment" or that the CAB's regulatory language "lacked a rational basis," such that the PVA's Administrative Procedure Act challenge to this portion of the regulation would prevail.

This finding cannot fairly be said to have established that the CAB's resolution was in some sense legally mandatory or binding. It has not established a legal requirement for DOT to copy the former Part 382. Like the CAB under the statutes it implemented, the Department is free to exercise its reasonable "decisional discretion" under the ACAA, even where the substantive result may differ from the CAB's 1982 decisions.

PVA correctly points out that the Senate Report suggested that DOT "may wish to refer to existing regulations * * * including, but not limited to * * * [the existing] 14 CFR part 382 * * *" (S. Rept. 90–400 at 5 (1986)). Clearly, Congress did not mandate that DOT would be bound to photocopy the old version of the rule.

3. Basis for the Rulemaking

Comments—ATA argued that DOT may not use the regulatory negotiation, and any tentative agreements reached by the advisory committee, as a basis for the proposed rule, since final, binding consensus was never reached. ATA also contends that the proposed rule is not based on adequate information concerning the need for this rule; i.e., an independent body of information supporting the need for any new rule, and for this proposal in particular. DOT failed to explore alternative approaches like simply making the CAB version of part 382 applicable to all air carriers.

PVA suggested a number of bases for the rulemaking. These included the legislative history of the ACAA (i.e., the inability of the old part 382 regulations to prevent discrimination and inconsistency), post-1982 changes in the industry (i.e., a more detailed rule is needed in a deregulated environment), the material in the record of the proceeding (including material provided by or for the advisory committee), and complaints filed with DOT.

DOT Response—ATA correctly points out that there was no final, binding agreement reached through the regulatory negotiation. However, the parties to the regulatory negotiation provided a substantial volume of material and contributed much valuable information to the discussions. Public meetings and input from non-members of the advisory committee produced additional information. All of this material became part of the basis for the NPRM.

The Department committed to the parties that, to the greatest extent feasible, it would use tentative agreements reached by the committee as the basis for portions of the NPRM. We did so. The NPRM was the Department's proposal; it did not purport to be a consensus proposal of the committee. Nevertheless, the information generated through the regulatory negotiation process is properly part of the record and basis for this rulemaking.

If ATA is contending that some separate, independent basis or body of information is a prerequisite to issuing an NPRM, it misunderstands the regulatory process. An NPRM is intended to be a vehicle for securing comments and data that will form the basis for a final rule. Beyond the ACAA's statutory requirement for rulemaking, no other basis is needed for the NPRM.

The Department did consider simply publishing an interim final rule applying the old version of part 382 to all carriers. This consideration is a matter of public record, and was known by members of the regulatory negotiation advisory committee, and the ATA knew this fact when it agreed to participate in the negotiation. The Department did not follow this course for several reasons. First, it responded to requests from parties that the rulemaking be produced through regulatory negotiation. Second, it was aware that the old part 382 did not address a number of issues of concern to passengers and carriers. Third, under the statute, DOT was not bound to use the old rule without change. Fourth, the legislative history indicated that Congress was deeply dissatisfied with carrier actions under the old rule (see discussion below under "Carrier Discrimination"). The rationales for additional rulemaking suggested in PVA's comments have substantial validity, and constitute additional grounds for moving to a new, more detailed, regulation in place of the old Part 382.

4. Preemption of State Law

Comments—ATA urges that the rule expressly preempt state laws protecting persons with disabilities as applied to the provision of air transportation. The rule is national in scope, part of the Federal regulation of air travel, and "occupies the field." Carriers should not be subject to differing state-to-state regulation as well as Federal regulation. ATA also cites section 105 of the FA Act, which preempts from state law matters affecting "services" to airline passengers.

PVA opposes a preemption provision. It is not necesssary and could restrict other options for improving the accessibility of air transportation (e.g., through state enforcement that may be more responsive to complainants than DOT), and could have unintended consequences (e.g., unintended coverage of hotel accommodations that are part of an air travel package). Any state regulations that directly conflict with the rule would be preempted, in any case. Also, section 105 is a narrow statute, which does not preclude all state regulation in matters related to air transportation.

DOT Response—This is a detailed, comprehensive, national regulation, based on Federal statute, that substantially, if not completely, occupies the field of nondiscrimination on the basis of handicap in air travel. Moreover, providing transportation to passengers is clearly a "service" within the meaning of section 105 of the FA Act (49 U.S.C. 1305(a)(1)), bringing that statute's preemptive force into play. courts have found that section 105 preempts state law in the area of nondiscrimination on the basis of handicap (*Anderson, supra,* 619 F. Supp. at 1198; 818 F.2d at 57; *Hingson* v. *Pacific Southwest Airlines,* 743 F.2d 1408, 1415 (9th cir., 1984)).

Consequently, interested parties should be on notice that there is a strong likelihood that state action on matters covered by this rule will be regarded as preempted. However, the Department will offer its opinion on preemption matters on a case-by-case basis, where it is requested.

5. Carrier Discrimination

Comments—ATA contends adamantly that carriers do not discriminate against handicapped passengers. The industry provides good service to persons with disabilities, providing many accommodations and carrying wheelchairs, for example, with minimal problems of loss or damage. (Advance notice is important to permitting accommodations to be made, ATA adds). ATA complains that the tone of the NPRM unfairly made it appear that carriers regularly discriminate. Indeed, ATA says, there is little evidence of well-founded consumer complaints of discrimination. Occasional incidents of insensitivity, or passenger service mistakes that sometimes can affect any passenger, do not equate to a pattern of discrimination.

PVA views the matter differently. The "horror stories" and documented complaints of many handicapped passengers, language in carrier manuals, comments of some carriers to the docket, and the absence of adequate physical accessibility and accommodations all provide evidence of discriminatory attitudes and practices on the part of carriers and their personnel. PVA also points to the legislative history of the ACAA, which makes numerous references to carrier discrimination and arbitrariness.

DOT Response—The debate between carriers and disability groups on this issue takes on, at times, a rather unhelpful "No, I didn't—Oh yes you did" tone. It is fair to say that no one attempts to paint carriers as "bad guys" who, because of some animus against persons with disabilities, set out deliberately to make handicapped passengers' travel experiences miserable. It is also fair to say, based on the record of the rulemaking, that carriers—from a mixture of motives including safety, carrier convenience, and uncertainty about how to accommodate handicapped passengers—take actions which many passengers with disabilities view as discriminatory.

This debate is, in one important sense, irrelevant to this rulemaking. The Department is charged with implementing the ACAA, which prohibits discrimination. Whether or not carriers engage in widespread discrimination, the Department has the duty of promulgating a rule that forbids discriminatory practices.

However, it is clear from the legislative history of the ACAA that Congress believed that a wide variety of discriminatory practices continued to exist under the old Part 382 and that legislative action was necessary to correct the abuses. For example, the Senate Report referred to the concern, post-*DOT* v. *PVA,* That handicapped passengers would be "subject to discriminatory, inconsistent, and unpredictable treatment" and mentioned the concerns of disabled passengers about discriminatory or inconsistent requirements. (S. Rept. 40–400 at 2 (1986)).

The problems to which the Committee and several individual members referred included refusals to provide transportation, extra charges, segregated waiting areas and aircraft seating, loss of or damage to equipment, requirements to sit on a blanket, and overly long advance notice requirements. These issues, as well as the overall issue of ensuring consistency in airline procedures, are matters which this rule addresses.

Section-by-Section Analysis

This portion of the preamble discusses each regulatory section of the NPRM, the comments made about it, and the Department's responses to the comments. For convenience, the regulatory sections are discussed in the order they appear in the final rule.

Section 382.1—Purpose

NPRM—The proposed rule stated that the purpose of the regulation was to prohibit carriers from discriminating against qualified handicapped individuals on the basis of handicap in the provision of air transportation, consistent with the safe carriage of all persons. The proposed provision also stated three policy aims of the rule—access to air transportation for handicapped passengers, imposition of only safety-related restrictions on their travel, and predictable services for them. The section also stated that nothing in the rule was intended to impose undue financial burdens.

Comments—PVA objected to the "undue burdens" and "consistent with the safe carriage of all passengers" language of the proposed section. A large number of other disability community commenters also objected to the "safe carriage" language, and a few of these comments also objected to the mention of "undue burdens." The Architectural and Transportation Barriers Compliance Board (ATBCB) and Department of Justice (DOJ) suggested clarifications of the "undue burdens" language to better express their views of the application of this concept. ATA and RAA, while agreeing that the "safe carriage" and "undue burdens" concepts were appropriate, objected to the three policy statements, which they felt put an inappropriate gloss on the requirements of the statute. ATA suggested reducing the section to a simple statement that the rule was intended to carry out the statute.

DOT Response—The purpose section of any regulation is not intended to be an operative provision. It imposes no requirements. Nor is it intended to set a tone for the rule that favors one party or

another's position. To avoid this pitfall, and to avoid making policy statements which, as RAA suggests, may be superfluous in light of the substantive sections of the rule, we have concluded that the ATA's suggestion of simplifying the section has merit. Therefore, the final rule section states that the purpose of the rule is to implement the ACAA and recites, verbatim, the language of the Act. The Department also agrees with commenters that the Department would not have the authority, under the ACAA, to impose undue administrative or financial burdens on carriers, or cause them to alter the nature of their programs. The rule has been designed to avoid doing so. Some potential requirements, which may increase carrier burdens, are among those about which comment is being sought in the accompanying ANPRM and SNPRM. At the time the Department conducts additional rulemaking pursuant to these documents, we will consider whether additional steps to avoid undue burdens are needed, as some comments (e.g., from DOJ) suggested.

We would point out that, as with any OST regulation, regulated parties may avail themselves of the procedures of 49 CFR § 5.11 if they believe that an exemption is warranted from any provision of the rule, for undue burdens or other reasons. To be considered favorably under this procedure, an exemption request must be based on special circumstances faced by the party requesting the exemption that make it impracticable to comply with the generally applicable requirement. Exemptions are not intended to be a backdoor device for amending a rule; issues considered during the rulemaking or matters which apply to a class of regulated parties are not appropriate grounds for an exemption request.

Section 382.3—Applicability

NPRM—The NPRM would have applied the rule to all air carriers providing air transportation. An exception was made for indirect air carriers, to whom provisions concerning aircraft operations would not have applied (on the assumption that indirect air carriers, by definition, do not engage in aircraft operations). Finally, the section stated that nothing in the rule was intended to authorize or require carrier noncompliance with an FAA safety rule.

Comments—ATA suggested that the language of the proposal concerning compliance with FAA safety rules was unnecessary. It recommended adding a provision disclaiming application of the rule to services or facilities of air carriers which are provided or located in foreign countries and controlled by foreign governments and where U.S. carriers have no authority to require compliance with DOT regulations. ATA agreed with the proposed exclusion of coverage for indirect air carriers, as did RAA, which also suggested excluding charter flights on the basis that they were negotiated contracts.

PVA disagreed with the exclusion for indirect air carriers, citing several examples of situations in which indirect carriers may provide services covered by the provisions of the rule relating to flight operations (e.g., seat assignments made by tour operators, arrangements for baggage handling by a tour operator representative accompanying a flight, provision of flight information, making arrangements related to service animals, etc.).

PVA also suggested using regulation of indirect air carriers as a mechanism for extending coverage to foreign air carriers in some situations (e.g., by prohibiting a U.S. tour operator from booking a tour on an inaccessible foreign airline). Another PVA suggestion relating to foreign carriers would involve amending the Department's section 504 regulation for Federally-assisted airports to require the airports to include provisions in their leases with foreign carriers obligating the carriers to meet regulatory standards equivalent to those of this regulation. PVA also asked for an amendment to the Department's section 504 regulation to cover carriers receiving Essential Air Service (EAS) subsidy.

PVA, like ATA, suggested that the proposed paragraph on FAA safety regulations should be deleted. Finally, PVA said that the rule should require nondiscrimination on the basis of handicap in carriers' employment practices, at least for those jobs involved in the provision of air transportation. Since the statute applies to carriers "in the provision of air transportation," and since pilots, baggage handlers, ticket agents, etc., do work related to providing air transportation, PVA argued, the statute should be read to prohibit discrimination in filling such positions. ATA strongly disagreed with PVA on this point, saying that there was no basis in the statute for coverage of employment practices.

Some other disability organizations and state and local government commenters agreed with PVA with respect to coverage of indirect carriers under all provisions of the regulation. The National Air Carrier Association argued against any coverage of charter flights, especially on flights chartered by the Department of Defense. The International Air Transport Association (IATA) suggested that the rule should clarify that foreign travel agents and foreign providers of airport facilities at non-U.S. locations were not covered by the rule. The ATBCB concurred in PVA's position concerning coverage of foreign air carriers via lease provisions at Federally-assisted airports. The NFB joined the consensus concerning deletion of the FAA safety rule language.

DOT Response—All parties who addressed the subject suggested that the FAA safety rule language of the NPRM could be deleted. It is clear, as a matter of law, that carriers must comply with FAA safety rules. However, re-emphasizing this point in the regulation, while perhaps not legally essential, is not harmful, and is a useful reminder of the relationship between nondiscrimination requirements and FAA safety rules. We would also point out that FAA, in addition to "CFR" regulations, issues Airworthiness Directives which have mandatory effect on carriers, and also issues guidance interpreting regulations. This provision is intended to encompass any FAA safety issuance having mandatory effect.

The Department does not agree with ATA that it is appropriate to exclude from coverage all activities of U.S. carriers carried out in foreign countries. The ACAA clearly applies to air carriers (i.e., U.S. carriers) in the provision of air transportation. The provision of air transportation is not limited, under the Federal Aviation Act, to the provision of air transportation within the borders or airspace of the United States. By accepting this suggestion, the Department would effectively amend the ACAA to narrow its scope from what Congress provided.

At the same time, the Department agrees with IATA's comment that the regulation should not cover foreign travel agents and airport operators at locations outside the United States. These parties are not U.S. air carriers; enforcement action against them, even if possible legally, would be very difficult practically. New language has been added to the regulation excluding these parties from coverage.

Extending coverage to foreign air carriers via their leases at Federally-assisted airports, as PVA suggests, is clearly beyond the scope of this rulemaking. That is, the Department could not do so under the authority of the ACAA, to which this rulemaking pertains, but would need to do so by proposing an amendment to 49 CFR

§ 27.71, the Department's section 504 regulation for Federally-assisted airports. The Department is not persuaded that following this suggestion would be a good idea.

Departmental officials have stated, as pointed out in the PVA comment, that a lease mechanism of this kind could have been used to extend part 382 requirements to non-subsidized carriers, had Congress not made this unnecessary by enacting the ACAA. However, there is a serious issue of whether imposing conditions on foreign carriers via airport leases would be consistent with bilateral or multilateral agreements governing international air transportation. This is particularly so if the lease arrangements purported to bind foreign carriers' activities, even those not carried out in the United States. If the lease arrangements only governed activities taking place in the U.S., the efficacy of the requirements would be doubtful. PVA's other suggestion, to prohibit indirect air carriers from engaging inaccessible foreign air carriers, is also inadvisable. There is no evidence that Congress contemplated any coverage of foreign carriers. Moreover, many foreign carriers do charter or tour work as a sideline. It would not be economically rational for them to make modifications in their facilities and services like those called for in this rule for a small portion of their total business. Consequently, they would probably rather drop out of providing service arranged by U.S. indirect air carriers than bear the expense. The result would be fewer choices, less competition, and higher consumer prices for passengers using the services of U.S. indirect carriers, without a consequent improvement in accessibility for handicapped passengers.

In the NPRM, the Department proposed to exempt indirect air carriers from coverage under several sections of the rule because those sections involved the direct provision of air transportation services, which is precisely what indirect air carriers do not do. The rationale for the Department's proposal was that it was silly to purport to apply to indirect carriers requirements for doing in an accessible fashion things that they did not do at all. PVA did, however, cite several at least hypothetical examples of services which could be provided by indirect carriers that, if provided by direct carriers, would be covered by the rule. Indirect carriers are covered by the general nondiscrimination provision of section 382.7, which has been changed to provide that an indirect carrier, if it offers services that are covered under the rule for direct air carriers, must also comply with the provisions in question with respect to these services or accommodations.

EAS carriers, like other air carriers, are subject to these regulations. PVA suggests duplicate coverage under the DOT 504 rule to cover the possibility of intrastate carriers receiving EAS subsidy but not being subject to the ACAA, as well as a means of applying fund cutoff sanctions for violations by EAS carriers. The Department will include in the NPRM it will publish concerning the airport accessibility section of its section 504 rule a proposal to specify that EAS carriers, as a condition of financial assistance, must comply with the applicable requirements of Part 382. The Department will do so because, as a matter of law, any party receiving assistance is subject to section 504.

The Department agrees with ATA's view that covering employment practices under Part 382, as PVA urges, has no basis in the statute. The CAB's original Part 382 rulemaking, the *PVA* v. *DOT* litigation, the text of the ACAA, and the statute's legislative history all focus on the provision of air transportation services to passengers with disabilities; they do not raise the issue of employment practices in any way. The ACAA requires that services and facilities be provided to handicapped passengers without discrimination; it is silent with respect to the rights of those who provide the services. Carriers, like other private employers, are subject to various Federal and state requirements for nondiscrimination in employment. It is these requirements, not the ACAA, that would provide recourse for any person who believed that a carrier had discriminated in employment.

Finally, the Department sees no basis under the statute for excluding charter service from the regulation. Charter service is, of course, different from scheduled service in many respects. But it is air transportation provided by an air carrier, which means that the ACAA covers it.

Section 382.5—Definitions

NPRM—The NPRM defined a "qualified handicapped individual" as meaning, for purposes of receiving air transportation, one who has a valid ticket and presents himself or herself at the airport and who meets reasonable, nondiscriminatory contract of carriage conditions applicable to all passengers. Other definitions in the NPRM were largely adapted either from existing section 504 or Federal Aviation Act sources.

Comments—Most comments focused on the definition of qualified handicapped individual, as applied to the provision of air transportation. ATA, and other industry commenters, objected to the NPRM definition as insufficient. They recommended use of the definition found in the original CAB version of part 382.

ATA points to language in the Senate Report for the bill that became the ACAA which says that "The phrase 'otherwise qualified handicapped individual' is intended to be consistent with DOT's definition in [the existing regulation as issued by the CAB]." ATA also refers to the affirmance of the CAB's definition of this term in *PVA* v. *CAB*, 752 F. 2d 694, 720–21 (D.C. Cir., 1985) in support of its position. The CAB version of the language, as distinct from the NPRM version, ATA contends, is necessary to provide the discretion to carrier personnel to determine when a handicapped person can safely be carried.

PVA generally agreed with the NPRM definition; it specifically argued that the "willingness to comply' language of the original Part 382 should not be made part of the definition, since it implied that handicapped persons were somehow more intractable than other passengers. Other disability community commenters agreed with PVA on these points. PVA suggested adding langauge that would cover provision by carriers of services such as air cargo and parking lots, language that would cover persons who attempt to use carrier services but cannot for lack of accommodations to their disabilities, and language to clarify that handicapped persons do not cease to be "qualified" because their tickets were for a different flight than they wound up taking (e.g., because of a cancellation of the original flight). Finally, PVA viewed the "contract of carriage" conditions language of the NPRM as superfluous, since all passengers have to comply with such conditions.

There were some comments on the definition of "handicapped individual." ATA supported removing references to the "is regarded as having an impairment" basis for being considered handicapped as relevant only to employment situations, not air travel. Two disability organizations commented on this point, one agreeing with ATA and the other disagreeing.

ATA made two suggestions for technical changes to other definitions. These included a reference to carrier control of a "facility" and more specific

language defining an "indirect air carrier." PVA asked for either a more inclusive definition of "scheduled air service" or, preferably, the elimination of the definition and the application of all requirements of the rule to both scheduled and non-scheduled service. One disability organization asked for a definition of "hearing impaired" and another for a definition of "ground" and "boarding" wheelchairs.

DOT Response—With respect to "handicapped individual," the Department is not removing the references to "is regarded as having an impairment." This provision is in the ACAA itself and it is also consistent with Section 504 and Federal Section 504 rules, as well as the 1982 CAB version of Part 382. There is no reason to delete it.

We have adopted ATA's suggested changes in "facility" and "indirect air carrier," which appear to be useful clarifications of the terms consistent with the rule's purposes. In response to the PVA comment about "scheduled service," we have modified the definition to include a reference to the carrier's published schedules and computer reservation in addition to the reference to the *Official Airline Guide*.

With respect to "qualified handicapped individual," the Department is aware that the legislative history of the ACAA includes a statement that the new rule's definition should be "consistent" with that of the existing part 382. A statement of intention in legislative history falls well short of being a statutory requirement, of course. Moreover, in order to achieve "consistency" between the substantive effect of the old Part 382 definition and the current rule, it is not essential to photocopy the words of the original definition. To the extent that comments from the ATA and other parties suggest that we are legally bound to repeal the original definition verbatim, we disagree.

The elements of the definition of qualified handicapped individual in the original part 382 definition are all found in this final rule. The new definition of "qualified handicapped individual" itself ("purchases or posesses a valid ticket for air transportation * * * and presents himself * * * at the airport for * * * the flight * * *.") covers the same ground as a phrase in the old definition ("who tenders payment for air transportation"), though the new version is more specific.

Old (c)(2) ("whose carriage will not violate the requirements of the Federal Aviation Regulations * * * or, in the reasonable expectation of carrier personnel * * * jeopardize the safe completion of the flight or the health or safety of other persons * * *.") concerns the question of when a handicapped person may be denied transportation for safety-related reasons. In this final rule, this function is performed by § 382.31(d), which references several authorities under which carrier personnel may deny transportation to any individual on safety grounds. Section 382.31(d) provides "decisional discretion" fully consistent with the provisions of the Federal Aviation Act and Federal Aviation Regulations concerning refusals to provide transportation, and repitition of the same essential authority in this definition is unnecessary. Of couse, it would be inappropriate to grant, or give the impression of granting, more or different authority through a definition than the substantive portion of the rule, and the statutes and rules cited therein, would provide.

Old (c)(3) concerns the question of when a carrier may require that an individual have an attendant in order to be provided transportation. It says that a qualified handicapped person is one who—

> is willing and able to comply with reasonable requests of carrier personnel or, if not, is accompanied by a responsible adult passenger who can ensure that the requests are complied with. A request will not be considered reasonable if: (i) It is inconsistent with this part; or (ii) It is neither safety-related nor necessary for the provision of air transportation.

In this rule, § 382.35 governs the situations in which a carrier may require a handicapped passengers to travel with an attendant, in order to be provided transportation. This section permits carriers to require attendants for persons who, because of a mental disability or severe hearing and vision impairments, are unable to understand the safety-related instructions (e.g., required safety briefings). Section 382.35 also includes criteria pertaining to other persons for whom an attendant may be required for safety reasons (e.g., inability to assist in one's own evacuation). No participants in the regulatory negotiation or commenters on the NPRM suggested other categories of person who would be unable to comply with carrier personnel's safety-related instructions.

The reference in the new definition of "qualified handicapped individual" to meeting "reasonable nondiscriminatory contract of carriage requirements applicable to all passengers" encompasses the meaning of "willingnes" to compy with reasonable requests of carrier personnel. All passengers, handicapped or not, are required to comply with such conditions, one of which, explicitly or implicitly, is compliance with reasonable carrier requests. A passenger who refuses to do so (and it is refusal to comply, not the seeing attitude of "willingness," that is really to the point), whether or not handicapped, may properly be the subject of adverse action by the carrier. (It is axiomatic, of course, that a carrier request that is inconsistent with this regulation is not a reasonable request.)

For example, if an FAA safety rule provides that only persons who can perform certain functions can sit in an emergency exit row, then carrier peronnel can request, consistent with this Part, that individual unable to perform these functions sit in another row. A person who refused to do so—whether a passenger with a disability or a passenger traveling with small children—could properly be denied transportation by the carrier. On the other hand, someone would not cease to be a qualified handicapped individual because he or she declined with a request that was inconsistent with the regulation (e.g., refused to respond to a "quiz" about the content of safety briefing).

We do not agree with PVA that retaining the "willingness to comply" concept burdens passengers unnecessarily or implies that handicapped passengers are less cooperative than others. It is not unreasonable, in the Department's view, to condition membership in a protected class on compliance with requirements applicable to all passengers as well as legitimate safety-related requirements that may be specific to members of the class.

In every substantive respect, then, this final regulation achieves the objective of consistency with the old Part 382's definition of "qualified handicapped person." At the same time, the new definition has been drafted to be simpler, more understandable, and less likely to create duplication or confusion with the relevant substantive sections of the regulation. Permitting duplicative or inconsistent standards on the same subject in a definition and a substantive section of the rule would reduce the predictability that is one of the goals of the regulation and would substantially complicate enforcement. It could also lead to uncertainty which could result in arbitrary actions by carriers.

Some of PVA's additional concerns about the definition are addressed by paragraphs (a) and (b) of the definition, which concern obtaining tickets and information, using the carrier's ground facilities, etc. These paragraphs were

otherwise not the subject of comment. We agree with PVA that the fact that a person first bought a ticket for a cancelled flight, rather than the flight the person actually took, should not render the person "unqualified." The point is obvious enough that it seems unnecessary to state it in the regulatory text, however. We have changed the provision concerning purchase of a ticket to include situations where a handicapped person makes a good faith effort to buy a ticket but is frustrated by barriers (e.g., a deaf person is unable to buy a ticket because the carrier's TDD is out of order).

Section 382.7—General Prohibition of Discrimination

NPRM—The NPRM would prohibit a carrier, directly or through contracting or licensing, from discriminating on the basis of handicap in providing air transportation, requiring a handicapped person to accept special services not requested by the passenger, excluding a handicapped person from generally available services that he or she can use, or retaliating against any handicapped person for asserting rights under the ACAA or Part 382.

Comments—PVA generally supported the NPRM provision, particularly the prohibition of discrimination via contract. PVA pointed out that such provisions are typical of regulations implementing Federal civil rights laws. PVA also suggested adding language to the "no retaliation" provision saying that it applied to persons acting on behalf of handicapped passengers, as well as to the passengers themselves.

ATA recommended deleting the section and replacing it with a one sentence statement tracking the nondiscrimination language of the ACAA itself. ATA suggests that to do more would unreasonably expand the scope of the ACAA, the language of which does not mention any parties other than air carriers themselves. ATA also requested the deletion of the proposal to prohibit mandating special services (e.g., preboarding), saying that this could disrupt or delay operations and make it difficult to administer required special briefings. ATA also objected to the tone of the "no retaliation" section, saying that it unfairly implied that airlines engaged in discriminatory acts.

RAA and several individual carriers agreed with ATA's position regarding preboarding, while a number of disabled individuals and disability groups supported the prohibition on mandatory special services of this kind. The ATBCB suggested that it was appropriate to offer, but not require, preboarding. A few carriers suggested softening the "no retaliation" language by substituting "take adverse action." A few disability groups supported PVA's suggestion for retaining the "no retaliation" language.

NFB suggested deleting "except when specifically permitted by another section of this part" from the end of the provision prohibiting the exclusion of handicapped persons from generally available services.

DOT Response—Elsewhere in its comments, ATA argues strongly that standards and principles derived from section 504 of the Rehabilitation Act of 1973 should govern implementation of the ACAA. We agree. It is completely consistent with section 504 to prohibit discrimination directly, or through contractual, licensing or other arrangements. Virtually every Federal Government regulation implementing section 504 has such language on "general nondiscrimination" (see for instance the Department of Transportation's section 504 rule, 49 CFR 27.7(b)(1)). The original CAB version of part 382, which ATA in many other respects takes as its model, includes similar language. See former 14 CFR 382.7. Other Federal civil rights rules have similar language (see for instance the Department's rule to implement Title VI of the Civil Rights Act of 1964, 49 CFR 21.5(b)(1)). This issue is discussed further under § 382.9 below.

With respect to the issue of mandatory special services, that of preboarding aroused the greatest interest. Carriers typically offer passengers the opportunity to preboard; this is well, since it permits parents with small children, persons with disabilities, and others the opportunity to get settled in their seats before other passengers board. Many persons with disabilities take advantage of this opportunity. A carrier policy that requires persons identified by carrier personnel as handicapped to preboard, whether they want to or not, runs afoul of a requirement not to discriminate, however. It involves singling out for special treatment, on the basis of a disability, individuals who believe themselves to be perfectly able to enplane with the general passenger population (e.g., a blind or deaf person who does not have a mobility impairment).

No FAA regulation requires any passenger to preboard and carriers' comments did not provide any other cogent safety rationale for required preboarding under this rule. Some carrier comments suggested that mandatory preboarding facilitated providing the FAA-mandated special safety briefings for passengers who may require assistance in an emergency evacuation. It may well be easier to administer these briefings for passengers who preboard. While administering these briefings after all passengers have boarded may create inconvenience, the briefings can nonetheless occur, and convenience is not a proper basis for imposing restrictions on handicapped passengers under the ACAA.

For these reasons, the "by contract and otherwise" and "no mandatory special services" provisions will remain unchanged; the latter now makes specific mention of preboarding.

With respect to the "no retaliation" section, the Department will adopt both the PVA comment that its protection should extend to persons who act on behalf of handicapped passengers and the carrier comment that the word "retaliate" should be changed to "take adverse action," as a means of moderating the provision's tone.

The substance remains the same. It is a clear violation of any nondiscrimination statute for a regulated party to take action against a member of the protected class because that person asserted his or her rights under the statute. PVA alleged, and ATA denied, that some carriers have "blacklisted" handicapped passengers who were viewed as "troublemakers" because they too actively asserted what they viewed as their legal rights. The Department hopes that this allegation is unfounded. It is clear that such action would be contrary to this regulation.

The Department will retain the "except when specifically permitted by another section of this Part" language. There may be a few instances (e.g., exit row seating under § 382.37 and the FAA safety regulation it references) in which some persons with disabilities may be excluded from services available to the general passenger population. This language avoids regulatory inconsistency in such cases.

Section 382.9—Assurances from Contractors

NPRM—This section proposed that carriers' agreements with contractors who provide services directly to passengers, including carriers' agreements of appointment with travel agents, would include a clause prohibiting discrimination on the basis of handicap by the contractors in activities performed on behalf of the carriers.

Comments—ATA made the same argument here as with respect to the mention of contractors under the

previous section, adding that obligations apply to contractors in other contexts simply because Federal civil rights laws apply to recipients of Federal financial assistance.

PVA argues for expansion of the proposed section, saying that it should not be limited to activities of contractors in providing services directly to passengers (e.g., it should apply to contract baggage handlers who never see a passenger, but may load his or her wheelchair onto the aircraft) and that it should not be limited to contractors' activities on behalf of carriers (e.g., that travel agents should be required to make their offices physically accessible). As with carriers, PVA says that contractors' employment practices should be covered.

Several individual carriers agreed with ATA that this section should be deleted; IATA added that it should be clarified that travel agents outside the U.S. are not intended to be covered. A number of disability groups argued for retention of the section, saying that travel agents and contractors should not be allowed to discriminate. The ATBCB suggested that the regulation should include a standard assurance clause.

DOT Response—As discussed under § 382.7, the Department believes that under the ACAA, like section 504 and other civil rights laws, the actions that contractors take on behalf of regulated parties, like the actions regulated parties take themselves, are subject to nondiscrimination requirements.

ATA errs when it attributes coverage of contactors under other Federal civil rights statutes to the fact that regulated parties receive Federal funds. This is because ATA's argument confuses the event that triggers coverage with the application of that coverage, once coverage has been triggered. Under section 504, for example, the receipt of Federal assistance triggers the application of nondiscrimination requirements to Federally—assisted transit authorities. Without Federal funds, there is no regulated party. Under the ACAA, being an air carrier providing air transportation triggers coverage under nondiscrimination requirements. Congress specifically decided, in response to the Supreme Court's decision in *PVA* v. *DOT* (which said section 504 did not apply to airlines which did not receive Federal assistance), that carriers would be a regulated party without receipt of Federal funds.

Once Congress has designated who the regulated party is, all the regulated party's activities that affect the protected class are subject to nondiscrimination requirements. Otherwise, the purpose of the statute could not be acheived. If a contractor to the regulated party (e.g., a private bus company that provides bus service on certain routes, a security screening contractor for an airline) performs functions which the regulated party would otherwise perform with its own employees, and which affect handicapped persons, the contractor's activities are subject to the same nondiscrimination requirements that would apply if the regulated party's own employees performed them. The transit authority cannot ignore requirements for transportation of handicapped persons on a certain route because a contractor provides that service; an air carrier cannot ignore the application of part 382 to security screening because a contractor performs this task.

Any party subject to a nondiscrimination statute like section 504 or the ACAA may contract out its functions; it can never contract away its responsibility to ensure nondiscrimination.

Under § 382.7, all discrimination by carriers via the actions of contractors is prohibited, regardless of the role played by contractors. Section 382.9 focuses on those contractors who provide services to handicapped passengers. A written assurance makes sense to formally put these contractors and the carriers on contractual notice of their obligations and to provide a contractual means by which the carrier can effect changes in the contractors' behavior, when necessary. This applies alike to contractors who have direct personal contract with passengers (e.g., for security screening) and those who perform services which do not necessarily include personal contact (e.g., baggage handling). On the other hand, contractors who may perform services for the carrier, but not as such for passengers (e.g., the airline's accounting firm or a repair station for aircraft), are not intended to have to provide assurances.

The Department disagrees with PVA's comment that this section should require travel agents' offices to be subject to physical accessibility requirements or that activities of travel agents other than those on behalf of air carriers should be covered. Travel agents perform the function of acting as agents for the sale of air carrier tickets. As long as that function is available to handicapped persons, by one means or another, and travel agents do not discriminate against handicapped persons in performing it (e.g., by declining to accept orders from handicapped passengers because they believe making reservations for them involves extra work), the statute is satisfied. In addition, adding physical accessibility requirements for travel agents' offices would raise serious questions about undue burdens and present perhaps insurmountable enforcement problems. It is also unlikely that the language of the statute can be viewed as applying physical accessibility standards to travel agents.

It is likewise doubtful that the activities of travel agents on behalf of Amtrak, tour bus companies, cruise ship lines, or European ski resorts can be covered under a statute relating to the provision of air transportation by U.S. air carriers. Also, just as carriers' employment practices are not covered by the ACAA, contractors' employment practices are not covered. The ACAA aims at nondiscrimination in the provision of services to passengers, and it simply is not an employment discrimination statute. As mentioned in the discussion under § 382.3, the Department agrees with IATA that foreign travel agents ought not be covered under the regulation, and language to this effect has been added here.

While some other civil rights regulations do include boilerplate assurance language, we do not, in contrast to ATBCB, see the need for such standard language in this section. The assurance involved is quite simple it will recite, in substance, that the contractor may not discriminate, in the performance of its functions for the carrier, on the basis of handicap, consistent with the ACAA and part 382, and that compliance with this obligation is a material term of the contract. The assurance would also reference the contractor's obligation to comply with directives of the carrier's complaints resolution officials (CROs) in matters covered by this rule.

Section 382.21—Aircraft Accessibility

NPRM—The NPRM proposed that new aircraft would have several accessibility features. There would be movable aisle armrests either on all aisle seats or, alternatively on between 2–12 aisle seats, depending on the size of the aircraft. In aircraft with lavatories, an on-board wheelchair would have to be provided on request (with 48-hour advance notice). There would have to be fully accessible lavatories in aircraft with 200 or more seats and lavatories with accessibility features in aircraft with 60–199 seats. However, carriers would not have to remove a revenue seat in order to provide accessible lavatories. Part 121 aircraft with more than 30 seats would

have on-board stowage capacity for at least one folding wheelchair.

These requirement would apply to new aircraft (i.e., those delivered more than two years after the rule's effective date). Existing aircraft would not have to be retrofitted for accessibility, although as cabins were refurbished, relevant accessibility features would be added. Aircraft delivered to the carrier within two years of the effective date of the rule would have to meet the new aircraft requirements to the extent not inconsistent with structural, configuration, or contractual limitations. Aircraft with 30 or fewer seats would have to meet the new aircraft standards to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations.

1. Movable Aisle Armrests

Comments—PVA favored having such armrests on all aisle seats, saying that it would increase opportunities for accessibility, provide for transportation in a more integrated setting, and make unnecessary a priority seating system to ensure that handicapped passengers are directed to the appropriate seats. PVA also referenced comments from carrier labor organizations who argued that having movable armrests would decrease risks of injury to carrier personnel from lifting handicapped passengers over fixed armrests. PVA also argued that movable aisle armrests were only minimally, if at all, more costly than fixed armrests.

ATA, by contrast, argued that putting accessible armrests on all aisle seats would be prohibitively expensive. The economic projections ATA furnished with its comment forecast annual costs of $7.1–9.6 million per year for all aisle seats, and $2.7–3.1 million per year for the 2–12 aisle seats option. ATS's 20-year constant dollar cost estimate was $142.3–192.5 million for all aisle seats and $54.0–61.4 million for the 2–12 aisle seats option. ATA also said that it was not cost-effective to put movable armrests on all aisle seats, since there would not be enough handicapped passengers to warrant having that many accessible rows. ATA also noted that for some types of seats (e.g., those with integrated trays in the armrests), movable armrests are not feasible. ATA considered a priority seating system to ensure that handicapped people got to use the aisles with accessible armrests to be unworkable.

A substantial number of disability community commenters favored movable aisle armrests for all aisle seats, or at least for a larger number than the 2–12 aisle seats proposed in the second NPRM option. RAA and some individual carriers supported the 2–12 aisle seats option, however. A few manufacturers suggested that costs would be small. One manufacturer suggested that movable armrests could compromise required aisle widths in some situations.

DOT Response—The Department has decided to require new aircraft to include movable armrests on half the aisle seats in an aircraft. Such armrests would not need to be installed in seats where doing so would be infeasible because of the nature of the armrest used on a particular seat (e.g., an armrest with an integrated tray, as mentioned by ATA's comment) or where a handicapped person could not use the row in question (e.g., because of an FAA safety rule concerning exist row seating).

This requirements represents a reasonable middle ground between the two alternatives proposed in the NPRM. It provides substantially more rows that are readily usable by persons with mobility impairments than the 2–12 seats alternative and thereby provides substantial seating capacity for passengers with mobility impairments. At the same time, it halves the cost to carriers of the 100 percent of rows option.

We agree with ATA that a priority seating system could be difficult to implement. The final rule does not require such a system. Because carriers could configure their aircraft in a very simple way to meet the final rule's requirement (e.g., there could be movable armrests on all the rows on the right side of the aisle), it would be easy for carriers to ensure that persons with mobility impairments would be able to take advantage of the armrests. No complex administrative or computer system would be needed for seat selection purposes. The rule provides flexibility to carriers to use an administrative system, as well as a cabin configuration approach, to ensure the availability of seats in a row with an movable aisle armrest to passengers who need or request them, however.

Having movable armrests on half the rows will ensure that a handicapped passenger can use a seat in any portion of the aircraft, permitting greater overall accessibility and enhancing the provision of services in an integrated setting. This approach also responds to carrier employees' concerns about lifting passengers during transfer to and from aircraft seats.

The Department estimates that the final rule requirement will cost around $5.6 million per year ($39.4 million in terms of present value over 21 years). In our view, this does not constitute an undue burden under case law interpreting section 504. Any regulatory compliance cost is a burden; however, the cost of movable aisle armrests may justifiably be regarded as a "due" burden that is necessary in order to ensure nondiscriminatory access to all portions of the aircraft cabin to passengers with disabilities and decrease injury risks to carrier personnel and disabled passengers, as well as reduce the potential costs of such injuries. Several million dollars per year across an industry of the magnitude of the U.S. air carrier industry would not seem to burden unreasonably the operations or financial health of the industry. Nor would it cause any fundamental alteration in the nature of the industry's "program."

We also point out that, as in other aircraft accessibility matters, the Department is not requiring retrofit. Movable armrests will be required on new aircraft or when seats are replaced with newly manufactured seats; carriers will not have to incur the cost of replacing existing seats before their time simply in order to have seats with movable armrests. This fact should help to keep costs within reasonable bounds.

2. Accessible Lavatories

Comments—PVA supports requiring accessible lavatories on aircraft, but strongly disagrees with the NPRM provision that would excuse carriers from providing accessible lavatories if doing so would entail the loss of a revenue seat. The application of this standard would inevitably be arbitrary and inconsistent with standards developed in section 504 case law, in PVA's view. Since providing an accessible lavatory in aircraft (which DOT already requires in passenger trains in its 504 regulation) would not adversely affect safety, PVA adds, DOT must impose the requirement under the ACAA. PVA estimates costs for providing accessible lavatories, including costs for the loss of revenue seats, to be $24 million in initial capital costs and $96.1 million annually for recurring costs, which PVA believes to be reasonable and to not impose an undue burden. PVA comments that the initial costs would represent about 0.07 percent of airline flight equipment assets and 0.18 percent of annual operating expenses.

ATA agrees that it is appropriate to provide accessible lavatories in new widebody aircraft, but opposes providing them in smaller (i.e., 60–199 seat) planes. ATA says that technical questions about the feasibility and costs

of accessible lavatories in the smaller aircraft remain unanswered and that costs would be extremely high for the lavatory units themselves, as well as removal of revenue seats and the possible need to reconfigure cabins and relocate galley units. In estimating costs for accessible lavatories, ATA projects that revenue seats would need to be removed in many aircraft. It concludes that average annual costs for widebody aircraft (assuming some revenue seat loss) would be $53.1 million, with an additional $44 million for smaller aircraft. On a 20 year constant dollar basis, ATA's estimates are $1061.4 million for widebodies and an additional $878.9 million for smaller aircraft.

Other disability community commenters favored requiring accessible lavatories. Some of these comments suggested that the fully accessible lavatory the NPRM proposed for 200+ seat aircraft should be required on all 60+ seat aircraft. Others suggested factoring in flight times (e.g., an accessible lavatory on any plane used for a flight of 90 minutes or more). A number of comments from disability organizations and other commenters agreed with PVA that the "no loss of a revenue seat" language should be deleted, and that seats should be removed, if needed, to accommodate the accessible lavatories. Some carrier and manufacturer comments asked that accessible lavatory requirements not be extended to small (e.g., 30 seat and below) aircraft.

DOT Response—PVA and ATA agree that it is appropriate, and, explicitly or implicitly, not an undue burden on carriers, to provide fully accessible lavatories in new widebody aircraft, regardless of the potential loss of revenue seats. The Department shares this view, and will so require. This requirement will result in new aircraft with the greatest passenger capacities, and which make the longest flights, having a lavatory that handicapped persons can readily use. Rather than using the term "widebody," which may be imprecise, or the 200 seat cutoff of the NPRM, which may include some non-widebody aircraft (e.g., some configurations of the Boeing 757), the Department will apply the accessible lavatory requirement to aircraft with more than one aisle.

The Department is deferring a decision, at this time, concerning accessible lavatories in narrowbody and smaller aircraft. Having accessible lavatories in these aircraft clearly is important for passengers; there are more narrowbody than widebody aircraft in the fleet, and they provide more flights than the larger aircraft. At the same time, the cost and feasibility concerns raised by carrier comments are worth serious consideration.

During the period between the NPRM and this final rule, DOT staff made inquiries on these matters and were unable to obtain sufficient information to make a sound decision. The Department cannot mandate technical changes related to accessibility without adequate information about technical and economic feasibility, to ensure that undue burdens are not imposed. Without additional information, the Department could have difficulty avoiding one or both of these pitfalls. The Department does not agree with PVA's argument that it must require accessibility features as long as they do not create a safety problem. The ACAA bars carrier restrictions on handicapped passengers' travel absent safety necessity. It does not require accommodations to be provided, regardless of potential burdens, if the accommodations are safe.

For this reason, the Department is issuing an advance notice of proposed rulemaking (ANPRM) to address, among other matters, the issue of accessible lavatories in narrowbody and smaller aircraft. Subsequently, the Department would convene a conference concerning all of these topics. We would intend to engage aircraft designers, lift designers, representatives of the disability groups, and the carriers, in an effort to find solutions which could provide a substantive basis for rulemaking in these areas. If necessary to provide information or develop facilities, the Department would also commit resources to a research contract or project for these purposes.

3. On-Board Wheelchairs

Comments—ATA opposes any requirement for providing on-board wheelchairs. It would be particularly unfortunate to require on-board chairs on small commuter aircraft, ATA says, because on-board chairs might be dangerously unstable and storage for them could require seat removal. In addition, this requirement would cost too much: assuming that seat loss would be incurred for storage of on-board wheelchairs in smaller aircraft, ATA's estimated cost is approximately $47 million annually and approximately $940 million over 20 years in constant dollars. ATA also urged that flight attendants not be required to assist handicapped persons in using and moving in the on-board chairs, which could get in the way of other flight attendant duties and could pose risks of injuries to the flight attendants.

PVA supports requiring on-board wheelchairs on all aircraft that have lavatories, but opposes the on-request (with 48-hour advance notice) feature of the NPRM, which it views as unworkable, unfair, and unnecessary. PVA contends that an on-board wheelchair is useful even where the lavatory is not accessible, because it could be used by someone who can stand or walk a few steps (and who thus could use a regular lavatory) but who cannot walk far enough to get from his or her seat to the lavatory. PVA also notes that aisle widths is not a problem for on-board chairs, which are designed to meet the standard 16-inch aisle width of passenger aircraft.

Approximately equal numbers of commenters said that on-board chairs either should or should not be required. Some of the latter made a particular point of saying that on-board chairs were not feasible on small aircraft. Some commenters appeared to believe that aisle widths would have to be increased substantially to accommodate on-board chairs, with cost and feasibility impacts. Finally, a few commenters suggested changes or additions to the standards for on-board chairs, such as making sure that footrests measured 6 inches front-to-back, adding requirements for occupant restraint systems and wheel locks to deal with turbulence, and adding armrests and padding for passenger comfort.

DOT Response—In the new aircraft provision of the final rule, the Department will require an on-board wheelchair to be present on those aircraft which have accessible lavatories. PVA is correct in saying that on-board wheelchairs are potentially of some use even where there is no accessible lavatory. Nevertheless, the most significant use for an on-board wheelchair is to enable persons with mobility impairments that necessitate their use of an accessible lavatory to get to that facility. In the absence of an accessible lavatory, it is likely that many users of an on-board chair would not have a usable destination.

Nevertheless, in order to serve those individuals who could use an inaccessible lavatory but need an on-board wheelchair, th erule will require carriers to honor a request to have an on-board wheelchair on a flight using an aircraft without an accessible lavatory. The carrier could require up to 48 hours' advance notice for this accommodation. In addition, the requester would have to state (either directly or in response to a carrier inquiry) that he or she: (1) Was capable of using an inaccessible

lavatory and (2) needed an on-board wheelchair to reach the lavatory.

With respect to existing aircraft, the rule requires on-board chairs to be provided on the aircraft (for aircraft with an accessible lavatory) or on request with 48 hours' advance notice (for aircraft without an accessible lavatory) within two years of the effective date of the rule.

Since this final rule requires on board chairs to be placed, even temporarily, only on aircraft with more than 60 seats, this requirement is not likely to encounter the problems commenters raised with on-board wheelchairs on small aircraft. PVA is correct in saying that on-board wheelchairs are designed to fit existing aisle widths; this is a main point distinguishing on-board wheelchairs from other wheelchairs.

Because fewer on-board wheelchairs will be involved than if all aircraft with lavatories were required to have them, and since they will not be on smaller aircraft, where seat loss is more likely to occur, the annual compliance cost of the final rule's on-board wheelchair requirement is likely to be substantially less than ATA's estimate of $47 million.

Feasibility, seat loss, and cost issues regarding on-board chairs in smaller aircraft will be considered further in the ANPRM, in connection with the research on accessible lavatories in those aircraft. The Department is adding a mention of occupant restraint systems and wheel locks to the standards for on-board chairs in the final rule. The NPRM provided for armrests and footrests; adding a specific size for the latter is out of place in a performance standard. Padding, while desirable for passenger comfort, appears not to be of sufficient safety or functional importance to be requried.

The Department will address the issue of carrier personnel assistance to persons using on-board chairs in its discussion of section 382.37, on provision of services and equipment.

4. Stowage Space

Comments—ATA objects to having stowage space for a folding wheelchair in the cabin. It would not be appropriate to use existing coat closets because, ATA says, there would not be sufficient room for other passengers' carry-on items, resulting in costly displacement of the other passengers' items. To avoid this consequence, carriers would need to create a new space just for wheelchairs, which would be expensive and possibly involve the removal of seats. Also, there is no need to stow a folding wheelchair in the cabin, since it cannot be used in the cabin. PVA essentially supports the NPRM proposal on this subject but stated that if small aircraft do not have enough cabin space, then priority storage in the cargo compartment would be acceptable.

DOT Response—The Department is not changing the requirement for there to be priority space in new aircraft for in-cabin stowage of a folding wheelchair. The purpose of this requirement is not so that the wheelchair can operate inside the cabin; the width of the aisle clearly does not permit a standard wheelchair to pass. Rather, the purpose of the requirement is to allow a wheelchair user to quickly retrieve his or her chair near the aircraft door, so that the person can use that chair immediately on exiting the aircraft. This will make independent mobility substantially easier for the person, compared to use of a boarding chair or a carrier's ground chair.

In ordering new aircraft, the carrier is free to designate either a portion of a coat closet or a separate area for this purpose. Since the former is permissible, the rule clearly does not require creating a separate area or removing seats to do so. The Regulatory Evaluation cites the results of a Transport Canada study indicating that storage of folding wheelchairs is dimensionally possible in 727, 767, and DC-9 aircraft coat closets, with minor modifications related to shelf position and recessed tie-downs. Service-related issues concerning on-board stowage of folding wheelchairs will be discussed under § 382.39, provision of services and equipment.

5. Timing

Comments—ATA objected to the phase-in proposed in the NPRM, saying that linking accessibility requirements to aircraft delivery date did not make sense, in view of the common carrier practice of ordering aircraft some years ahead of anticipated delivery. It would cause revision of contracts, delays, and cost increases to require modification of existing orders, in ATA's view. ATA recommended applying accessibility requirements to aircraft ordered more than 90 days after the effective date of the rule. The comment did not state a rationale for the additional 90-day period.

ATA also objected to what it characterized as the "retrofit" requirement; that is, the requirement that as cabin interior elements are replaced, they be replaced with accessible elements (e.g., if original seats are replaced with newly manufactured seats, the newly manufactured seats would have to have movable armrests). ATA also objected to the tone of a provision in the NPRM providing that carriers could not reduce accessibility features below the level specified in the regulation, saying that it merely expressed the obvious. ATA also opposed adding any requirement that accessibility features be kept in good working order, saying that it also expresses the obvious.

PVA noted that ATA itself had suggested the two-year delivery date phase-in period for accessibility during the regulatory negotiation and contended that any lengthier grace period was unreasonable. PVA argues that, since in the aircraft manufacturing process, carriers may make many change orders before the plane is delivered, it will not cause significant delays or extra costs to incorporate accessibility features in aircraft to be delivered after 2 years of the rule's effective date.

Several disability groups or other commenters said that it is improper under the ACAA to exempt existing aircraft from accessibility requirements (i.e., that they should be retrofitted for accessibility). Others opposed the proposed phase-in period, saying that it was too long. On the other hand, a manufacturer though the phase-in period was too short, and recommended a four-year period, since that was the manufacturer's typical lead time for responding to an aircraft order. Some disability groups recommended a provision that accessibility features must be kept in working order.

DOT Response—The Department has decided to require that all new aircraft, ordered after the effective date of the rule or delivered to the carrier more than two years after the effective date, will have to incorporate the accessibility features mentioned in this section.

The Department agrees that it is appropriate to require all aircraft in covered categories ordered after the effective date of the rule to have the required accessibility features. ATA did not provide a basis for a 90-day delay of the date on which orders must be for accessible aircraft, and this suggestion has not been adopted.

In addition, we will retain the requirement that a new aircraft delivered more than two years after the effective date of the rule have the required accessibilty features. As commenters stated, carriers typically order aircraft years in advance of the anticipated delivery date. If all aircraft on order before the effective date are exempted from accessibility requirements, it will mean that hundreds of inaccessible aircraft—with a potential life span of 15–20 years—will join carriers' fleets in the next few years. This would have the effect of

substantially, and unnecessarily, delaying fleet accessibility.

Because the ordering and manufacture of aircraft is a long process, carriers and manufacturers should have plenty of time, within two years, to provide cabin items such as accessible lavatories, movable armrests, and on-board wheelchairs, without delaying delivery. These items, obviously, do not involve modifications to the airframe and may readily be made within the last two years of the procurement process. Adding these features may require change orders in contracts. Change orders, however, are a common part of the procurement process for aircraft. Additional costs should not be markedly different from those for providing the same accessibility features in new aircraft ordered after the effective date of the rule.

Contrary to ATA's characterization, it is not a "retrofit" to require that when cabin interior elements are replaced in the normal course by the carrier, they be replaced by accessible elements. Retrofitting solely for the purpose of accessibility (e.g., requiring existing seats, not otherwise is need of replacement, to be pulled and replaced with seats with movable armrests within a year of the effective date of the rule) is specifically not required. The only provision that requires a retrofit is that concerning on-board wheelchairs in existing aircraft, and that provision relates not to any major reconstruction or reconfiguration of the aircraft or its elements but simply the provision of a portable piece of equipment.

It is standard practice, consistent with statute and case law, for regulated parties to be required to make accessible those elements of a facility that they replace. The Architectural Barriers Act, the Uniform Federal Accessibility Standards, and section 504 regulations are unanimous on the point. Unlike a true retrofit, the requirements of this rule do not impose undue burdens, since they add only a modest increment to replacement costs incurred voluntarily, rather than imposing the cost of an otherwise unnecessary replacement of the element itself. The Department will retain this requirement, but will not adopt the disability group comment that accessibility features should be installed on existing aircraft. As we understand the comment, it would require a retrofit solely for the purpose of a accessibility, which the Department does not believe is appropriate or consistent with the ACAA.

The Department does not believe that it implies any bad faith on the part of carriers to require that existing accessibility levels not be reduced. One of the purposes of a regulation is to spell out, clearly and with particularity, the obligations of regulated parties. This provision goes to that purpose, and is intended simply to leave no doubt in anyone's mind on the point.

The Department is adopting the comment made by PVA and other disability groups that a provision should be added to require that accessibility features be kept in working order. AS PVA states, the Department has become aware, in other areas, that the provision of equipment is not enough to ensure accessibility. For example, some transit authorities equipped buses with wheelchair lifts which, for lack of sufficient maintenance, broke down. In consequence, the Department's 1986 section 504 rule for mass transit required that accessibility equipment be maintained in proper operating condition.

A similar provision here should not work any hardship on carriers (indeed, keeping on-board wheelchairs, armrests, and lavatories in working order is probably easier than keeping bus lifts working). Nor is it likely to lead to "technical" violations that will not affect passengers; when a handicapped passenger's ability to use aircraft facilities is impaired by broken equipment, the violation is substantive, not merely "technical."

Section 382.23—Airport Facilities and Services

NPRM—The NPRM proposed to apply accessibility requirements to those portions of airport facilities owned, leased, or operated by the air carrier at the airport. New facilities would have to meet the requirements of the Uniform Federal Accessibility Standards (UFAS) plus six other standards drawn from the existing airport operator requirements of 49 CFR 27.71, the Department's section 504 rule. These six items pertain to terminal design, ticketing, baggage facilities, TDDs, terminal information systems, and gate-aircraft interface. Existing facilities would have to be modified to meet these standards within three years.

This proposal was intended to operate in tandem with 49 CFR 27.71, since airport operators and carriers typically share, or divide up in one way or another, responsibility for terminal facilities. The preamble to the NPRM asked for comment on how compliance responsibility between airport operators and carriers should be apportioned under the two regulations.

Comments—PVA generally supported the NPRM provision. PVA suggested adding a requirement that terminal passenger transportation systems (e.g., the electric carts that help carry passengers around the terminal, shuttles between terminals and parking areas or among terminals) be accessible. For PVA, apportioning compliance responsibility between carriers and operators was not crucial; both had responsibility, under the ACAA and section 504, respectively. PVA thought it unlikely that small carriers would have to bear disproportionately high costs, since airports, who want carriers to maintain service, have an incentive to negotiate reasonably with them concerning the allocation of responsibility. PVA also objected to the three-year phase-in period for accessibility modifications to existing facilities.

ATA recommended substantially rewriting this provision, to say simply that airport facilities and services owned, leased, or operated by carriers, when viewed in their entirety, shall be accessible. Facilities which are designed, built, or which "undergo a substantial structural change" (ATA's preferred substitute for "altered," the term used in the NPRM) after the rule is effective would have to conform to UFAS. The six additional elements, which ATA views as too vague and potentially burdensome, would be deleted. ATA says that this formulation is better because it is less likely to result in significant costs for carriers, especially small carriers (a point emphasized by the RAA as well) and because airports bear the major responsibility for accessibility under section 504.

Individual carriers who commented on this section generally took the position that airports, not carriers, should bear the responsibility for airport accessibility. One carrier's variation on this theme was that carriers should have such obligations only where they had a dedicated facility at the airport, they owned or leased the entire facility, or the carrier controls the design, construction or alteration of the facility.

The Airport Operators' Council International (AOCI) recognized that airports have significant responsibilities under section 504 concerning airport accessibility. They made several specific comments about the proposed airport provisions. They said ticketing requirements could be burdensome, especially if ticketing equipment could not readily be used at a low height counter. Like ATA, AOCI expressed concern about terms like "efficient" and "minimize" in the section concerning terminal design and flow, suggesting that they were too vague. AOCI

suggested that the three-year phase-in for accessibility requirements was too short, and that seven years was more realistic, given the long lead time for airport planning and the local government funding delays which many airports face. AOCI also expressed a concern about potential conflicts with existing carrier leases at airports. For some airport functions under the control of carriers, such as ticketing, administrative as well as physical solutions should be allowed, in AOCI's view. AOCI also expressed the concern that airports could face and undue financial burden. Finally, AOCI suggested that information to persons with various impairments be presented "aurally" rather than "orally," believing the latter implied more extensive service requirements.

Disability groups and other commenters suggested a variety of other accommodations they believed should be required at airports. These included electronic message boards to page hearing-impaired passengers, hearing-aid compatible phones as well as TDDs, additional TDDs beyond the one mentioned in the NPRM (i.e., a number of such phones proportional to all phones in the terminal, a point with which AOCI agreed), accessible electric carts, and better and more strategically placed visual information systems. With respect to the division of responsibility between carriers and airport operators, the ATBCB said that airport/carrier leases or contracts should provide for how responsibilities are apportioned.

DOT Response—49 CFR 27.71, promulgated in 1979, has required all new terminals at airports receiving Federal financial assistance since that time to meet substantially the same accessibililty requirements as set forth in the ACAA NPRM. Under the 1979 section 504 rule, federally-assisted airport facilities existing in 1979 were to have been modified for accessibility no later than 1982. Therefore, most airport facilities should already meet essentially the same requirements proposed in the ACAA NPRM. If there are federally-assisted airport facilities that do not meet these requirements, they are in noncompliance with 49 CFR part 27, and their operators need to take corrective action immediately. (The NPRM to amend § 27.71 would require transition plans for airports which have not submitted them.)

In administering 49 CFR 27.71, the FAA became aware that some of the facilities and services responsibilities as which was assigned to airport operators were often under the control of carriers, making compliance by airport operators alone difficult in some instances. In addition, there may be some situations (e.g., terminals wholly owned or controlled by carriers, airports not receiving Federal assistance) which section 504 does not cover. It is to minimize gaps in accessibility in such situations that a section of the ACAA rule parallel to 49 CFR 27.71 is needed.

It should be emphasized that carriers are responsible, under part 382, only for those facilities or services at an airport that they own, lease, operate or otherwise control. Consequently, at an airport not receiving Federal financial assistance, facilities that are not owned, leased, operated or controlled by an air carrier would not be subject to accessibility requirements under either section 504 or the ACAA.

Coverage of this kind is analogous to coverage under section 504 and the Architecture Barriers Act, both of which can apply to leased as well as owned facilities. In addition, it seems clear from case law and CAB administrative decisions that facilities under the control of the carrier, in a variety of contexts, are subject to coverage under provisions of the Federal Aviation Act, as being part of or connected with air transportation. *See for instance United States* v. *City of Montgomery,* 201 F.Supp. 590 (M.D. Ala., 1962); *Kodish* v. *United Airlines,* 465 F.Supp. 1245 (D.Colo., 1979); *Polansky* v. *TWA,* 453 F.2d 332 (3d Cir., 1975); *PVA* v. *CAB,* 752 F.2d 694 (D.C. Cir, 1985), rev'd on other grounds *sub nom DOT* v. *PVA,* 106 S.Ct. 2705 (1986); *Bergt-AIA Western-Wein Acquisition/Control Case,* 98 CAB 28 (1982); *Additional California Points, Essential Service,* 89 CAB 623 (1981); *TWA, Re German Discriminatory Practices,* 89 CAB 952 (1981); and *Oklahoma Points, Essential Service,* 89 CAB 1903 (1980).

In this context, it is useful to point out that section 404(a) of the Federal Aviation Act, which was authority for the original CAB version of part 382 and is additional authority for this final rule, requires carriers to provide safe and adequate service, equipment, *and facilities* in connection with air transportation.

The Department believes it is useful to have the airport accessibility requirements for airports and carriers parallel one another, to correct the present situation under which airports are subject to a much more detailed set of requirements under part 27 than are carriers under the existing part 382. Carriers and airports must cooperate to ensure that accessible requirements are met fully; this cooperation should be on a level playing field.

In the Department's view, making airport facilities subject to UFAS, the currently applicable standards under the Architectural Barriers Act and section 504, is sensible and consistent with the law. The additional six features, which are not mentioned in UFAS, are important to ensure that handicapped persons can readily use airports for their intended air transportation functions. Some of these standards are deliberately expressed in general, performance standard terms because the Department cannot reasonably specify the design of specific terminals or terminal features. Most of these items are closely patterned after 49 CFR 27.71, and airport operators have been subject to them for nearly eleven years. It would be as likely to add as to subtract uncertainty to modify them in the direction of greater specificity at this time.

We do not believe that these requirements will create an undue financial burden for carriers, even small carriers. First, federally-assisted airports should already meet these standards. Second, the portion of airport facilities and services which are not now accessible and which are under the carriers' control, are likely to be limited. Third, PVA makes a persuasive point that airport operators, especially those at small airports served mostly by commuter carriers, are likely to be eager to take steps to retain carrier service to the airport and therefore be willing to negotiate reasonably with carriers. We would also point to the UFAS exception for structural impracticability (which applies when the alteration would result in an increased cost of 50 percent of the value of the element, or would affect a load-bearing member) would be available to carriers through the Department, in appropriate cases involving major structural modifications.

We have added, somewhat along the lines suggested by the ATBCB, a provision calling for contracts or leases between airport operators and carriers to allocate compliance responsibilities under part 27 and part 382, respectively. We believe that this provision should help to resolve, in advance, questions of who is responsible for various services or facilities at an airport. For enforcement purposes, should a complaint about airport accessibility arise, the Department would be guided by such a contractual provision. In the absence of such a provision, the Department would proceed jointly in enforcement under parts 27 and 382 and attempt to make the determination of who is responsible for a particular feature of the airport in question.

The three-year phase-in is consistent with general section 504 regulatory practice, and was applied to federally-assisted airports under 49 CFR 27.71 as published in 1979. The Department does not believe that a seven-year phase-in is necessary to permit modifications to be made; in any case, had this longer period, suggested by AOCI, been part of the 1979 regulations, federally-assisted airports covered by the 1979 requirements would still have had to complete the modification of their existing facilities by 1986.

The term "altered," as applied to fixed facilities, comes from Architectural Barriers Act practice. The Department does not believe it would be useful to change a well-established term from the statute that is the basis for the same standards (UFAS) that will apply to airports under this rule. "Substantial structural change" is much more likely to produce uncertainty, and could be construed to narrow the requirements applicable to carriers from those of UFAS.

The Department agrees with AOCI that requiring "dropped" ticket counters may prove burdensome. Except to the extent such counters are specifically required by UFAS (see section 7.2 of UFAS), this rule will allow administrative means of making ticket facilities accessible to handicapped passengers.

We agree that telephones usable by persons wearing hearing aids, as well as TDDs, are important in airports. 49 CFR 27.71 requires them for federally-assisted airports. They are not mentioned specifically in the rule because UFAS incorporates the requirement for them. We are also clarifying the provision for TDDs (that "the terminal" shall have at least one TDD). This clarification will require at least one TDD in "each terminal" at an airport. At large airports, there are often many terminals, which seem to passengers to be miles apart from one another. By saying "each terminal," we mean that every one of these main, satellite, or multiple terminals must have its own TDD. This is important so that a hearing-impaired person who needs to make a call between flights does not need to go from Terminal C to Terminal A (where the TDD is) and back to Terminal C for his connection.

Language in the proposed rule adequately handles conveying of information to persons with hearing or vision impairments, and greater specificity is not needed. Our unabridged dictionary does not distinguish between "oral" and "aural" in any way that would imply any greater or lesser set of requirements attaching to the use of either word, so we will leave it as it is. Semantics aside, the point is that to accommodate persons with vision impairments, the carrier must provide information that such a person can hear.

The Department agrees with PVA that it is reasonable to consider making airport transportation systems (e.g., interterminal buses and vans, electric carts, moving sidewalks) accessible. However, there may be technical, cost, and timing issues with such a requirement on which public comment would be useful. In addition, this is a new requirement on which interested persons have not had the chance to comment. Therefore, we are not including such a provision in this final rule. We will instead ask for comment on this issue in the SNPRM (as well as in the NPRM to amend the airports section of 49 CFR part 27).

For unusual, infrequent situations in which making accessibility modifications may not make sense, carriers could have recourse to the exemption procedures of 49 CFR 5.11. For example, if an airport facility is about to be torn down and a new accessible facility is under construction, it would be unreasonable to require expensive, "permanent" modifications in the old facility. The exemption authority will be used sparingly by the Department. It is not intended to let carriers out of inconvenient obligations, or to be used in circumstances which are not exceptional and peculiar to a particular situation. In addition, the carrier would have to show how it would substantially comply with the rule while the waiver was in force (e.g., by operational methods). Exemptions are not intended to be a backdoor method of amending a final rule.

The Department has added, § 382.5, a new definition of "air carrier airport." This definition would exclude the smallest airports, or airports which provide only general aviation services, from coverage under this section. The definition covers airports receiving scheduled air service which enplane 2,500 or more passengers a year. The new definition is intended to be consistent with current statutory definitions in the FAA's airport financial assistance legislation. Carriers using non-air carrier airports are still subject to all other provisions of the rule.

The Department will publish an NPRM that would incorporate language parallel to this part 382 section as an amendment to 49 CFR 27.71. This amendment would ensure consistency between the two regulations.

Section 382.31—Refusal to Provide Transportation

NPRM—The NPRM prohibited carriers from refusing to provide transportation to handicapped persons on the basis of handicap, except as otherwise permitted by the regulation. Specifically, limits on the number of handicapped persons on a particular flight would be prohibited, as would refusing transportation because the handicapped person's involuntary behavior annoyed, offended, or inconvenienced others (as distinguished from behavior which adversely affected safety). Carrier personnel could continue to exercise their discretion to exclude persons from a flight on the basis of existing legal authority concerning safety. Such actions would have to be consistent with part 382; if they were not, the carrier (not individual carrier personnel) would be subject to enforcement action under the rule. When a handicapped person was exluded from a flight, the carrier would have to explain the reason, in writing, within 10 days.

Comments—PVA generally supports the NPRM provision. PVA strongly favors a ban on number limits, saying there is no evidence to support the safety necessity for such limits and that various airlines have indicated their ability and willingness to carry significant numbers of disabled passengers on a flight. PVA points out that carriers do not talk of applying number limits to other categories of people who might evacuate a plane more slowly than the average (e.g., obese or elderly people).

In support of the provision prohibiting exclusion because of the appearance or involuntary behavior of a handicapped person, PVA cites several carrier manuals which appear to provide for excluding handicapped persons on the basis of the unpleasantness that allegedly is created for other passengers by their very presence. PVA also supports the written explanation provision of the proposal, but says that the explanation should be provided immediately, so that the carrier does not have the opportunity to devise *post hoc* justifications for the exclusion.

ATA argues that this provision should be deleted and replaced by a provision authorizing carrier personnel to exclude any handicapped persons they regard as not being qualified handicapped individuals. Carriers must be able to exercise discretion, unconstrained by regulatory provisions regarding nondiscrimination, to exclude any individual from a flight on the basis of

safety. By regulating in an area affecting safety, ATA argues, the Department would exceed its authority under the ACAA. (In fact, ATA and RAA petitioned the FAA to issue rules that would effectively preempt part 382 by giving carriers the degree of discretion they seek with respect to such issues as refusals to provide transportation and requirements for attendants.) Moreover, as ATA reads the existing part 382, the CAB gave carriers all the "decisional discretion" they needed, and DOT is legally bound not to change CAB's approach without substantial and compelling reasons, which, in ATA's view, DOT does not have.

ATA objects to requiring a written explanation for refusals to provide transportation on the basis of handicap. ATA says that carriers do not provide such statements to other passengers they exclude and do not see why handicapped persons should be different. ATA also objects to carriers being subject to enforcement action under part 382 if carrier personnel exclude a handicapped person in a way that contravenes the rule. This would have a chilling effect on the ability of carrier personnel to exercise safety discretion, since they would worry about the prospect of enforcement action instead of concentrating just on safety.

ATA favors carriers having the discretion to limit the number of handicapped persons, especially those with mobility impairments, on a flight, particularly a flight using a small aircraft. ATA does not suggest any particular number limit (though it mentions that some carriers use the number of floor level exits as a basis for such limits) or what the basis for any particular number limit would be. ATA suggests that without the discretion to impose number limits, carriers could not meet the FAA regulatory requirement to evacuate aircraft within 90 seconds.

Finally, ATA calls attention to what it views as an inconsistency between the NPRM's citation of several authorities with respect to carriers' safety discretion and its exclusion of a reference to section 902(j) of the Federal Aviation Act, which prohibits interference with crewmembers in the performance of their duties.

Among other commenters, the discussion of this subject was divided along similar lines. Disability community organizations and agencies, for example, unanimously opposed number limits. Carriers and carrier labor organizations favored limits and made a variety of recommendations on number restrictions for non-ambulatory passengers. For example, one commenter suggested having no more than one unaccompanied non-ambulatory person per floor level exit and limiting unaccompanied non-ambulatory passengers to the number of flight attendants. The positions and rationales were basically the same as PVA's and ATA's, respectively. A number of disability groups wanted an immediate written explanation for an exclusion; RAA and some individual carriers wanted the period lengthened to 30 days.

Disability groups favored making the actions of carrier personnel the subject of enforcement action against the carrier where the actions violated the rule. Carriers emphasized the need for discretion to refuse service in the interest of safety, and expressed a concern similar to ATA's about the potential chilling effect of making this discretion the subject of enforcement action.

The preamble to the NPRM raised the question of whether, if a handicapped person with a valid reservation is denied transportation because of an equipment substitution (e.g., a smaller plane than usual is used for a flight, and it will not accommodate the passenger or his wheelchair), the person should receive denied boarding compensation (DBC) under the Department's oversale rule. Disability group commenters, the ATBCB, and DOJ said that like a passenger "bumped" for overbooking reasons, a handicapped person in this situation should receive DBC. Carriers did not agree.

DOT Response—Under the final rule, as under the proposal, carriers retain adequate "decisional discretion" to exclude individuals from a flight on the basis of safety. Indeed, the statutory and regulatory provisions cited in the rule ensure that, when the pilot-in-command or other carrier personnel determine that carriage of any individual would or might be inimical to safety, the individual may be excluded. This existing discretion is more than sufficient to permit carrier personnel to guard against any genuine endangerment of the flight or persons on it stemming from the presence on board the aircraft of any particular handicapped (or other) person.

The principal statute involved is section 1111 of the FA Act (49 U.S.C. 1511), which authorizes carriers to "refuse transportation to a passenger when, in the opinion of the carrier, such transportation would or might be inimical to the safety of flight." In reviewing exercises of discretion under this statute (e.g., in the context of a complaint under § 382.31), the Department will be guided by judicial interpretation of section 1111:

> The test of whether or not the airline properly exercised its power under § 1511 to refuse passage . . . rests upon the facts and circumstances of the case as known to the airline at the time it formed its opinion and made its decision and whether or not the opinion and decision were rational and reasonable in light of these facts and circumstances. They are not to be tested by other facts later disclosed by hindsight. *William* v. *Trans World Airlines*, 509 F.2d 942 (2d Cir. 1975); *Cordero* v. *Mexicana Airlines*, 681 F.2d 669 (9th Cir. 1982).

Of course, carrier personnel are charged with knowledge of the requirements of this rule as they form their opinions and make their decisions. Decisions contrary to the provisions of this rule are prohibited.

The other authorities cited in this section are 14 CFR 121.533(e) (the pilot in command has "full control and authority" in the operation of the aircraft) and 14 CFR 91.8 (prohibition of interference with crewmembers).

Indeed, it is difficult to determine how the basic grant of this discretion by provisions of the Federal Aviation Act and Federal Aviation Regulations differs in substance from that described as "inevitable" by the court in *PVA* v. *CAB*. Under the CAB rule at issue in that case, a determination that an individual was not a qualified handicapped individual (and hence excludable from a flight as a threat to safety) was to be made only when the carrier had a "reasonable, specific basis" for its determination. Carriers were not to have "unbridled discretion." 752 F.2d at 721. This rule simply adds the requirement that when a carrier excludes a handicapped person from a flight for safety reasons, it must explain the reasonable, specific, safety basis for the exclusion in writing. The essence of arbitrariness in decisionmaking is that the decision need not be explained. It does not unreasonably constrain carrier safety discretion to insist that, in this most basic way, carrier decisions to exclude handicapped persons not be arbitrary. If there is a reasonable, specific, safety basis for an exclusion, then the carrier personnel who make the decision will be able to articulate it. If there is not such a basis for the decision, which the carrier can articulate, then it is a decision better left unmade.

The Department believes that the 10-day time frame for sending this explanation to the passenger makes more sense than either a shorter (e.g., immediate) or a longer (e.g., 30 day) period. When an exclusion occurs as a flight is about to leave, it could delay the

flight if a crewmember had to sit down and write a letter or memorandum to the passenger. This delay, which would inconvenience other passengers, would not do anything to get the handicapped person on the flight, since the decision to exclude had already been made.

The Department does not share PVA's concern about "*post hoc* rationalizations." The explanation of the exclusion is made on behalf of the carrier, not an individual crewmember. It is the carrier, not the individual crewmember, who is subject to enforcement action if the exclusion violates the rule. It does not violate the intent of the rule if carrier officials, other than the employees involved, consult about or prepare the response to the passenger after the event.

The Department believes that an expeditious reply is necessary, however, so that a passenger can know as soon as possible the basis on which he or she was kept off a flight. Among other things, this will allow the passenger to initiate a complaint with the carrier or the Department in a timely manner. Consequently, the Department will not extend the reply period to 30 days.

The Department also has concluded that it is appropriate for carriers to be subject to enforcement based on the actions of carrier personnel in excluding handicapped persons. ATA's objection to this provision—that it would, in effect, exert a chilling effect on the safety judgment of pilots and others—is unpersuasive. Individual carrier employees incur no liability for enforcement action or penalties under the rule. Only the carrier does. It is highly implausible that a pilot, confronted by a situation in which carrying a particular passenger would genuinely endanger his life and the lives of his passengers, plus several million dollars' worth of carrier property, would be deterred from denying transportation to the passenger because, some time hence, his employer might face administrative enforcement action.

The carrier will presumably train its employees well so that they exercise their discretion consistently with the rule. But should an error occur (e.g., carrier personnel exclude a person with a severe disfigurement from a flight because they believe other passengers would find the person unpleasant to look at), the carrier should not be immune from enforcement action. Otherwise, there would be no way to vindicate the most basic right protected by the ACAA, that of receiving air transportation without discrimination on the basis of handicap.

The prohibition on denying transportation because the appearance or involuntary behavior of a handicapped passenger may offend, annoy, or inconvenience other passengers or crew is unfortunate necessity. It is unfortunate because it is an regretable fact in our society that some people, focusing on the manifestations of a disability rather than on the human being who has the disability, may find proximity to a disabled person uncongenial. They may not want to look at a person with a severe disfigurement or sit next to a person whose muscular control is impaired by cerebral palsy. It is necessary because, as PVA points out in its comment, carrier policies have sometimes catered to passenger squeamishness or the desire of crewmembers to avoid what they view as additional inconvenience (e.g., PVA quotes recent carrier policies that bar persons who have "a malodorous condition, gross disfigurement, or other characteristics so unusual as to be unpleasant" or "whose habits or appearance [would be] objectionable to other passengers"). Exclusions for safety reasons are permitted under the ACAA; exclusions on grounds of pleasantness or convenience are not. The regulation must make this point unequivocally.

The Department recognizes that there may be some situations in which carrier personnel will have to exercise their judgment to distinguish between involuntary behavior by a handicapped person that poses a real safety problem and behavior that is only annoying. There was much discussion during the regulatory negotiation about persons with Tourette's syndrome. This disability affects about 100,000 persons in the U.S. and is manifested by episodes of shaking, muscle tics and/or spasms and uncontrolled shouting, barking, screaming, cursing and/or abusive language. The latter is present in about 30 percent of the cases. Tension and pressure tend to stimulate outbursts. Medication may help a substantial number of persons with Tourette's to reduce or suppress symptoms. Many persons with Tourette's carry cards or brochures explaining the disability.

Sitting near such a person in an aircraft cabin, like sitting near a crying baby, may be a very uncomfortable experience for other passengers, but manifestations of Tourette's in the cabin of a large aircraft may create only a high level of annoyance, and not a genuine safety problem. Some manifestations of Tourette's in the cabin of a small air taxi, in which the passenger in question is sitting a few feet from the pilot, may well create a safety problem if the individual's exclamations would distract the pilot. This issue is discussed further under § 382.37, concerning seat assignments.

It should be emphasized that this provision does not give handicapped persons *carte blanche* to act voluntarily in a disruptive fashion. On occasion, a passenger, whether or not disabled, through frustration, ill temper, or a belief that the rules apply to everybody but him, may deliberately act to violate a rule that applies to all passengers, violate generally applicable standards of behavior, or act so as to interfere with the duties of crewmembers. Such behavior is no more tolerable from a disabled passenger than anyone else. If a disabled passenger insists on smoking on a no-smoking flight, for example, or strikes or grabs a flight attendant in anger, the disabled passenger is subject to the same sanctions as any other disruptive passenger.

With respect to the issue of number limits, the Department recognizes that handicapped passengers, especially persons with mobility impairments, are likely to move out of an aircraft in an emergency situation more slowly than many other passengers. This is a common-sense observation, which various FAA studies have confirmed. It is a substantial leap from this proposition, however, to the conclusion that it is permissible, under the ACAA, for a carrier to impose a limit on the number of handicapped passengers who may travel on a particular flight.

Under the ACAA, a carrier may not discriminate against a qualified handicapped individual by, among other things, denying transportation to that person. If person X is a qualified handicapped individual in his own right, X does not cease being a qualified handicapped individual because persons A, B, C, D, and E, likewise qualified handicapped individuals, have already boarded the aircraft. By keeping X off the plane because he makes "one too many" qualified handicapped individuals on that flight, a carrier engages in a facial violation of the Act.

If a clear case had been made that the second, or fifth, or eleventh qualified handicapped individual on a flight, or the handicapped person that exceeds the number of floor level exits or flight attendants, is "one too many," such that he or she may be excluded for that reason alone, the Department may have been able to permit a certain number limit to be imposed. In the preamble to the NPRM, the Department explicitly requested information on which a specific number limit could be based. None was presented. None of the comments, including those that

supported number limits, provided a basis on which the Department could conclude that any particular number limit was essential on safety grounds. Nor was there any discussion of number limits not focused exclusively on persons with disabilities (e.g., on elderly or obese persons or others who may leave a plane more slowly than others). We must conclude that there is insufficient evidence in the record of this rulemaking to warrant permitting number limits.

Instead, commenters favoring number limits simply asserted that carriers needed discretion to limit the numbers of handicapped passengers on various flights. (Indeed, ATA's proposed regulatory language on this point would not call on FAA to set any particular limit as essential to safety, or provide any basis on which FAA could do so, but would specifically permit carriers to set such limits for themselves, in carrier procedures.) To limit handicapped passengers on a given flight to some number or other, without standards, and without articulating a reasonable, specific safety basis, is to engage in classically arbitrary behavior inconsistent with a nondiscrimination statute like the ACAA. (Interestingly, the imposition of a number limit was among the "numerous incidents of arbitrary refusals of service and irrational decisions by airline personnel" cited by the court in *PVA* v. *CAB*. 752 F.2d at 720, nt. 185.)

Contrary to ATA's assertion, there is no relationship between the ability to impose number limits and compliance with 14 CFR 25.803(c). This FAA regulation requires that, as part of aircraft certification, a demonstration must be conducted, under specified conditions (including specifications as to the age and sex of passengers), showing that a fully loaded plane can be evacuated within 90 seconds. This is not an operational requirement. The mix of passengers on any particular real flight has no effect on the ability of a carrier, or an aircraft, to comply with the 90-second evacuation demonstration requirement for certification.

The issue of denial of boarding because of the substitution of a smaller, inaccessible aircraft would arise only in those situations when an aircraft with less than 30 seats was used, and hand-carrying was the only way of getting the passenger into the aircraft. In the SNPRM accompanying this rule, the Department raises for comment the question of whether substitute transportation should be provided when this occurs. The Department will consider the issue of denied boarding compensation in the overall context of further rulemaking concerning small, inaccessible aircraft.

Section 382.33—Advance Notice Requirements

NPRM—The NPRM section would prohibit any requirement for advance notice from a handicapped person in order to receive transportation or to receive most services or accommodations required by the rule, with six exceptions. Persons who wanted medical oxygen, incubator or stretcher service or a respirator hook-up, an on-board wheelchair, or hazardous materials packaging for a battery could be required to provide up to 48 hours notice by the carrier. If this notice is provided, the carrier would be required to provide the service or accommodation. If not, the carrier would still be required to provide the service or accommodation, if the carrier could make it available through a reasonable effort, without delaying the flight.

Comments—PVA agreed that requiring advance notice for incubators, stretchers, medical oxygen for on-board use, and respirator hook-ups was reasonable. PVA opposed requiring advance notice for on-board chairs and hazardous materials packaging for batteries. Requiring advance notice for these two items would work a hardship on handicapped travelers, especially business travelers and others who must fly on short notice. Having on-board chairs and battery packages available on every aircraft or every terminal would not be unduly burdensome on carriers, in PVA's view. Also, advance notice systems often have not worked, making this provision of questionable worth. PVA pointed to language in *PVA* v. *CAB* suggesting that, outside the context of the small EAS carriers to which CAB expected the advance notice provision to pertain, the court might view an advance notice requirement differently than it did in upholding that provision of the CAB rule.

ATA emphasized that the purpose of advance notice requirements was to allow carriers to get the personnel and other resources needed for special accommodations for handicapped passengers in place in time. Advance check-in of two hours is advisable for the same reason. These provisions simply make for smoother arrangements, ATA says. ATA would add provision of boarding and deplaning assistance using mechanical lifts or aisle chairs, or more than the usual complement of personnel and ground wheelchairs at facilities where they are not normally available to the list of accommodations for which advance notice and check-in could be required.

Other carrier comments suggested advance notice for any passenger requiring some form of assistance, for non-ambulatory passengers (for purposes of preboarding), for hearing impaired passengers, or for wheelchairs as well as batteries. One carrier wanted an advance notice period longer than 48 hours. RAA said that, if a passenger gave advance notice to one carrier, and that carrier cancelled the flight or bumped the passenger because of overbooking, a second carrier who carries the passenger on short notice should not be expected to provide the accommodation for which advance notice was given to the first carrier. RAA also supported a one-hour advance check-in. Some carriers also mentioned support for advance notice requirements for on-board wheelchairs and battery packages.

Disability community commenters said that airlines should be prohibited from requiring advance notice or that, if advance notice were permitted, that it should be for a shorter period (e.g., 24 hours). A larger number of disability community commenters opposed advance notice for accommodating wheelchairs or providing battery packages.

In discussing advance notice, it is important to distinguish between advance notice for persons and advance notice for accommodations. The rule, like the NPRM, clearly prohibits the former. There are no circumstances in which it is proper for a carrier to require, as a condition for providing transportation, that a handicapped person provide advance notice that he or she is coming and that he or she has a disability.

On the other hand, there are circumstances in which it may be appropriate for a carrier to say that if it is going to provide special services or accommodations, it needs to have advance notice so that the equipment or personnel needed to provide the accommodations can be directed to the right place at the right time. We agree with ATA that if certain accommodations are required to be provided, the carrier should have enough time to prepare to do the job right.

For this reason, we are retaining the provision allowing carriers to require advance notice for packaging a battery for a wheelchair or other assistive device. The reason for doing so is less that of reducing carrier costs for battery packages (which should not be high in any case) than it is to ensure that both

materials and personnel are available for the task. The task, in this case, would involve not only putting the battery into a package but also disassembling and reassembling the wheelchair or other device. This involves a commitment of personnel time and training by the carrier, and it is reasonable to let the carrier know in advance that it will have to perform this task.

A similar point applies to electric wheelchairs, with respect to flights scheduled to be made with aircraft with 60 or fewer seats. Handling of large pieces of equipment for stowage aboard smaller aircraft is likely to pose special problems. In this situation, we believe that advance notice will make it more likely that this accommodation can be provided smoothly and in a timely manner.

A carrier may also require advance notice for on-board wheelchairs in aircraft with inaccessible lavatories. On-board wheelchairs are not required to be carried on these aircraft at all times. In order to give the carrier a chance to get an on-board wheelchair to the proper station for the flight in question, it is reasonable for the user of the equipment to provide advance notice. Otherwise, it is not realistic to believe that the service can be provided reliably. Since on-board wheelchairs will be provided in aircraft with accessible lavatories, this provision will not pertain to such aircraft.

The advance notice requirements for medical oxygen, stretcher accommodations, incubator accommodations, and respirator hook-ups were not controversial, and they have been retained.

We agree with carrier comments that advance check-in, as well as advance notice, may be necessary if proper accommodations are to be provided. As a practical matter, for example, it takes time to disassemble an electric wheelchair, pack the battery, and stow the wheelchair aboard the aircraft. It is not reasonable to ask carrier personnel to perform this work at the last minute, when many tasks must be accomplished, or to delay the flight. A one-hour advance check-in, as suggested by RAA, is not an unreasonable burden on passengers, in any case.

PVA and other commenters expressed concern about whether advance notice really works, suggesting that operating personnel may never get the word from reservation agents that advance notice has been provided. Obviously, if this internal carrier communication does not happen, advance notice is futile. Consequently, the rule will require that reservation systems and other carrier administrative systems provide for this communication to occur properly. When advance notice has been given, the carrier is required to provide the accommodation in question, assuming the service is one which the carrier makes available on the flight. Even if a passenger does not comply with a carrier's advance notice and advance check-in requirements, the carrier must provide an accommodation as long as it can do so with a reasonable effort and without delaying the flight. This latter provision should mitigate any adverse effect of the advance notice requirements on business and other short-notice travelers.

We regard such things as equipment used for boarding assistance and ground wheelchairs as so much a part of the normal, day-to-day business of getting people onto and off of airplanes that it is not appropriate to think of them as the kind of special, time-consuming assistance that would call for advance notice. As the Department commented in 1979 to the CAB on this issue, "provision of wheelchairs would not appear to require any unusual effort or training on the part of airline employees; and many airlines already provide wheelchairs for handicapped passengers during boarding of aircraft, without advance notice * * *." 752 F.2d at 723, nt. 211. In addition, the traveler making a telephone reservation is likely to have no way of knowing whether a carrier will view a particular service as requiring more than the usual complement of personnel or whether ground wheelchairs are usually not available at a particular facility. It is not reasonable to make passengers guess about such matters, with the penalty for a wrong guess being the unavailability of a needed accommodation.

As PVA noted, the court in *PVA* v. *CAB* suggested that it viewed the 48-hour advance notice provision of the CAB rule as intended to assist the small EAS carriers to which the rule principally applied. The Department does not view this discussion in the decision (which consists, in any event, merely of dicta) as a mandate to limit advance notice requirements to a shorter period. Given the administrative complexities of providing accommodations in large as well as small carriers, we believe that the 48-hour period is a reasonable one for the purpose of ensuring that requested services are actually provided. A longer period (e.g., 72 hours) could unreasonably burden travelers; a shorter period (e.g., 24 hours or less) might provide handicapped passengers a pyrrhic victory, if it resulted in carriers being unprepared to provide needed accommodations.

In the commenters' discussion of the number limits issue under § 382.31, disability group commenters mentioned that carriers are often able to carry rather large groups of disabled persons, and carrier commenters countered that this was because carriers were able to make arrangements well in advance of the flight. This discussion suggested to the Department a useful addition to the list of accommodations for which advance notice is appropriate. That is, carriers may require 48 hours' advance notice for a group of ten or more handicapped persons who will be traveling together as a group on a flight. As for the other items for which advance notice may be required, this provision is intended to allow carriers sufficient time to prepare to make whatever special arrangements may be needed to accommodate a group of this size.

This provision is not intended to cover all situations, or to be a surrogate for a number limit provision. It does not apply to situations where a number of handicapped passengers independently wind up taking the same flight. Nor does it apply to a situation where a number of handicapped passengers are traveling to a common destination (e.g., a conference) on the same flight, but not as a formal group. It is intended to be helpful in situations where an organized group is making a collective reservation to travel together.

The rule will not impute to a second carrier advance notice provided to a carrier whose flight was cancelled. However, since the first carrier will have had the chance to prepare for the accommodation, the Department believes the first carrier should be obligated to assist the second carrier to the maximum extent feasible to ensure that it can provide the accommodation. For example, if carrier X designates a ground staff person to disassemble a wheelchair, but carrier X's flight is cancelled and the passenger has to travel on carrier Y, carrier X must, to the maximum extent feasible, have its ground staff person assist carrier Y's personnel in preparing to carry the wheelchair.

Section 382.35—Attendants

NPRM—With the exception of persons in certain specified categories the NPRM would prohibit carriers from requiring handicapped persons to travel with an attendant. These categories included persons with a mental disability who either could not comprehend or respond appropriately to

safety-related instructions of carrier personnel or who were brought to the airport under the supervision of an agent of an institution which had custody of the individual. Persons traveling in a stretcher could be required to have an attendant capable of providing whatever medical care they needed during the flight. Quadriplegics and deaf/blind persons could self-assess with respect to the need for an attendant. If the carrier decided persons needed an attendant, the first person in each category on a particular flight could travel unaccompanied anyway, though in a seat designated by the carrier. Subsequent members of each category on the flight would have to have an attendant if the carrier decided that it was necessary.

Comments—ATA would replace the NPRM provision with a statement that the carrier may require an attendant if the person needs extraordinary personal care during the flight or if reasonably necessary for safety in accordance with FAA rules or policies, or in order to meet the definition of a qualified handicapped person. The NPRM proposal, ATA said, did not ensure that carriers had adequate "decisional discretion" to make decisions in the interest of safety. In particular, by allowing passengers' self-assessments to control in some situations, the NPRM would prevent carriers from meeting their legal responsibilities for flight safety. ATA also objected to the "first passenger" provision as administratively unworkable.

ATA added that carrier personnel cannot know when a handicapped person might impede a rapid evacuation. Consequently, when carrier personnel have doubts about a handicapped person's ability to evacuate safely, or otherwise about their being a qualified handicapped individual, then the carrier should be able to require an attendant. Self-assessments should not override this discretion on the part of carrier personnel, which is needed to ensure safety, even if it may result in unfairness and hardship to passengers.

PVA objects to the NPRM's use of categories of disabled persons who could be subjected to attendant requirements, which PVA views as discriminatory. The categories are so broad as to be unworkable (particularly "quadriplegics"), PVA says, and they also give carrier personnel too much discretion to decide who needs an attendant. PVA says that carrier personnel have no basis on which to second-guess the self-assessments of handicapped persons, arguing that ATA's own comment concedes the point (see previous paragraph).

PVA also disagrees with the "person under the supervision of an agent of a custodial institution" category, saying that it is overbroad, difficult to apply reasonably, and discriminatory against a number of individuals. Like ATA, PVA believes that the "first passenger" scheme is unworkable.

PVA believes that the rule should call on carriers to follow disabled persons' self-assessment with respect to the need for an attendant. No one knows better than the handicapped individual what his or her abilities and needs actually are, and handicapped individuals are neither so unintelligent nor so stubborn as to insist on flying alone when they know they need an attendant. If a carrier may overturn a handicapped passenger's self-assessment, PVA suggests, the carrier should bear the cost of any attendant requirement it imposes.

A substantial number of other disability community commenters agreed with PVA that passengers' self-assessments should control, and that the rule should prohibit carriers from requiring attendants when passengers did not believe attendants were needed. Some of these comments pointed out that the extra cost of an attendant could prevent handicapped people from flying. DOJ and another commenter suggested that if the carrier required an attendant, the carrier should provide the attendant at no cost to the passenger.

Some organizations representing deaf/blind persons objected to attendant requirements; others suggested that anyone making determinations about such passengers for the carriers be well trained. Likewise, organizations representing persons with mobility impairments objected to attendant requirements for quadriplegics or, like PVA, called attention to the difficulty of using this category reasonably. Similar comments disagreed with the "mental disability" category. A number of comments from various parties joined the chorus of disapproval for the "first passenger" mechanism.

Comments from carriers and carrier labor organizations suggested that all "totally handicapped" persons, or non-ambulatory persons, or persons who could not completely understand safety-related instructions, should have attendants. RAA suggested that the entire provision should be deleted, to be replaced by an FAA rule (part of the ATA/RAA petition alluded to above) giving carriers discretion conerning attendants.

DOT Response—Both carriers and disability groups have valid concerns relating to attendant requirements. On one hand, passengers know far better than carrier personnel what their own capabilities are. As both PVA and ATA state, carrier personnel are not well equipped to evaluate these capabilities. Moreover, an attendant requirement is not only galling for a handicapped person who does not feel an attendant is needed, it is very costly. ATA points out, justifiably, that this rule should not impose undue burdens on carriers. Disability groups could respond, equally justifiably, that the rule should not permit carriers to impose undue financial burdens on passengers through unnecessary attendant requirements. Disability groups can point to numerous situations in which disabled passengers have been arbitrarily required to have an attendant, or denied passage for lack of one. Attendant requirements were also among the list of "arbitrary refusals of service and * * * irrational decisions" noted by the court in *PVA* v. *CAB*, 752 F.2d at 720, nt. 185.

On the other hand, carriers do have a responsibility to ensure the safety of all passengers; a responsibility explicitly recognized by the ACAA. This safety responsibility must be exercised even if, on occasion, in a way contrary to passenger preferences. While handicapped individuals are probably the best judges of their own capabilities, carrier personnel are likely to have more information concerning the aircraft and evacuation procedures. Handicapped passengers, no less than other passengers, may have their judgment affected by economic factors or an "it can't happen to me" attitude. All this suggests an appropriate role for carrier judgment.

In framing a final rule provision, the Department has tried to balance all these factors. The Department recognizes, first of all, that for most handicapped individuals, it is never appropriate for a carrier to require an attendant. For example, blind individuals, deaf individuals, and persons with relatively less severe mobility impairments (e.g., most paraplegics or persons who have lost one or two limbs) are likely never to need an attendant for safety or evacuation-related reasons. Also, there are some grounds, under the ACAA, that are never legitimate for requiring an attendant (e.g., a perception by carrier personnel that the individual will need substantial personal services during the flight, which carrier personnel are not obligated to provide). That a person may, in a carrier employee's judgment,

need to use a restroom on a flight not using an aircraft with accessible restrooms is not a safety-related basis for requiring an attendant, and hence the rule does not permit an attendant requirement for such a reason.

The rule, then, says that a carrier is permitted to require an attendant only for safety reasons (not presumed requirements for personal services or inconvenience or additional work for crewmembers) and only for persons meeting one of four criteria. The first of these criteria concerns persons traveling in an incubator or stretcher. No carrier judgment is required here; the person either is or is not in an incubator or stretcher. In this case, which was not controversial under the NPRM, the attendant must be capable of attending to in-flight medical needs of the passenger.

The second criterion concerns a person who, because of a mental disability, is unable to comprehend or respond appropriately to safety-related instructions of carrier personnel, including the safety briefings required by FAA safety rules. (The Department has decided to drop the "person coming to the airport under the supervision of agent of a custodial institution" category, both in response to adverse comment on that category and because persons in that category who would create a safety concern would probably be subsumed in this mental disability category.) While people with a variety of disabilities (e.g., developmental disabilities, cognitive disabilities, brain damage, mental illness, Alzheimer's syndrome) may be affected, this criterion, in its application, is intended to be defined in functional rather than diagnostic terms. That is, the ability of the individual to actually understand and respond appropriately to the instructions is the key. Some individuals with mental disabilities may be able to do so, while others may not.

The Department recognizes the problems, pointed out by commenters, with the "quadriplegics" category of the NPRM, and is substituting a more functional criterion. An attendant may be required for a person with a mobility impairment so severe that the person is unable to assist in his or her own evacuation. The rationale for this functional criterion is that if a person can assist in his or her evacuation, the need for the assistance of others is reduced.

For example, if an individual cannot move his arms or legs independently at all, that individual is unlikely to be able to assist in his or her own evacuation. The individual would need someone else to help if he or she is to make any progress toward an exit during an evacuation. On the other hand, a paraplegic may often be able to use his or her arms and hands to assist in an evacuation by crawling or pulling him or herself along by grasping seat backs. Again, the key is the individual's functional ability, not a diagnostic category.

The fourth criterion derives from the Department's 1987 *Southwest Airlines* enforcement case, and concerns a person who has both severe hearing and vision impairments. If such an individual can establish some means of communication with carrier personnel, sufficient to permit the passenger to receive the carrier's safety briefing, the carrier could not require an attendant. Otherwise, the carrier could require an attendant. This criterion is also intended to be a functional criterion relating to an individual's particular abilities, and the Department intends the provision to be implemented in a manner consistent with the *Southwest Airlines* decision. Burdensome administrative requirements making it difficult for the passenger to establish that he or she can communicate or otherwise making independent travel difficult are not consistent with this portion of the rule.

These criteria encompass the situations in which, based on discussions in the regulatory negotiation, comments, and the Department's experience, it is fair to expect that a genuine safety rationale for requiring an attendant could exist. More inclusive criteria would go beyond safety into the realm of carrier convenience and concerns about providing personal services, which are not sufficient rationales for imposing requirements on handicapped passengers under the ACAA.

The Department agrees with commenters that the "first person" mechanism, developed by the parties during the regulatory negotiation, is probably unworkable. In its place, as a means of accommodating both the safety discretion concerns of carriers and the concerns of disability group commenters about arbitrariness and cost burdens of attendant requirements, the Department is adopting a suggestion made in a number of comments.

Under this provision, if the carrier determines that safety requires a person arguably meeting one of the last three criteria to have an attendant, then the person will have to travel with an attendant, even if his or her self-assessment is that he or she can travel independently. In this case, however, the carrier will bear the cost of the attendant's transportation.

The carrier could do so in a number of ways. The carrier could provide a free ticket to an attendant of the handicapped passenger's choice. The carrier could designate an off-duty employee who happened to be traveling on the same flight to act as the attendant. Either the carrier or the handicapped passenger could seek a volunteer from among other passengers on the flight (a search which would probably be facilitated by the incentive of free passage). It should be emphasized that the only purpose of the attendant in these circumstances is to assist the handicapped person in an emergency evacuation. Personal service duties (e.g., with respect to eating or going to the lavatory) are not expected.

This approach has several advantages. It gives the carrier the "decisional discretion" to require an attendant when it really believes an attendant is required for safety purposes. The handicapped person's self-assessment cannot override the carrier's safety judgment in this regard. Because it requires the carrier to stand behind its safety judgment with a financial commitment, it reduces the likelihood of arbitrary decisions by carriers to require attendants. While the handicapped person may have to accept traveling with an attendant, the extra monetary burden on the passenger is largely removed. The possibility that the carrier will respond to a situation by designating an off-duty employee or another passenger as the attendant (or by determining that the passenger, indeed, can travel independently) minimizes the likelihood that handicapped persons would use this provision as a "free rider" opportunity for friends or relatives. Because disabled persons who genuinely need attendants tend to travel with them anyway (there is no reason to doubt the representations of disability groups on this point, and it is consistent with the experience of DOT staff), the overall cost to carriers is not likely to be great.

Two administrative provisions have been added to help this provision work in the situation of a sold-out flight. When the carrier determines that an attendant is needed, the attendant will be deemed to have checked in at the handicapped person's original check-in time. For example, on a sold-out flight, a handicapped person with a confirmed reservation checks in at the gate an hour before the scheduled departure time. Forty minutes later, after discussion with the handicapped person and the complaints resolution official, carrier personnel determine that the passenger must have an attendant. No one with a

confirmed reservation volunteers, but a standby passenger or an off-duty carrier employee is found to act in this capacity. For purposes of determining who gets bumped from the flight, the attendant is regarded as having checked in an hour before departure. The attendant and the handicapped person would both have priority over other passengers who arrived less than an hour before the scheduled departure time. For example, a passenger who arrived 30 minutes before scheduled departure time would be bumped before the handicapped person or the attendant, even though the passenger had checked in before the attendant was actually selected.

On the other hand, if the handicapped person arrived 15 minutes before scheduled departure time, and the carrier determined that an attendant was necessary, the handicapped person and the attendant would not have bumping priority over passengers who had arrived earlier. If there were not room for both, and the handicapped person consequently could not travel, the handicapped person would be eligible for DBC, just as if he or she had been a victim of overbooking. This is because the handicapped person had a confirmed reservation and, but for the carrier's decision and the inability of the carrier to find someone already on the aircraft to act as an attendant, would have flown on the flight.

Section 382.37—Seat Assignments

NPRM—The NPRM provided that carriers could not exclude any person from an exit row or other seat location, or require any person to use a particular seat, on the basis of handicap, except in order to comply with an FAA safety regulation. FAA subsequently published a separate NPRM proposing to require carriers to seat in exit rows only those persons who could perform a series of functions in an emergency evacuation. The FAA NPRM would have the effect of excluding many handicapped passengers from exit rows.

Comments—RAA suggested deleting this section. ATA would replace the NPRM provision with language granting carriers discretion to restrict the assignment of any seat if, in the carrier's reasonable expectation, a passenger may impede or interfere with an emergency evacuation or with the crew's performance of duties in an emergency. ATA says that this formulation better accommodates the fact that FAA standards are minimum standards which carriers are encouraged to exceed, in the interest of achieving the highest possible degree of safety. Moreover, ATA says, the NPRM does not take proper account of the role of FAA orders, advisory circulars etc. concerning safety, since it focuses on what an FAA regulation says. ATA makes specific reference to a 1977 FAA Advisory Circular suggesting that carriers seat non-ambulatory persons near floor level, non-overwing exits.

PVA argued that in the absence of an FAA safety regulation, carriers should be prohibited from imposing seating restrictions on the basis of handicap. PVA said, however, that any carrier procedures adopted to implement an FAA regulation in this area must themselves conform with the general nondiscrimination requirements of part 382. PVA disagrees with ATA's assertions that carriers' general discretion to exceed minimum FAA requirements authorizes carriers to take action contrary to a Federal statute like the ACAA.

The NFB commented extensively on this section. NFB strongly advocates the position that there is no valid or persuasive evidence that blind persons present a safety problem as passengers in air transportation. Genuine safety justifications for different treatment of blind passengers (e.g., airline policies barring blind passengers from exit rows) do not exist, in NFB's view. NFB warns against making blind passengers the victim of a discriminatory "safety hoax," and expresses concern that safety reasons advanced for restricting exit row seating are pretexts for discrimination and prejudice.

Indeed, NFB contends, there are far more serious cabin safety problems which FAA and the industry have thus far failed to address. The NFB comment discusses several matters raised at a recent cabin safety conference which, in NFB's view, were far more deserving of regulatory attention by FAA than exit row seating. NFB points to FAA's acceptance, under current FAA rules, of some carrier policies which do not bar blind passengers from exit rows as evidence that FAA has not, until recently, believed that exit row seating is a significant safety issue.

NFB urges that this section of the rule prohibit discrimination in seat assignments and require carriers to apply the same standards and restrictions concerning exit row seating to handicapped and nonhandicapped persons alike.

The American Council of the Blind (ACB) said that any restrictions on exit row seating should be based on empirical evidence. Other disability community comments generally favored a prohibition on seating restrictions, though one comment suggested that restrictions could apply to the seat next to the exit (but not the whole exit row). Carrier comments favored provisions that would either preserve carrier discretion in seating matters or expressly authorize seating restrictions for handicapped persons where restricted seating would contribute to speeding an evacuation. Carrier labor organizations generally agreed with carrier comments on this issue.

DOT Response—Many comments on this section of the NPRM, including a substantial portion of NFB's comments, concerned the substance of what restrictions, if any, on exit row seating should be imposed by an FAA safety rule. These comments are not on point for this NPRM. Rather, they relate to the FAA rulemaking concerning exit row seating.

As a general matter, ATA is correct in pointing out that carriers have discretion to exceed requirements of FAA safety rules. This discretion cannot be taken to override the mandate of a Federal statute, however. As discussed above, the ACAA prohibits discrimination against qualified handicapped individuals on the basis of handicap, including the imposition on handicapped passengers of restrictions not imposed on other passengers, except for safety reasons found necessary by the FAA. Where the exercise of discretion by a carrier imposes restrictions on handicapped passengers not imposed on other passengers, and the restriction has not been found necessary by the FAA, the carrier's discretion is constrained.

For example, some carriers have followed policies of requiring persons using service animals to sit in bulkhead rows. Absent the ACAA, this exercise of discretion, which is not inconsistent with FAA safety requirements, is legally permissible. But imposing this seating restriction on handicapped persons who use service animals in the absence of an FAA safety requirement for seating service dog users in bulkhead seats, is prohibited under the ACAA and this rule.

Likewise, an FAA Advisory Circular suggesting that it may be useful to sit non-ambulatory persons in a location that would place them at the end of an exit queue is advice or suggestion. It is not a legal requirement. It is not a finding by the FAA that this seating pattern is necessary for safety. FAA's administration of its safety rules (14 CFR § 121.586) has not required this suggestion to be adopted. So while, under the ACAA, it is perfectly appropriate for a carrier to recommend seating locations to non-ambulatory persons, it is not correct to say that

carriers have discretion to require these passengers to sit in these locations. Under the ACAA, carriers are not intended to have this discretion, and this regulation will not grant discretion which the statute intends to be withheld.

At the same time, the Department would not, consistent with the ACAA, purport to limit through this rule the discretion of the FAA to issue a specific safety regulatory requirement such as it has proposed in the exit row seating area. Consequently, were are not adopting comments which urged a regulatory ban on exit row seating restrictions.

We agree with PVA and NFB that in implementing any FAA rule in this area, carriers are obligated to do so in a nondiscriminatory manner. The Department does not believe that any special language to this effect is needed in this section, however; the general nondiscrimination requirements of section 382.7 should be sufficient.

The Department is adding two provisions to this section. The first is a response to a comment concerning the denial of transportation, consistent with § 382.31, of a person whose involuntary active behavior would endanger flight safety. If such an individual could be transported safely in a particular seat location on a particular flight, the carrier would be required to offer such a seat location for the person as an alternative to denying transportation.

It should be emphasized that this provision applies only with respect to a passenger's involuntary active behavior (e.g., the loud exclamations of someone with Tourette's syndrome). This provision is not intended to allow carriers to isolate a handicapped person because the person might look or seem strange to other passengers.

The second responds to comments concerning service animals (see discussion of § 382.53). If a service animal cannot be accommodated at the seat originally assigned to its user (e.g., because it blocks an aisle), the carrier may move the animal and its user to another seat at which it may be properly accommodated.

Section 382.39—Provision of Services and Equipment

NPRM—This provision would require carriers to assist handicapped persons in enplaning and deplaning, making connections, etc. However, where the physical limitations of 19-seat or smaller aircraft precluded the use of existing boarding devices, carrier personnel would not have to hand-carry a handicapped person onto an aircraft. Carriers would have to provide assistance (including help with the use of an on-board wheelchair) in getting handicapped persons to lavatories, but would not have to assist handicapped persons in a bathroom or otherwise with elimination functions. Carrier personnel would have to assist handicapped persons with preparation for eating but not with eating itself. Assistance would be required for retrieving carry-on items. Carrier personnel would not be required to provide medical services for handicapped persons.

1. Enplaning and Deplaning of Handicapped Passengers

Comments—PVA argued that the ACAA requires access to air travel, and that carriers have the obligation to make sure that handicapped passengers are able to get onto aircraft, by whatever means are available and necessary. It is undesirable to carry passengers on board by hand, but if no other method is available, then it must be done, even on the smallest of aircraft. If a carrier refuses to do so, then the passenger should receive denied boarding compensation.

ATA believes that it is never proper to require carrier personnel to carry passengers on board. The danger of injury to personnel is too great, and such a requirement would involve the provision of extensive affirmative assistance which is beyond the scope of the ACAA. If carrying passengers aboard is the only way to enplane them, then they won't get to travel. Airports should be required to provide lifts for carriers to use, in order to facilitate enplaning handicapped passengers. RAA emphasizes the point that it is often very difficult to enplane handicapped persons on small aircraft and that requiring hand-carrying would involve serious risk of injury to carrier personnel and passengers alike.

Disability group comments emphasized that the exception to boarding assistance requirements for small aircraft would close many flights to handicapped passengers. Some of these commenters suggested that lifts should be required for all flights not served by a level-entry boarding ramp. ATBCB suggested that lifts should be required even for small aircraft within three years. Carrier commenters opposed requirements for carrying handicapped persons on board and consequently supported the small aircraft exception. Carrier labor organizations also opposed any requirements for carrying of passengers, for the same reasons stated by carriers. Carrier comments also expressed concerns about the potential costs of lifts, although comments did not quantify these costs.

DOT Response—The Department agrees with commenters that hand-carrying a handicapped passenger onto or off of a plane is the least desirable method of enplaning and deplaning that passenger. This is true because of concerns about injuries to carrier personnel as well as concerns about the dignity and safety of the passenger. For this reason, the Department has made several changes and clarifications to this section.

The basic requirement remains intact: carriers must provide assistance to handicapped passengers in enplaning and deplaning. This assistance includes the services of personnel and the use of ground wheelchairs, boarding wheelchairs, on-board chairs (where provided in accordance with the rule), and ramps or mechanical lifts. The Department has added language, adapted from 49 CFR § 27.71, requiring that level-entry boarding platforms or accessible passenger lounges be used for this purpose when these devices are available. Otherwise, carriers shall use ramps, lifts, or other devices for enplaning or deplaning handicapped persons who need this kind of assistance. The rule requires that devices not normally used for freight be used for boarding assistance, for reasons pertaining to the dignity of passengers. However, if a passenger would prefer to use a lift—even one normally used for freight—in preference to a boarding chair, the carrier may honor the passenger's preference without conflict with this rule.

This provision does not mean, necessarily, that each airline must own its own lift at each airport. Airport operations have an existing responsibility under 49 CFR 27.71(a)(ii)(v) to ensure that such devices are available. Carriers may also jointly own or lease such devices at a given airport, or borrow devices from one another. These means should enable carriers to mitigate the costs of providing boarding assistance.

Carriers are required to use these devices where level entry boarding platforms are not available for a flight (i.e., a carrier cannot decline to use an available lift). The requirement to use such devices carries with it the obligation to maintain them in proper working order.

In small aircraft (less than 30 seats), the Department will exempt from boarding assistance requirements situations in which existing lifts, boarding chairs or other devices are unfeasible, leaving hand-carrying as the only means for boarding a passenger (The 30-seat aircraft cutoff for this

exception is based on discussions during the regulatory negotiation which indicated that small aircraft often have in-door stairs that can accommodate safely only one person at a time. Information coming to the Department after the regulatory negotiation suggested such stairs are common in less than 30, as well as in 19-seat or less, aircraft.) This provision was included on the basis of the concerns about potential injuries to passengers and crew alike.

In the ANPRM being issued in connection with this rule, the Department is seeking further information on the development of lifts for small aircraft. While one Canadian manufacturer has developed a lift, and other development work is under way, it is not clear at this time when a working lift will be commercially available that will fully achieve the objective of being able to help handicapped persons enplane in all or most small commuter aircraft. The Department is hopeful that, through the ANPRM, that we will obtain information concerning the feasibility, cost, and time of availability of these devices, so that we can determine whether and when to mandate their use. Also, the ANPRM, seeks comment on substitute service for persons who cannot use a small inaccessible aircraft in this situation.

The Department emphasizes that enplaning or deplaning assistance is not extraordinary or extensive special assistance; it is a key, regular part of everyday operations. There is little point in pretending that the Air Carrier *Access* Act has meaning if carriers can refuse to take steps essential to enabling handicapped passengers to get onto airplanes. Carriers' concerns about potential injuries to their personnel can be directly addressed by the carriers' assuring that lifts or similar devices are always available and used in the absence of level entry boarding platforms.

If a carrier fails or refuses to provide boarding assistance at an airport, the carrier has violated this regulation (except with respect to the small aircraft exception discussed above). The carrier would be subject to enforcement action; DBC would not apply, however, since that is not intended as an enforcement tool under the final regulation.

2. Assistance within the cabin

Comments—ATA opposed any requirement for carrier personnel to assist handicapped persons with moving to the bathroom, or with the use of an on-board chair. This would expose flight attendants to the risk of injury and would interfere with other flight attendant duties, and would force flight attendants to play the inappropriate role of personal attendant for the passenger. RAA and carrier labor organizations again were in basic agreement with the ATA position. RAA was particularly concerned about the operation of boarding chairs in small aircraft. One labor organization suggested that a crewmember should be able to opt out of lifting or carrying a handicapped person if he or she believed that doing so would result in injury.

PVA generally indicates a contrary position, but did not address this point specifically. Other disability groups did specify that carriers should provide assistance in transfers between aircraft seats and boarding or on-board chairs.

DOT Response—RAA's concerns about the use of on-board chairs in small aircraft are moot, since the rule will require on-board chairs only in aircraft with accessible lavatories, which small commuter aircraft typically do not have.

An on-board chair is not a device in which a handicapped individual can be independently mobile; because of size limitations (i.e., to fit down the aisle), the user cannot roll the chair on his or her own. Someone must push. Carriers already require flight attendants to push large, heavy beverage and meal carts up and down the aisles. Flight attendants therefore have experience in maneuvering substantial wheeled devices in the narrow spaces involved, and are best situated (compared, for example, to other passengers) to avoid conflicts with other people and devices using the aisles as they do so. In the multiple-aisle environment of widebody aircraft in which accessible lavatories, and hence on-board chairs, are required, flight attendant crews are larger than in other aircraft and conflicts with other flight attendant functions (e.g., meal and beverage service) are less likely to occur.

Use of crewmembers to push on-board chairs does not convert the crewmembers into personal attendants for disabled persons. Carriers are obligated to provide certain accommodations under the ACAA and part 382; the carrier inevitably implements these obligations by directing the employees in a position to carry them out to do so. The likelihood of injury from pushing a person in an on-board chair does not seem markedly greater than that resulting from pushing a meal or beverage cart. Carriers' concern about the former might be more persuasive if they did not require the latter.

The requirement for movable aisle armrests should mitigate, in new aircraft and in existing aircraft in which seats are replaced with newly manufactured seats, the concern relating to assistance with transfers. A lateral transfer is clearly much easier to accomplish than a transfer which involves someone being lifted over a fixed armrest. Since, with a few exceptions, accessible lavatories and on-board chairs will be found on new aircraft, which also will have movable armrests, flight attendants will have to deal with few situations in which assistance in the use of an on-board chair involves lifting a passenger over a fixed armrest.

Carriers could address even these situations (e.g., an existing aircraft with an accessible lavatory) by retrofitting a number of seats with movable armrests. While the regulation does not require this to be done, doing so would reduce concerns about potential lifting injuries. For transfers involved in enplaning and deplaning, ground personnel can come on board to assist crewmembers with transfers, where this is necessary.

The requirement to provide assistance with use of the on-board wheelchair is not necessarily intended to involve instant compliance by flight attendants with passenger wishes. For example, during some periods of a flight, a passenger's seat may be bracketed by both a beverage cart and a meal cart in the aisle, preventing the passage of an on-board chair. The crew would not be required to stop food and beverage service operations and displace one or both of the carts to employ the on-board chair. However, when the obstacles were gone, the assistance with the chair would be provided.

There may be occasional extreme situations in which it is physically impossible for particular carrier personnel, without obvious, inarguable risk of injury, to provide assistance to a particular passenger with the use of an on-board chair. For example, it may be physically impossible for a pair of 100-pound female flight attendants to assist a 350-pound wheelchair user in a transfer into or out of an on-board chair, or to maneuver the chair down the aisle carrying such an individual. The Department does not think it necessary to write a provision into this section of the rule to cover such unusual situations. However, the Department would apply a rule of reasonableness in responding to any complaint resulting from such a situation.

3. Other Issues

Comments—PVA supported the incorporation of standards for boarding chairs in the regulation, and the ATBCB supplied draft standards for this purpose. RAA said that handicapped

persons should not be permitted to crawl aboard aircraft. Several disability groups said that handicapped persons should not be left stranded in wheelchairs not permitting independent mobility for unreasonable periods of time. When a deaf/blind person is traveling, one commenter suggested, the carrier should provide a flight attendant trained in fingerspelling if advance notice is provided. Another commenter suggested requiring male flight attendants on a flight where lifting a handicapped person is required. One commenter suggested that services should be provided to developmentally disabled passengers on the model of services provided to young children traveling alone. Another recommended clip-on trays for meals.

DOT Response—DOT will defer the suggestion of the draft ATBCB standards for boarding chairs to the SNPRM for further comment. We are not sure, at this time, whether the proposed standards are workable. It is possible, for example, that current boarding chairs would not meet these standards and that manufacturers would have to modify existing designs. Information from manufacturers would be useful on this point.

The Department will not require carriers to permit handicapped persons to crawl aboard aircraft, which, dignity issues aside, is potentially dangerous. The Department does believe that carriers should not strand handicapped passengers in wheelchairs in which the passengers are not independently mobile (e.g., by putting a person who uses an electric wheelchair into a manual ground chair for long periods in the terminal in between flights). This can have adverse health consequences for some passengers, as well as creating inconvenience. The rule will prohibit leaving a handicapped person in this predicament for more than 30 minutes. After that time, the carrier would have to provide the person's own wheelchair, another wheelchair in which the individual could be independently mobile, or, on request, a person to assist with mobility (e.g., if the person asks to have the ground wheelchair pushed to a concession stand, the carrier would find someone to push).

The Department is not adopting the other comments requesting specific accommodations. These are very detailed suggestions, which appear to apply only to very small subsets of the handicapped passenger population, or which could be burdensome or inappropriate to require.

Section 382.41—Stowage of Personal Equipment

NPRM—In-cabin stowage of wheelchairs and other equipment would be governed by FAA rules concerning carry-on baggage. This general rule applies to such items as respirators and canes as well as other assistive devices.

Wheelchairs or components could be stored under seats or in overhead compartments, assuming they fit in those spaces consistent with FAA carry-on baggage rules. Carriers would have to allow stowage of at least one folding wheelchair in the cabin, if there was an area (e.g., a coat closet) that would accommodate it. In a smaller aircraft, there would need to be a dedicated storage area in the baggage compartment for such a wheelchair if there were no in-cabin storage space available.

Wheelchairs and other mobility aids would be stowed in the baggage compartment with priority over other cargo and baggage, except baggage brought by passengers who made their reservation before the disabled person did so. Wheelchairs carried as checked baggage would have to be returned as close as possible to the gate, and would be among the first items removed from the baggage compartment.

Carriers would have to accept electric wheelchairs as baggage, except where baggage compartment size or airworthiness/operational conditions prevented doing so. Carriers would also have to transport batteries containing hazardous materials, and would have to provide and package such batteries in appropriate hazardous materials packaging. Handicapped persons would have the opportunity to provide written instructions for or assist in the disassembly and reassembly of their equipment.

1. In-cabin wheelchair storage

Comments—Stowing a wheelchair in the cabin, such as in a coat closet, is unnecessary because airlines have procedures for the checking and quick return of such equipment, ATA comments. ATA adds that carriers have a good record concerning loss of or damage to wheelchairs. If wheelchairs were given priority for coat closets, other passengers' garment bags would be displaced, and would have to be stored elsewhere in the cabin, checked, or even sent on a later flight, with attendant problems of inconvenience, possible loss or damage, delay and extra cost. ATA would permit wheelchairs or components to be stored only in overhead bins or under seats, and would bar them from closets.

PVA believes that, since wheelchairs are more important for disabled passengers than garment bags are for other travelers, in-cabin stowage space should be provided for wheelchairs on a priority basis, even at the cost of inconvenience to other passengers. For example, if a closet has room for two wheelchairs, the rule should require the carrier to store two chairs there, even if this displaces all other bags from the space. It is desirable to stow wheelchairs in the cabin, PVA explains, to forestall the possibility of loss or damage to checked equipment and to permit easier retrieval at the aircraft door, which will facilitate mobility in the terminal.

Other disability group commenters said that carriers should be exempt from stowing wheelchairs only if the physical space to do so did not exist. Even aircraft with fewer than 30 seats should have a wheelchair storage space, some of these commenters said. Some carriers, on the other hand, said that in-cabin stowage was not feasible on small aircraft.

DOT Response—There appears to be a general perception among airline passengers that for reasons of convenience, speed, and concern (whether or not well justified) about loss or damage, it is preferable to carry on as much as possible of one's effects and check as little as possible. This behavioral pattern by passengers is one of the most significant reasons for recent FAA rulemaking action to limit more strictly carry-on baggage in the interest of cabin safety. It is a pattern that appears to characterize handicapped passengers as well as the general passenger population. Indeed, given that the consequences of loss of or damage to a wheelchair are greater to its user than the consequences to other passengers of the loss of or damage to a garment bag, and that there is a real benefit to being able to use one's own wheelchair as soon as possible after a flight concludes, handicapped passengers probably have better reason than most for wanting in-cabin storage.

For this reason, the Department is retaining a requirement that in aircraft where there is an in-cabin storage area that will physically accommodate a folding wheelchair, the carrier must designate a priority stowage area for at least one folding wheelchair. At the same time, the Department believes that ATA has a reasonable point in saying that it will create substantial inconvenience for other passengers and administrative problems if garment bags and other items already in the closet have to be removed and checked

because of the subsequent arrival of a wheelchair.

Consequently, the priority for stowage of a folding wheelchair will work as follows. When a handicapped person takes advantage of a carrier offer of an opportunity to preboard, that passenger may stow his or her wheelchair in the priority storage area, with priority over the items of other passengers who board at the same airport. This means that, if bags of passengers who have gotten on the flight at a previous stop so fill the area that there isn't room for the wheelchair, the wheelchair would have to be checked. Items that have been carried on by passengers who boarded the aircraft at a previous airport do not have to be checked to accommodate the wheelchair (though we would urge carriers and passengers to cooperate in moving such items to overhead or under-seat storage if this would make room for a wheelchair).

On the other hand, once the preboarded handicapped person has stowed the wheelchair in the closet or other area, other passengers who do not find sufficient room in that area for their items must stow them in an overhead compartment or under a seat, or give them to the airline to be checked. If the handicapped person does not preboard, he takes his chances, with all other passengers enplaning at the airport, of finding in-cabin storage space for his wheelchair or other items.

2. Stowage of Wheelchairs and Batteries

Comments—ATA had three general comments concerning stowage of wheelchairs. First, like surfboards, guns, bicycles, and fishing tackle, especially electric wheelchairs are an item requiring special packaging and handling, for which carriers ought to be able to charge a reasonable fee. Second, the reservation priority system for determining whether a wheelchair gets into the baggage compartment was unworkable. (RAA concurs with this point.) Third, with respect to spillage batteries, which are subject to DOT hazardous materials rules, carriers should be able to use their own DOT-approved packages and need not use packages (even if approved by DOT) that they do not normally use. ATA also says that a carrier which as a normal matter accepts no hazardous materials of any kind should not have to carry hazardous wheelchair batteries.

PVA generally concurs with the NPRM provison. With respect to carriage of wheelchairs, PVA would eliminate the provision that allows carriers to decline to do so on the basis of "operational" considerations. PVA agrees with ATA and RAA that the reservation priority system for wheelchairs on small aircraft is unworkable. PVA's solution would be to give an absolute priority to wheelchairs, since they are essential personal equipment for their users. Other baggage would be "bumped" from the plane, if necessary. All carriers should transport wheelchair batteries, even if they do not otherwise transport hazardous materials. As an alternative, a carrier that did not transport hazardous materials could provide "loaner" batteries (presumably at the destination point) and/or provide an equally effective way of getting the battery to its destination.

Southwest Airlines, which does not accept any hazardous materials, strongly contended that it should not be required to carry wheelchair batteries. Doing so, it said, would result in very expensive ($825,000 the first year; $425,000 in subsequent years) training requirements for its ground personnel under DOT hazardous materials rules. Southwest said that this expense would be unduly burdensome in light of the fact that it expects to carry only about 48 persons using electric wheelchairs in a year. Other carrier commenters objected to the cost of providing battery packages, or suggested that passengers should bring their own. One disability group seconded PVA's suggestion for "loaner" batteries.

DOT Response—Contrary to ATA's view, we do not believe that it is reasonable or appropriate to analogize a passenger's wheelchair—a piece of essential personal equipment without which the person has no independent mobility and cannot obtain access to other necessary items like food, lodging, and remunerative work—to optional recreational accessories like surfboard, guns, fishing tackle, or bikes. The two sets of items are not similarly situated. The first is virtually an extension of one's person. The second consists of nice-to-have, not need-to-have, things you use for fun.

In a regulation implementing a statute requiring nondiscriminatory access to air transportation, it is appropriate to treat different sets of items differently, when doing so is necessary to ensure that the purpose of the statute is achieved. This is such a situation. Essential personal equipment must go along with the person, its handling included in the price of the person's ticket. Extra charges would not be consistent with the nondiscrimination purpose of the ACAA. In this context, it appears, based on information in PVA's comment, uncontroverted by other commenters, that battery packages are quite inexpensive.

In response to the unanimous comment on the issue, we are dropping the "reservation priority" system for wheelchairs in checked baggage. Rather, to simplify the rule and to ensure that handicapped persons and their essential personal equipment are not denied transportation, the final rule makes the priority for wheelchairs and other assistive devices absolute. That is, the carrier must make room for the wheelchair or assistive device even if it means bumping cargo or other passengers' luggage.

The Department is aware that this provision may, on occasion, inconvenience other passengers. We regret this inconvenience. It is necessary, however, to balance the inconvenience of passengers whose luggage arrives late with the fact that without his or her wheelchair, the disabled passenger is unable to be independently mobile at the destination. In the Department's view, given the intent of the ACAA, the absolute necessity for a disabled passenger of bringing a wheelchair on a trip, if the trip is to take place at all, outweighs the inconvenience of a passenger who can make the trip without his or her luggage, but will be inconvenienced by its late arrival. (In situations where regular luggage must be bumped, this provision is not intended to give the handicapped person's regular luggage priority over other passengers' regular luggage.)

The rule requires that, where baggage has to be bumped for this reason, that the carrier make its best efforts to have the bumped baggage to the destination of the flight (either the various passengers' final destinations or the next hub where the baggage can be loaded on a flight for carriage to the final destination) within four hours of the scheduled arrival time of the flight from which the baggage was bumped. As its phrasing indicates, this is not an absolute requirement: the requirement is for good faith efforts.

The Department makes two suggestions for ways in which carriers can reduce potential inconvenience to other passengers and meet this best efforts requirement. First, section 382.33(b)(5) permits carriers to require up to 48 hours advance notice for transportation of an electric wheelchair on a flight scheduled to be made on an aircraft with fewer than 60 seats. This means that carriers will have the opportunity to know, two days ahead of time, that a large piece of equipment is going to be presented for transportation on a small aircraft at a given station. This is the situation most likely to produce bumping of baggage.

The carrier could then take steps (e.g., contacting other passengers with confirmed reservations to make alternate arrangements, making alternative arrangements for the transportation of other cargo or baggage, substituting equipment) to minimize inconvenience. A carrier could also offer incentives to other passengers to voluntarily have their luggage delayed, where baggage bumping proved to be necessary, much as is now done to obtain volunteers for bumping in overbooking situations.

With respect to carriage of hazardous materials batteries, the Department believes that comments (e.g., that of Southwest Airlines) overestimated the cost of training that would be involved in handling the batteries. According to FAA and RSPA staff who implement hazardous materials rules, only those personnel who would have to handle the batteries (not all ground personnel) would have to receive training, and the training would have to cover only the types of batteries used to power wheelchairs or other assistive devices.

All carriers are required to transport handicapped passengers, without discrimination. If, by refusing to carry hazardous materials, the carrier makes it impracticable for users of electric wheelchairs to use the carrier's flights, the carrier would not be complying with the ACAA. While it might be possible to surmount this problem by adopting PVA's suggestion concerning "loaner" batteries, (i.e., a carrier which does not carry any hazardous materials would not have to carry a hazardous material wheelchair battery, but it would ensure that a battery capable of operating the wheelchair is available for the passenger to use at his destination), it is doubtful that this alternative is practicable, given the different types of batteries involved and the logistical problems in getting the right battery to the right place at the right time.

DOT does not, as much, "approve" hazardous materials packages for batteries, so there is no such thing as a "DOT-approved" package. With this qualification, DOT agrees with ATA's suggestion that carriers may use only hazardous materials packages meeting the requirements of DOT regulations and may insist on the use of their own packages. Words to this effect have been added to the regulation.

The NPRM in effect excused carriers from transporting electric wheelchairs where baggage compartment size, airworthiness, or "operational" considerations prohibited doing so. PVA commented that "operational" was vague and a potential loophole in the requirement. The use of this term derived from discussions in the regulatory negotiation that referred to the fact that small carriers, at some stations, might not have enough personnel to prepare and load an electric wheelchair. Carrier and other parties did not describe further in their comments what "operational" considerations might be, as distinguished from airworthiness considerations. This concern is mitigated, under the final rule, by the fact that a carrier may require 48 hours' advance notice to transport an electric wheelchair on a small aircraft. The final rule will delete "operational" since it does not seem to have any other meaning in this context.

3. Other Issues

Comments—PVA said that the NPRM, which discussed stowage of wheelchairs and mobility aids, should be expanded to include other "assistive devices" used by disabled passengers (e.g., walkers, crutches, respirators, reading aids). PVA also suggests that carriers should not be permitted to limit disabled passengers' bringing of assistive devices on board by reference to carry-on baggage policies more restrictive than mandated by FAA rules. The ATBCB also takes this position.

ATA responds that since the FAA carry-on baggage rules set minimum standards, carriers' carry-on policies may be more stringent than FAA requires. RAA adds that regional carriers using small aircraft often have policies limiting passengers to one carry-on item (e.g., a briefcase), and advocates referencing compliance with these policies in the regulation. A carrier labor organization concurs that additional carry-on items should not be permitted in the cabin.

ATA suggests language permitting the carrier to return a wheelchair to the passenger at the baggage claim area rather than at the gate, if the passenger so requested or if doing so is necessary in order to comply with security requirements. The ATBCB and a number of disability groups, to the contrary, say that airlines should not be permitted to return wheelchairs at the baggage claim area rather than the gate or aircraft door.

ATA also suggested that the reference to a handicapped person "assisting" in the disassembly of a wheelchair be deleted and that an advance check-in requirement be permitted for persons checking electric wheelchairs.

Other disability groups asked that such devices as respirators, small personal oxygen tanks, and equipment to assist communications for deaf/blind persons be able to be taken into the cabin with their users.

DOT Response—The Department has incorporated the "assistive devices" language, in order not to restrict the kind of equipment with which handicapped passengers can travel. Any device can be brought on board the aircraft as long as doing so is consistent with rules of DOT administrations for hazardous materials and carry-on baggage.

The FAA rule about carry-on baggage has a bottom line: carry-on items must be stowed only in approved stowage areas. The FAA rule directs carriers to devise a program for implementing this basic requirement. The FAA then approves the program. One widely-used program, drafted by the ATA, limits carry-on items to two per person. As RAA mentions, some carriers may limit passenger to one carry-on item. The FAA advisory circular concerning the carry-on baggage rule does not address how assistive devices for handicapped persons should be treated under carrier programs.

The problem faced by handicapped persons is that, like other travelers, they have briefcases and garment bags that they want to bring into the cabin. Unlike other passengers, they sometimes must use mobility aids or other assistive devices. Such a device may be necessary, in light of an individual's disability, to allow the individual to perform a major life function. If the device is counted against the one-item or two-item carry-on limit established in a carrier's program, then the individual, because he or she needs the device to help deal with a disability, is permitted fewer "regular" carry-on items than other passengers. For example, on a commuter carrier with a one-item limit, a person with a vision impairment could face a choice between carrying on her briefcase, with papers to read for work purposes, or her reader/magnifier device, which enables her to read the papers. Whichever choice she made, she would not get her reading done.

We do not believe this kind of dilemma should be forced upon handicapped passengers; indeed, a good argument can be made that allowing a handicapped person fewer briefcases, garment bags etc. than other passengers are allowed because the handicapped person must use an assistive device would constitute a discriminatory application of a carrier's carry-on baggage program, not contemplated by the FAA's rule or consistent with the ACAA. Therefore, this rule will provide that assistive devices for a handicapped passenger, which can be stowed in approved stowage areas, will not count

against the number of carry-on items to which a passenger is limited by a carrier's carry-on baggage policy.

We see no reason to prevent a carrier from returning a wheelchair to a passenger at the baggage claim area if the passenger requests it. Language to this effect has been added to the rule. ATA's comment about "if necessary to comply with security requirements" is unclear. While a chair may have to go back to a gate through the security screening checkpoint, this does not mean that security considerations prevent the return of the chair at the gate. Addition of this language would be unnecessary and confusing.

In response to an ATA comment, we have added to this section a provision allowing carriers to require passengers with electric wheelchairs to check in an hour prior to the scheduled departure time of the flight. This advance check-in may be required even where a 48-hour advance notice requirement is not permitted by section 382.33 (i.e., for aircraft with 60 or more seats). If the passenger checks in later than this, the carrier must still transport the wheelchair if it can do so by making reasonable efforts, without delaying the flight.

Also in response to an ATA comment, we have deleted the reference to a handicapped passenger being able to "assist" in, as well as to provide written instruction for, the disassembly of a wheelchair. This work may often take place in an area of the airport which is off limits to passengers generally, and which in any case is not required to be accessible to handicapped passengers by this rule. We do not think it advisable to require carriers to allow passengers to enter these areas.

Section 382.43—Treatment of Mobility Aids and Assistive Devices

NPRM—This provision (then titled "Reimbursement for lost or damaged mobility aids") proposed that wheelchairs and other mobility aids shall be returned to the passenger functioning as delivered to the carrier. Carriers' liability could not be limited to less than twice the lost baggage compensation amount under DOT baggage rules (i.e., $2500). Carriers could not require handicapped persons to sign waivers of liability regarding wheelchairs and other mobility aids.

Comments—ATA would change "functioning as delivered to the carrier" to "in the same condition as received by the carrier." They would also permit waivers of liability for electric wheelchairs or other assistive devices which have controls subject to being damaged in transport and which are not delivered to the carrier adequately protected. RAA objects to increasing the baggage liability increase for wheelchairs and other assistive devices, saying that passengers should purchase insurance for additional value of such items.

As in the previous section, PVA says that coverage should be expanded to all "assistive devices." PVA also says that carrier liability for loss of or damage to assistive devices should not be limited to $2500, but should be full replacement value, given the key role that these devices play in the lives of their users. PVA urges the application of this principle to international flights of U.S. carriers as well as domestic flights. The carrier who loses or damages an assistive device should repair or replace it at the carrier's cost and provide a "loaner" replacement while the repair or replacement is pending. PVA does not object to ATA's word change concerning "in the condition received by the carrier" but does disagree with ATA's proposal to permit waivers of liability for wheelchair controls.

A large majority of disability community commenters stated that carriers should be responsible for the full replacement value of items they lose or damage, and, many said, for any consequential damages as well. Several of these comments also suggested that carriers promptly buy or rent a replacement. Among carriers, comments either supported the liability limit mentioned in the NPRM or said that liability should be the same as for other passengers' items, since handicapped passengers could buy insurance for the additional value of expensive items.

Some disability groups agreed with PVA that the section should cover all "assistive devices." A carrier and the ATBCB said that the "loaner" idea was unworkable; the ATBCB suggested that carriers should have liaison with local centers for independent living as a place to refer disabled travelers who needed equipment quickly.

DOT Response—DOT will make the change to "assistive devices" and the change to "in the condition received." Recognizing the often high cost of assistive devices and their importance to users, the Department will retain the liability limit at twice the normal liability limit for passengers' baggage (i.e., $2500). This is preferable to both leaving the liability limit at the $1250 applicable to other baggage (which does not recognize the cost and importance factors sufficiently) or making the carrier responsible for the full replacement value of assistive devices (which does not recognize sufficiently the ability of passengers to purchase insurance for expensive items).

Baggage liability for international flights is governed by the Warsaw Convention, and this provision would therefore not apply to international flights, even for U.S. carriers. It is correct, as PVA points out, that persons may declare the value of a item and receive actual value compensation if it is lost or damaged. This mechanism is available for passengers checking assistive devices on international flights. Carriers may impose a supplementary charge for carrying items in this situation, as provided in the Warsaw Convention.

For practicability and cost reasons, the Department does not believe that it would be reasonable in this rule to require carriers to rent or purchase replacement assistive devices for handicapped persons or to provide them as "loaners" when the carrier lost or damaged a device. We think that ATBCB's suggestion of carrier liaison with centers for independent living and other local disability groups, as a means of providing assistance to disabled passengers whose assistive devices are lost or damaged, is a good one, and we urge carriers to establish such relationships.

The Department will leave in place the prohibition of waivers of liability. It is not realistic to suggest that users of electric wheelchairs, for example, deliver their chairs to the carrier with protection attached to the controls. The person usually has to arrive at the airport using the wheelchair, for one thing; for another, the disabilities of many users of electric wheelchairs may prevent them from doing the work necessary to protectively package the controls. Carrier personnel, in any event, are likely to have a better notion than passengers of what sort of protection is needed for a device in the baggage handling environment. Handicapped passengers sometimes carry controls on board with them, or sometimes may come with packaging materials they ask carrier personnel to use. While this may be a prudent step, its absence is not a reason for a mandatory waiver of liability.

The Department has added a new paragraph to this section emphasizing that when carriers take a wheelchair or other assistive device apart for stowage, they have to put it back together promptly at the end of the flight.

Section 382.45—Passenger Information

NPRM—A carrier would have to make information available of interest to handicapped passengers, including

the location of seats on an aircraft with movable armrests, limitations of the aircraft with respect to accommodating handicapped persons or their wheelchairs or other equipment, and whether the aircraft has an accessible restroom. With respect to FAA-required safety briefings, carriers could conduct them for persons who preboard. With respect to other passengers, carriers could offer briefings but not require their acceptance. Carriers could not "quiz" disabled passengers to make sure they had absorbed the content of the briefing. Carriers also would have to ensure that handicapped passengers (including those with vision and hearing impairments) had access to information on ticketing, schedules, flight delays, etc.

Comments—PVA agreed with the NPRM provision, but suggested an addition. Carriers would report data about Part 382 complaints to DOT, which would publish a report periodically. The report, analogous to the "on-time" report, would give consumers an idea of what carriers were or were not doing a good job of serving handicapped passengers. DOT should require carriers to use their best efforts to make information available, even though PVA recognizes that in some instances (e.g., information on specific aircraft, information provided through foreign travel agents) it might be difficult to do.

ATA says that it typically is not feasible for a carrier to provide information about a specific aircraft to be used on a given flight; only about the aircraft type to be used. Information requirements should therefore relate to aircraft type. ATA also asked for clarification that carriers could, consistent with Part 382, provide safety briefings to all persons required to have them by FAA rules, a point echoed by RAA. ATA has no objection to providing various sorts of information, but asks that disabled passengers self-identify so the information can be provided readily. ATA opposes a complaint report of the sort suggested by PVA, saying it would be of little use and that other factors (e.g., personal experiences) play a more important role in choice of carriers than consolidated statistics.

A number of other comments, from various parties, endorsed the idea of a section like this one. Modest numbers of carriers and disability groups agreed with the positions of ATA and PVA, respectively, with regard to a number of the section's provisions. With respect to individual safety briefings, the American Council of the Blind (ACB) suggested they be given "inconspicuously and discreetly," to avoid embarrassment of the passenger. IATA repeated its point about foreign travel agents. Disability organizations suggested such accommodations as braille or large print information or tapping hearing-impaired persons on the shoulder to alert them to flight information.

DOT Response—The Department agrees that, since flight information is typically available in terms of aircraft type, the regulatory requirement for information should be phrased accordingly. However, since in some circumstances information about a specific aircraft may be available, we have retained the requirement to provide information about the specific aircraft, where doing so is feasible.

ATA and RAA are also correct in saying that FAA rules require providing individual safety briefings to certain passengers. The rule explicitly recognizes this fact, though it also permits the carrier to offer such a briefing to other passengers. (In the latter case, the carrier should desist if the passenger declines the offer.) We have adopted ACB's comment that such briefings should be conducted as discreetly and inconspicuously as possible. Obviously, it will be more practical to conduct briefings this way if disabled passengers preboard; those who do not preboard will have to put up with somewhat more public special briefings.

The Department is retaining the "no quizzes" provision, to which there was no objection in the comments. We are adding a sentence prohibiting the carrier from taking any action adverse to a passenger on the basis that the passenger has not "accepted" the briefing. (Carriers have sometimes used this concept as a reason for taking action against passengers.) It is unclear what "acceptance" of a briefing means. Disclaiming interest, staring straight ahead, reading a newspaper, or knitting while the special briefing is going on is not an appropriate basis for action against the passenger; while close attention to safety briefings is always recommended for passengers, carriers do not take action against members of the general passenger population who similarly ignore the general safety briefing. None of these behaviors prevents the crew from complying with their duty under the FAA rule, which simply is to provide the briefing.

The Department agrees with ATA's suggestion that persons who are unable to obtain needed information from terminal and aircraft sources should ask for the information from carrier personnel, who are obligated to provide it. Self-identification is a useful way to draw carrier personnel's attention to a need for information, althought the regulation will not require it. The rule will not specify particular ways of accommodating the needs of persons with vision and hearing impairments; a general requirement to accommodate is sufficient, and carriers can find the most appropriate way of doing so in the variety of situations they face.

The Department is not adopting the suggestion for a data reporting requirement on airlines' complaint experience. This would be an additional paperwork burden. Whether or not ATA's point about statistical data being less persuasive than personal experience or anecdote is valid, the Department does not see an equivalent of the "on-time" report as being a sufficiently useful tool that the resources to be used in preparing and compiling the data would be justified. Persons with an interest in the complaint experience of various airlines can call the Department's Consumer Affairs office (202-366-2220). The complaints received by this office may be of greater interest to consumers than the total universe of complaints, since the Consumer Affairs Office is likely to receive those complaints which passengers have been able to resolve satisfactorily with carriers.

Section 382.47—Accommodations for Persons with Hearing Impairments

NPRM—Carriers providing scheduled service would have to have telecommunications devices for the deaf (TDDs) for reservation and information service. Aircraft using video safety briefings would have to open caption the briefing tapes, phasing in captioned tapes as old tapes were replaced.

Comments—PVA generally agreed with this section, suggesting that non-scheduled as well as scheduled carriers should have TDDs and mentioning that sign language interpreter insets in a tape could be a reasonable alternative to captioning. ATA and RAA also generally agreed with the section, with ATA suggesting that if captioning were too small to be readable, carriers could substitute a non-video equivalent (e.g., written materials). ATA and RAA opposed the idea, mentioned in the NPRM preamble, of audio loops in the aircraft, on both cost and technical grounds.

Disability groups supported requiring TDDs for carriers not providing scheduled service as well as for those providing scheduled service, concurring with PVA that TDDs are a low cost item.

There was also support for captioning of safety briefing videos, and assurances that captions would not obscure the visuals. Some comments suggested retrofitting videos for this purpose, and one suggested that in-flight movies receive the same treatment. One carrier suggested not requiring captioning, and allowing as an alternative a video that used symbols. A few commenters recommended audio loops (in airports as well as in aircraft), and another called for a TDD in any on-board telephone bank.

DOT Response—DOT is partially adopting the comment that TDDs should be required for reservation and information purposes for carriers other than those providing scheduled service. Charter services under Section 401 of the FA Act will also be covered, but Part 298 air taxis (which include some very small operations) will not. As commenters pointed out, TDDs are inexpensive (about $200 per copy) and easy to use. They make communication possible for deaf persons that otherwise would be difficult to arrange. But we still do not think it is advisable to place even a modest burden for this purpose on the smallest of carriers.

We will also adopt both PVA's comment about sign language interpreter insets and ATA's comment about allowing non-video alternatives if captioning or sign language interpreter insets either obscured the visual message of the tape or were too small to be readable. The cost and technical feasibility of audio loops in the aviation environment (e.g., potential adverse effect on the operation of avionics) are so uncertain as to make a regulatory requirement inadvisable.

Section 382.47—Security Screening of Passengers

NPRM—This provision would require security screenings of handicapped passengers to be conducted in the same manner as for other passengers. Passengers whose mobility aids or assistive devices set off the alarm would receive an additional search just as would other passengers who set off the alarm. Private screenings could be requested by handicapped passengers (e.g., to avoid a public pat-down search where needed), if it could be provided in a timely manner without delaying the flight. A carrier would not have to provide a private screening if it used technology that could screen the passenger without necessitating a physical pat-down search.

Comments—ATA, RAA and PVA all approved this section as written. NFB objected to a sentence which would allow security personnel to inspect a wheelchair or other mobility aid, which, in their judgment, could conceal a weapon or other prohibited item. In NFB's view, if the wheelchair or assistive device otherwise passes security, there should not be allowance of judgment for additional inspection.

DOT Response—The section, subject of rare agreement, will remain intact. Security is a matter of the highest concern to everyone connected with aviation; taking precautions against terrorism is in everyone's interest. A terrorist who would pack a bomb in the luggage of his pregnant girlfriend would not scruple to try to conceal a weapon or explosive device in a wheelchair. If a security screener believes that it is necessary to take a closer look at a piece of equipment that could conceal something dangerous, this rule should not stand in the way.

Section 382.49—Communicable Diseases

Section 382.51—Medical Certificates

NPRM—These related sections are considered together. The NPRM said that a person who was handicapped, or regarded as such, on the basis of a communicable disease or infection could not be denied transportation, required to have a medical certificate, be subjected to any other restriction or condition, or otherwise discriminated against unless there was a reasonable medical judgment by appropriate U.S. public health authorities that the disease could be transmitted to other persons in the normal course of flight. Nor could a carrier require a medical certificate of anyone else except with respect to someone traveling in a stretcher or incubator, a person who needs medical oxygen on the flight, or a person with a communicable disease which had been determined by appropriate U.S. public health authorities to be transmissible to others during the normal course of flight.

Comments—PVA generally agreed with these proposals, though it found confusing the reference to communicable diseases in the section dealing with medical certificates. PVA was uncertain about when a person with a communicable disease transmissible in the normal course of flight could fly at all, or what a medical certificate could add to the process. Carrier personnel could not be expected to make an informed decision in such a case. PVA suggested a clarification that would provide that if a person had a disease transmissible in the normal course of flight, the person could fly if there was a medical certificate saying that, with certain precautions, or under certain conditions, the disease would not be transmitted by this particular passenger.

ATA suggested a modification to permit carriers to deny transportation to an individual, whether or not suffering from a communicable disease, who is so ill that the carrier has a legitimate concern that the person might not survive the flight or might require extraordinary medical attention. RAA agreed on this point. ATA also asked for clarification that such services as medical oxygen, stretcher and incubator accommodations are not required to be provided on a flight.

Three carriers pointed out that carrier personnel are not trained to make medical determinations, and one carrier labor organization suggested that carriers' discretion with respect to medical certificates should not be restricted. One disability group suggested having more specific references to the U.S. public health authorities (e.g., the Surgeon General or the Centers for Disease Control), and another suggested that the content of a medical certificate be spelled out. A third opposed all requirements for medical certificates.

DOT Response—The Department has retained the basic substance of these sections, but has reorganized them and clarified the relationship between them. Section 382.51(a) prohibits a carrier from taking certain actions against an individual on the basis of a communicable disease or infection, except as provided in paragraph (b) of the section. These actions include refusal of transportation, requirement of a medical certificate, or imposition of other conditions, restrictions, or requirements. The fourth item in the parallel NPRM section, "otherwise discriminate," has been eliminated as redundant with the general nondiscrimination provision of section 382.7.

Paragraph (b) then provides that the carrier may take these actions with respect to an individual with a disease or infection which has been determined by the U.S. Surgeon General, Centers for Disease Control, or other Federal public health authority knowledgeable about the disease or infection, to be able to be transmitted to other persons in the normal course of a flight. The specific mention of the Surgeon General and CDC is in response to a comment.

Paragraph (c) is new, and spells out the effect of a medical certificate in the case of an individual with a communicable disease. If an individual with a disease which has been determined, as a general matter, to be transmissible in the normal course of

flight presents a medical certificate to the carrier (as provided in § 382.53(c)(2)), the carrier must provide transportation to the individual, unless it is unfeasible for the carrier to carry out the conditions set forth in the medical certificate as needed to prevent the transmission of the disease or infection to other passengers in the course of flight.

Section 382.53 prohibits requirements for a medical certificate, except in two classes of cases. The first case concerns a person traveling in a stretcher or incubator, a person who needs medical oxygen on the flight, or a person whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely (i.e., can avoid dying or suffering serious, long-term adverse health consequences), without requiring extraordinary medical attention.

This last item has been added in response to ATA's comment about persons with serious illnesses, where carrier personnel believe that they have good cause to fear that a passenger may die or require extraordinary medical attention during the flight. We recognize that carrier personnel are not medical experts; one need not be a medical expert to have a genuine concern about whether a seriously ill individual, who appears to be at death's door, can survive the rigors of a flight, however.

This language pertains only to medical conditions (i.e., the acute manifestations of illnesses or injuries). While illnesses may result in persons being handicapped, a disability is not an illness. This sentence is therefore not intended to permit carriers to require medical certificates from people just because they have a disability, even if that disability originally resulted from an illness or injury.

For persons in this category, and oxygen, stretcher, and incubator users, the medical certificate would be a statement by the passenger's physician that the passenger is capable of completing the flight safely, without requiring extraordinary medical assistance during the flight. This statement is added in response to the comment asking that the content of a medical certificate be spelled out.

The second category of persons for whom a medical certificate may be required is someone with a communicable disease or infection which has been determined by public health authorities, as provided in § 382.51(b), to be able to be transmitted, as a general matter, to other persons in the normal course of a flight. In this case, the medical certificate would be a written statement from the passenger's physician saying that under conditions present in the passenger's particular case (e.g., the stage of the illness, factors peculiar to the manifestation of the illness in the individual), the disease or infection would not be transmitted by this passenger to other persons in the normal course of a flight.

The certificate would also include any conditions (e.g., the passenger should wear a surgical mask, the passenger should sit alone in a row, the passenger should not use the lavatory) that would have to be observed to prevent the disease or infection from being transmitted to other persons in the normal course of a flight.

This provision, and the related portions of § 382.51, are intended to clarify the relationship between communicable diseases and medical certificates, as comments requested. We also note that these provisions do not require special accommodations for stretchers, incubators, or medical oxygen to be provided. As with advance notice provisions for similar services, the regulatory provisions apply if a particular accommodation is available on a flight.

Section 382.53—Miscellaneous Provisions

NPRM—This provision would prohibit requirements for handicapped passengers to sit on blankets or to sit in special lounges or holding areas. It would also require carriers to allow dogs and other service animals to accompany their user to the user's seat in the cabin. Information concerning travel with animals outside the continental U.S. would be provided to persons traveling with service animals. The carrier could request documentation or credentials for the animal if there were a reasonable doubt about its status as a service animal.

Comments—There was general agreement among commenters that the blankets and segregated areas provisions of the rule were appropriate. ACB asked for a specific prohibition on requirements that handicapped passengers wear big buttons, ID tags etc.

With respect to service animals, ATA asked that the rule specify that they not be allowed in emergency exit rows or in places where they would not fit under the seat in front of the passenger (e.g., if they would block an aisle). RAA concurred with this point. ATA also asked that if a carrier reasonably doubted that an animal was a genuine service animal, it could refuse to treat the animal as a service animal if the animal's user was unable to produce credible documentation of the animal's status as a service animal. This would be particularly important for non-traditional service animals like monkeys.

PVA said that carriers should not be able to request documentation of the authenticity of the service animal, since there were not any universally accepted credentials for such creatures. It is also unfair to make the owner carry an ID card for the animal, in PVA's view. Also, service animals can be identified, as a practical matter, by the harnesses they wear, identification tatoos, dog tags, or the verbal assurances of people using the animals. These means should be accepted by carriers.

Other disability group commenters said that service animals should be permitted on board all flights. Some commuter carriers said, however, that carriers should be able to establish number limits for service animals on a flight or even to exclude animals during bad weather in small planes.

DOT Response—The Department will retain the provisions regarding blankets and segregated areas. With respect to service animal identification, the Department believes that a wide variety of means of identification are available and should be acceptable. These include ID cards, other documentation, presence of harnesses, markings on harnesses, tags, or the credible verbal assurances of users. The latter phrase is intended to cover a situation where there is no documentation available, but the user of the animal assures the carrier that the animal is in fact a service animal. The carrier is intended to accept this assurance, except in a case where the animal is one that cannot reasonably be viewed as being capable of performing the service animal function claimed for it by its user. In marginal cases, the Department intends that the benefit of the doubt go to the person traveling with the animal.

The Department agrees with ATA that service animals should not be permitted to obstruct an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation. (Since FAA's rule on exit row seating would have the effect of excluding from exit rows persons who are likely to use service animals, this section does not need to mention exit rows.) Consequently, we are modifying the requirement that service animals be allowed to accompany their users to any seat occupied by the user. Animals would not have to be allowed to stay where they would obstruct an aisle or other area that must remain free of obstructions in order to facilitate an emergency evacuation. Dogs are the animals most frequently used, at this

time, to assist persons with disabilities, and it would be reasonable for carriers to require them to be placed under the seat in front of the passenger, in order to avoid obstructing an aisle or other space.

As with carry-on baggage, the "under the seat" requirement would need to be interpreted reasonably. For example, the fact that some part of the animal extends into the area where the passenger's feet go should not be grounds for determining that the animal could not be accommodated at the passenger's seat, unless the carrier so strictly enforces its carry-on policies that it requires other passengers to move their carry-on items if any part of an item extends into that area. There may also be situations in which it would not be appropriate for a carrier to insist that an animal be placed under the seat in front of the passenger. For example, small monkeys are beginning to be used as service animals for some persons with mobility impairments. If an airline allows parents to hold young infants in their arms during a flight, a disabled passenger should be able to accommodate a monkey of roughly the same size as a human infant in the same way.

The main point is that, for reasons of safety, consistent with FAA regulations, animals cannot obstruct aisles and other passageways. If an animal cannot be accommodated at the passenger's seat, in a way that will not create such an obstruction, then the animal and passenger can relocate to another seat where accommodation is possible (see § 382.37(c)) or the animal can be checked in the manner provided for pets traveling with other passengers.

The Department does not believe it would be appropriate to permit number limits for service animals. No basis for number limits in general for such animals, or for any particular limit, has been demonstrated. While it may not be possible to accommodate all service animals on all small planes (e.g., there might be no place on a very small aircraft where a large dog would fit without blocking an aisle), it would be inconsistent with the ACAA to deny transportation to a particular animal where it could be accommodated on a particular aircraft. Varying the ability of a user to travel with a service animal with changes in the weather would lead to unpredictable, arbitrary results. Service animals are typically well trained to remain calm under a variety of difficult conditions, and are not likely to pose serious problems on a bumpy flight.

It should be pointed out that this section (i.e., the "otherwise mandate separate treatment for handicapped persons" language), along with § 382.7, also prohibits discriminatory administrative requirements applied to handicapped persons. Examples of such requirements include a requirement for handicapped passengers to wear large buttons or ID tags, fill out a waiver form applicable only to handicapped passengers (*see Jacobson* v. *Delta Airlines*, 742 F.2d 1202 (9th Cir., 1984)), or answer detailed, personal questions from ticket agents or other carrier personnel after requesting a service or accommodation.

Section 382.55—Charges for accommodations

NPRM—The NPRM would prohibit carriers from imposing extra or special charges for providing assistance to handicapped persons to comply with the provisions of this rule.

Comments—ATA would substitute an adaptation of the language of § 382.15(d) of the original CAB version of the rule, which permits "reasonable, nondiscriminatory charges for passengers using special assistance," as long as "all other passengers using the assistance are also charged for it." Specifically, carriers could charge for hazardous material battery packages. Carriers could not charge for services necessitated by the fact that their aircraft are not accessible. ATA said it was reasonable to charge for extensive special assistance.

PVA agreed with the provision as written. It opposed ATA's suggestion for regulatory language, suggesting that the notion of charging handicapped persons for accommodations for which all other passengers are charged is meaningless, since handicapped passengers are the only people who need the accommodations in the first place.

Several disability organizations agreed with PVA's objection to any charges for accommodations, with particular reference to hazardous materials battery packages, the cost of which was said to be minimal. Other commenters, including RAA, some carriers and some disability organizations, said that it would be appropriate to charge for items of this kind.

DOT Response—Under the ACA, carriers' obligation not to discriminate includes the duty to provide reasonable accommodation to ensure that qualified handicapped individuals are able to use the carriers' facilities and services. Fulfilling this responsibility involves providing a series of specific accommodations spelled out in this regulation. It is not appropriate, or consistent with law interpreting section 504, to charge "user fees" to members of the protected class for accommodations which a party has a legal obligation to provide. This is as true for service-related accommodations as it is for accommodations resulting from the inaccessible nature of aircraft or other physicial facilities.

PVA also has a fair point when it says that it is meaningless to say that handicapped persons can be charged for an accommodation if other passengers are also charged for it. The kinds of accommodations required by this rule are not needed by passengers who do not have disabilities. As discussed under § 382.39, comparisons between non-essential services for passengers (e.g., boxes for surfboards or skis) and essential accommodations for persons with disabilities (e.g., hazardous material battery packages) do not form a sound basis for imposing charges for the latter.

With respect to services or accommodations that are not required to be provided to handicapped persons, carriers are not precluded from imposing reasonable, nondiscriminatory charges that would be charged to nonhandicapped persons for the services or accommodations involved. For example, carriers may, but are not required to, provide accommodations for persons traveling in stretchers or incubators. To accommodate a person traveling in a stretcher, a carrier may need to block off several seats. It would not be contrary to this section for the carrier to charge for the seats involved. Likewise, a charge for special accommodations needed to provide power to or to safely carry an incubator would be permitted.

Section 382.61—Training

Section 382.63—Carrier Programs

NPRM—Carriers operating aircraft with more than 19 seats would have to train their personnel who deal with the traveling public to proficiency concerning the requirements of this rule, carrier procedures for dealing with handicapped passengers, and awareness and appropriate responses to such passengers, distinguishing among different sorts of disabilities.

In developing a training program, carriers would have to consult with disability groups. The carrier would submit its program (which would include carrier policies concerning handicapped passengers) to DOT for approval within 90 days of the rule's effective date; DOT would have 120 days for review. The carrier would have

to implement it within 90 days of DOT approval.

Personnel would have to receive initial training on a schedule that would call for most covered employees to be trained within 180 days of program approval. There would be annual refresher training for employees. Complaints resolution officials would have to be trained within 60 days of the rule's effective date.

Carriers operating only aircraft with 19 or fewer seats would have to provide training for their personnel, but would not have to draft programs or submit them to the Department for approval.

Comments—Everyone thinks training is a good idea. There are a number of differences on the specifics, however. ATA objects to consulting with disability organizations, suggesting that reasonable efforts to obtain their views is sufficient, ATA also objects to submitting programs for DOT review, saying that this constitutes unnecessary micromanagement. ATA also objects to the requirement for training of contractor personnel.

ATA would also modify the timetables for training, calling for training programs to be developed in 180 days with implementation 90 days later. Employees would be trained within 180 days to a year thereafter. Refresher training would be on an as-needed basis, rather than annually. For training (including annual refresher training) conforming to the proposed rule, ATA estimated annual costs to the industry of $22.9 million, with a present value over 20 years of $289 million.

RAA generally concurs with ATA's positions. It suggests that annual recurrent training for all employees would cost five times as much as initial training, which it views as unnecessary if training programs are effective. Recurrent training every three years would be sufficient, in RAA's view. Moreover, 120 days after program development is needed for implementation and 180 days for training of complaints resolution officers, RAA contends.

PVA strongly supports recurrent training, lest employees forget how they are supposed to accommodate handicapped passengers. PVA also supports submittal of programs for DOT, even for small carriers, since these carriers may be less likely than larger carriers to get the word on appropriate treatment of handicapped passengers. PVA suggests DOT's regulatory evaluation may have overestimated training costs; even at DOT's projected cost levels, however, the benefits justify the costs.

PVA also emphasizes the value of carrier consultation with disability groups, since these are among the best sources of information on the best way to accommodate passengers with disabilities. PVA also disagrees with ATA's comments that training periods should be stretched out and that contractor employees should not have to be trained.

Other disability groups commenting on this section supported the proposed training requirement, including recurrent training and consultation with disability groups. Some of these comments suggested specific elements that should be included in the training, or suggested that a model program be developed. Some disability groups suggested that if pilots or other carrier personnel violate the rule (e.g., by wrongly refusing to provide transportation), remedial training should be required. The ATBCB suggested that the rule should specify that all employees who provide services to passengers (e.g., baggage handlers), not just those who deal directly with the public, be trained.

Some carrier comments agreed that recurrent training need not be annual. Every two years or only when there are changes in rules, procedures, or technology should recurrent training be needed. Other commenters agreed with ATA that recurrent training on an "as needed" basis would be sufficient. Otherwise, it would be too burdensome.

DOT Response—The final rule will maintain the distinction between carriers who operate aircraft with more than 19 seats and those who do not. The latter need only provide training to crewmembers and other appropriate personnel sufficient to ensure compliance with this part. Specific schedules and program development requirements are not required of these carriers, who nonetheless remain fully responsible for implementing the requirements of this rule.

The Department sees little real difference between the NPRM's "consultation" language and ATA's suggestion concerning liaison with disability groups—"make reasonable efforts to obtain the views of organizations * * *." The Department continues to believe that disability groups are a major resource for carriers, to help them devise practical and comprehensive procedures for accommodating passengers with a wide variety of disabilities. Consultation basically means making reasonable efforts to obtain the views of disability organizations: there is no list of organizations or type of contacts that the rule specifically mandates.

The Department is retaining the timetables for training proposed in the NPRM. Expeditious training of employees is essential to the achievement of the ACAA's objectives, and carrier comments suggesting stretched-out training periods did not demonstrate that training on the proposed schedules could not be accomplished. The Department believes that, since complaints resolution officials are key personnel in ensuring carrier compliance with the rule, they should be trained first, and as soon as possible. While 60 days after the effective date of the rule is a relatively short time, it is in the carriers' interest as well as that of passengers to make sure that carriers' in-house experts on regulatory compliance are in place as soon as possible. DOT staff would be willing to participate in ATA/RAA or other industry sessions to work through the provisions of the rule with complaints resolution officials.

With respect to refresher training, the Department is adopting ATA's suggestion that such training occur "as needed" to maintain proficiency. Mandatory annual recurrent training, as ATA and RAA comments pointed out, would be very expensive. Removing this requirement will reduce compliance costs of the rule by $24.8 million per year. It is not clear that carrier personnel will be as forgetful as PVA appears to assume, or that repetition is the essence of compliance.

Training "as needed" is not a license for ignoring training needs of personnel, of course. When procedures or equipment change, for example, training of personnel who have already received initial training is likely to be needed. While DOT is not adopting the comment that suggested mandatory remedial training for employees involved in any rule violation, a carrier employee who exhibited a pattern of conduct inconsistent with the rule would clearly "need" refresher training. If, in taking enforcement action with respect to a particular complaint, the Department discovered that carrier personnel had erred for lack of adequate refresher training, the Department could find a violation of this section as well, since refresher training as needed to ensure continued proficiency had been lacking.

The issue of contractor personnel training is parallel to the issue of coverage of contractors in general. Carriers contact out a number of functions, including some requiring direct contract with passengers. For example, security screening personnel at airports are often employed by contractors to carriers. If they are not

trained in their responsibilities under § 382.47, the carrier could not ensure that this section is properly implemented. The same is true, for example, if carrier contractor employees provide ground services to passengers (e.g., assistance in moving between gates). Under the rule, the carrier can either train contractor employees itself or delegate this task to the contractor. Either way, training is one of those responsibilities that a carrier cannot contract away by contracting a function out.

The requirements for carrier programs have been changed somewhat in response to comments. Carriers operating aircraft with more than 19 seats have to establish a program for compliance with this rule within 180 days of the effective date of the rule. They are not excused from compliance with the rule in the meantime. Compliance with the ACAA through this rule is a legal obligation in its own right, whether or not a program has been completed. The program will include the training schedule for employees and the carrier's policies and procedures for accommodating handicapped passengers consistent with the requirements of this part.

Carriers will begin to implement the program immediately upon its establishment, without waiting for DOT approval. (DOT will not, as such, approve programs.) To reduce burdens on smaller carriers, only Major and National carriers, and those regional carriers that have code-sharing arrangements with Majors and Nationals, will have to submit their programs to DOT. These carriers account for the vast majority of U.S. passengers enplaned. Other carriers will retain their programs on file, and must make them available to DOT on request by DOT staff. As with the FAA carry-on rule, it could be useful for organizations like ATA and RAA to develop model programs that carriers could adopt.

DOT will review the programs that are submitted. If DOT determines that a carrier's program must be changed in order to comply with this rule, DOT will direct the carrier to make the change(s) involved. The carrier is required to make the change(s). This does not constitute micromanagement, nor is it unnecessary. The Department has a responsibility, emphasized in the legislative history of the ACAA, for exercising oversight to make sure that carriers who carry the bulk of U.S. passengers properly implement the rule. Statutes and rules are not self-implementing; it is important to make sure that the parties responsible for implementation in airports and aircraft are going about it in a way consistent with legal requirements.

Section 382.65—Compliance Procedures

NPRM—The NPRM proposed that carriers, working through a complaints resolution official (CRO), would attempt to resolve complaints on the spot. Unhappy passengers could also file a written complaint with the carrier. The carrier, in either case, was required to respond in writing promptly. If the carrier and passenger did not reach agreement, the passenger could file an informal complaint with DOT, which would make an informal determination of whether a violation had occurred.

If the CRO or, on written complaint, the carrier conceded that a violation had occurred, or if DOT found that a violation had occurred, the carrier would have to pay compensation to the passenger at a rate modeled on the Department's DBC rule. Finally, notwithstanding other enforcement procedures, any person retained the right to file a formal complaint for enforcement action with the Department under 14 CFR part 382.

Comments—PVA recommended that DOT make a regulatory commitment to prosecuting all "pattern or practice" complaints filed under part 302. The CRO process should apply to nonscheduled service (under the NPRM, it applied only to scheduled service). A notice informing passengers of their ACAA rights should be included with all tickets and posted at ticket counters. The carrier should have an affirmative responsibility for placing the CRO in contact with any handicapped individual who has a complaint or is to be excluded from a flight on the basis of handicap.

The complaint process should be accessible to disabled person (e.g., if CRO contact is by telephone, TDD service should be available). Time for filing complaints, both with carriers and DOT, should be stretched out to give passengers enough time to file. DOT should also require carriers to provide more detailed information about the appeal process to DOT. The DOT appeal process should include procedures to guarantee that complaints are pursued fully and that complainants have adequate opportunity to present evidence.

PVA argues for a reporting requirement for complaints. DOT should also greatly increase the level of compensation under the rule. The DBC amounts are inadequate, and the DBC analogy (which concerns lawful carrier behavior) is inapposite as applied to an enforcement mechanism to redress violations of a civil rights statute. Substantially higher compensation levels are needed to deter improper carrier behavior and to make passengers whole for the actual losses they suffer as the result of carrier violations.

PVA also says that the implementation date of enforcement provisions should not be delayed. Otherwise, the rule would provide a right without a remedy, contrary to the intent of the ACAA.

ATA sees the enforcement process quite differently. It views the proposed system as unnecessarily complex and burdensome, and argues that the Department lacks legal authority for the DBC-like compensation scheme. Applying this scheme to a situation quite unlike that of denied boarding (where compensation is automatic upon the happening of a defined event, with no need for case-by-case determinations of regulatory violations) creates a hybrid remedy that would be difficult and confusing to apply. The process is also not final, since the complainant who receives compensation is not precluded from seeking additional relief in the same matter under part 302 or in court under the ACAA itself.

ATA recommends that DOT rely on the existing part 302 mechanism as the exclusive enforcement mechanism, asserting that it works well.

Several carriers said there should be between a 60-day and 18-month phase-in period for this provision, to permit carriers to gear up for compliance before they become liable to enforcement action. A number of disability groups argued, like PVA, for higher levels of compensation (including actual damages, and, in some commenters' views, attorney fees). Other favored the CRO system, but urged longer time periods for filing complaints. One comment said that responding to complaints should take priority over the CRO's other duties.

Another commenter suggested that CROs should be regarded as mediators, and that carriers should not surrender their decisionmaking authority to them. CROs should address problems with contractor personnel as well as carrier employees, a commenter urged. Some carriers ought that CROs were not needed at all, were too expensive, and/or duplicated functions that regular consumer affairs offices could perform. Disability group commenters wanted CROs to be easily accessible to persons with vision or hearing impairments and wanted carriers to inform passengers of the availability of CROs and of other rights and procedures. A number of

disability group commenters wanted complaint time frames stretched out.

DOT Response—The Department is dropping the DBC-model compensation scheme proposed in the NPRM. Carriers raised serious questions about the legal authority for such a system. Disability groups challenged the aptness of applying the DBC model to enforcement of a nondiscrimination statute and found the amounts of compensation inadequate. These comments suggested that the system would work only if it could provide something approaching actual damages to passengers.

Moreover, there would be difficulties in implementation. As ATA stated, DBC was set up to operate automatically, in the absence of case-by-case determinations of rule violations. DBC is, in a sense, a no-fault system. Making a similar model work where at least some violations were contested would be problematic. Determining liability for compensation in contested cases could be difficult, both because the adequacy of an informal, non-legal procedure for doing so is questionable (especially given the larger liability amounts that would be involved if actual damages were payable) and because the Department does not have sufficient resources in the relevant program offices to handle the workload, particularly where there were factual disputes.

The Department is retaining, however, the requirements for CROs and written carrier responses to passenger complaints. In ensuring compliance with any regulation, it is far better to head off problems before they occur, or correct them as they occur, than to take enforcement action after they occur. Designating certain employees to prevent or correct problems on the spot is a key part of this compliance process.

The Department intends that CROs be trained to be thoroughly familiar with the regulation. When a handicapped passenger complains to any carrier employee that there is a problem with how the carrier is treating him or her, the employee has the responsibility of ensuring that the passenger is put in touch with the CRO, if the passenger wishes. (This is the meaning of "make available" in § 382.65(a)(1)). The CRO may be made available either in person at the airport or by telephone (TDD service must be available for persons with hearing impairments).

If the CRO determines that other carrier personnel are making a mistake in implementing the requirements of the rule or failing to provide an accommodation the rule mandates, the CRO will then direct other carrier personnel to fix the problem. This authority is essential. While the CRO certainly plays a kind of "ombudsman" role, the CRO cannot merely be a mediator or public relations person. The CRO has the responsibility of ensuring compliance with the rule, and must have authority to go with the responsibility. Otherwise, the CRO will be ineffectual. The one exception to this authority to direct other carrier personnel concerns the pilot-in-command of an aircraft, whose decisions based on safety grounds the carrier is not required to give the CRO authority to countermand on the spot. For example, if a pilot-in-command proposes to exclude a handicapped person from a flight because the person's appearance would be unpleasant to other passengers, and made this decision on ostensible safety grounds, the CRO would inform the pilot that his decision appeared to be contrary to part 382. The CRO would not be able to force the pilot to carry the person, however.

When a handicapped person alleges to a CRO that a violation has occurred, and the CRO is unable to resolve the problem satisfactorily on the spot, the CRO has a responsibility to provide a written statement to the passenger. If the CRO agrees that a violation occurred (e.g., in the hypothetical situation presented in the previous paragraph), the CRO's statement would admit the violation on behalf of the carrier and set forth a summary of the facts and what steps, if any, the carrier proposed to take in response to the violation (e.g., apology, additional training for the personnel involved, offer of a free ticket for future travel). If the CRO determines that the carrier acted properly under the rule, the statement would include a written summary of the facts and the reasons for the determination that a violation had not occurred. The written statement is important because explaining to a passenger the reasons for a carrier decision is essential to avoid decisions that are arbitrary.

In addition, the statement would be of use should a part 302 enforcement proceeding ensue, as part of the documentary record relevant in the proceeding. The rule requires the written statement to be provided within ten days of the complaint to the CRO, which will ensure prompt response without unreasonably burdening the carrier administratively. This time frame should result in CROs attaching high priority to dealing with complaints, among whatever other duties these individuals perform. When a passenger contacts a CRO concerning a problem that is happening as they speak, it is intended, of course, that the CRO deal with the situation right then and there.

We agree with the comment that suggested that CROs respond to complaints regarding actions of carrier contractors as well as of the carrier's own staff. This is consistent with the general principle that carriers may not discriminate through contractual means or otherwise. Carriers' assurances with contractors under § 382.9 would have to include a provision to this effect.

Nothing in the rule would preclude staff of a carrier's consumer affairs office from acting as CROs. Any person acting as a CRO would have to have the authority to direct other employees to fix problems, and there must be CRO coverage for all times during which the carrier is operating.

As under the NPRM, carriers who do not provide scheduled service are not required to have CROs. Many of these carriers are quite small, and have fewer resources to devote to an administrative mechanism of this kind. These carriers will have to respond to written complaints, however.

Other carriers would also have to have a means of responding to written complaints. A passenger may complain about any alleged violation of the rules in writing, though this provision is intended primarily for situations which, because of timing or other problems, the passenger has not been able to take up with a CRO when the problem occurred. In response to comments, the Department is extending the filing time for written comments to 45 days, to avoid cutting off the opportunity to complain because of passengers' travel plans or the longer time it may take persons with some disabilities to send in a written complaint.

On the other hand, we do not intend for carriers, through the written complaint mechanism, to duplicate work done by their CROs. For this reason, we are requiring complainants to indicate whether they have contacted a CRO on the matter and who the CRO is and when the contact was made. If this information is unavailable (e.g., the complainant has forgotten the CRO's name), the complaint would at least indicate the date of the contact and the airport from which the contact was made. The complainant would also have to enclose a copy of any response received from the CRO. This information will allow the carrier to check with the relevant CRO and avoid duplication of effort, or, if the CRO had already responded, stand on the CRO's response if the carrier believed it was appropriate.

Like the CRO's written responses, the carrier's responses to a written complaint (due within 30 days of receipt

of the complaint) would summarize the facts and state whether or not the carrier concluded that the rule had been violated. If the carrier agreed that the rule had been violated, the response would state what steps, if any, the carrier was taking in response; if not, it would explain the carrier's reasons for its conclusion.

The enforcement procedures of 14 CFR part 302 are available to any person who believes a carrier has violated this regulation. These procedures afford full due process to complainants and respondents alike. If the Department finds that a violation has occurred, it can impose civil penalties on the carrier. In the absence of other enforcement mechanisms (e.g., the DBC-model compensation scheme of the NPRM), the Department will consider individual complaints as well as so-called "pattern or practice" complaints under part 302 procedures. The Department believes that, because the new part 382 is much more specific in its applications to carriers than its predecessors, enforcement in individual cases under part 302 procedures will be substantially clearer, easier, and faster than in the past. Because of the specificity of the new rules, the need for enforcement action should also be reduced.

The Department is not adopting comments which suggested constraints on the discretion of the Department's Aviation Enforcement and Proceedings Office with respect to prosecuting complaints. That office will evaluate all complaints that come in. To mandate that every complaint be prosecuted, however, regardless of its merits, would entail a considerable waste of resources, both the Department's and those of carriers and complainants.

The Department's Consumer Affairs Office is often able to help resolve problems between passengers and carriers on disability issues as well as other airline consumer matters. We recommend that, before filing a part 302 complaint, a passenger write or call this office (202-366-2220) to determine if it can work out a solution to the problem. We also suggest that carriers mention the name and number of this office in responses to complaints.

The Department is not adopting the comment that counter signs and/or ticket notices be required to inform passengers of their rights under this rule. Ticket notices and counter signs involve extensive papework and administrative burdens; it is far from clear whether they would result in substantial benefits in terms of actually informing passengers.

The Department does not believe it would be appropriate to include a "grace period" in the rule before making the enforcement provisions effective. The requirements of the rule are intended to implement the statutory right to nondiscrimination created by the ACAA. To say that these requirements would be unenforceable for six to eighteen months after the rule became effective would be to say, for that period, that Congress had intended to create a right without a remedy. Even before all employees are trained, carriers are responsible for making sure that handicaped passengers are treated appropriately under the rule. The requirement to train CROs quickly should make it easier for carriers to ensure compliance quickly.

During the initial stages of implementation, the Department's focus will be on assisting carriers to comply with the rule, not on penalizing inadvertent or minor errors. At the same time, the Department will not tolerate intentional or major violations of the rule or deliberate attempts to avoid compliance.

Regulatory Process Matters

This rule is not a major rule, because its estimated annual compliance costs do not exceed $100 million. It is a significant rule under the Department of Transportation's Regulatory Policies and Procedures. A Regulatory Evaluation has been prepared and filed in the rulemaking docket.

The Department has determined, under the Regulatory Flexibility Act, that this rule does not have a significant economic effect on a substantial number of small entities. Small entities affected by the rule include such parties as air taxis and small carriers who operate only aircraft with fewer than 19 seats. Many of the specific requirements of the rule do not apply to these smaller carriers. The major responsibilities of these smaller carriers relate to nondiscrimination duties which do not impose significant costs, substantially easing compliance costs. Activities at small airports (less than 2,500 annual enplanements) also are not covered. For these reasons, while there are substantial numbers of small carriers covered by the rule (around 4000 air taxis, for example), the economic effects of the regulation are not likely to be significant for any of them.

This rule imposes information collection requirements (i.e., programs to be submitted to DOT). A Paperwork Reduction Act clearance request has been submitted to the Office of Management and Budget. The information collection requirement does not go into effect until OMB clearance and the assignment of an OMB control number. We will publish a **Federal Register** notice when the OMB control number is received.

Under Executive Order 12612 on Federalism, the Department anticipates one Federalism effect of the regulation. This regulation pertains to "services" provided to passengers by carriers, within the meaning of section 105 of the Federal Aviation Act. It is also a comprehensive regulation in the area of the rights of handicapped passengers, promulgated pursuant to the ACAA (section 404(c) of the Federal Aviation Act), which appears to occupy the field. For these reasons, it is likely that this regulation will have the effect of preempting state regulation of the transportation of handicapped persons by regulated carriers in many instances. While the Department can consider, on a case-by-case basis, whether a particular state action would be preempted, it is likely that most state regulatory action in this area would be subject to preemption. The Department regards this effect as inevitable in view of the provisions of the Federal Aviation Act involved. Since state or local governments are not otherwise affected by the rule, a Federalism assessment has not been prepared.

List of Subjects in 14 CFR Part 382

Aviation, Handicapped.

Issued this 28th day of February, 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the Preamble, chapter II, subchapter D of title 14 of the Code of Federal Regulations is amended by revising part 382 to read as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN AIR TRAVEL

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Authority: Sections 404(a), 404(c), and 411 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374(a), 1374(c), and 1381).

Subpart A—General Provisions

§ 382.1 Purpose.

The purpose of this part is to implement the Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)), which provides that no air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.

§ 382.3 Applicability.

(a) Except as provided in this section, this part applies to all air carriers providing air transportation.

(b) Sections 382.21–382.63 do not apply to indirect air carriers.

(c) This part does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions, and commonwealths.

(d) Nothing in this part shall authorize or require a carrier to fail to comply with any applicable FAA safety regulation.

§ 382.5 Definitions

As used in this Part—

Air Carrier or *carrier* means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

Air carrier airport means a public, commercial service airport which emplanes annually 2,500 or more passengers and receives scheduled air service.

Air transportation means interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act.

Department or *DOT* means the United States Department of Transportation.

FAA means the Federal Aviation Administration, an operating administration of the Department.

Facility means all or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport, to the extent the carrier exercises control over the selection, design, construction, or alteration of the property.

Handicapped individual means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

Indirect air carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of an air carrier.

Qualified handicapped individual means a handicapped individual who—

(a) With respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies, takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

(b) With respect to obtaining a ticket for air transportation on an air carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(c) With respect to obtaining air transportation, or other services or acommodations required by this part:

(1) Purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and

(2) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers;

Schedule air service means any flight scheduled in the current edition of the *Official Airline Guide*, the carrier's published schedule, or the computer reservation system used by the carrier.

§ 382.7 General prohibition of discrimination.

(a) A carrier shall not, directly or through contractual, licensing, or other arrangements:

(1) Discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation;

(2) Require a handicapped person to accept special services (including, but not limited to, preboarding) not requested by the passenger;

(3) Exclude a qualified handicapped individual from or deny the person the benefit of any air transportation or related services that are available to other persons, even if there are separate or different services available for handicapped persons except when specifically permitted by another section of this part; or,

(4) Take any action adverse to an individual because of the individual's assertion, on his or her own behalf or

through or behalf of others, of rights protected by this part or the Air Carrier Access Act.

(b) If an indirect air carrier provides facilities or services for passengers that are covered for other carriers by sections §§ 382.21–382.55, the indirect air carrier shall do so in a manner consistent with those sections.

§ 382.9 Assurances from contractors.

Carriers' contracts with contractors who provide services to passengers, including carriers' agreements of appointment with travel agents (excluding travel agents who are not U.S. citizens who provide services to air carriers outside the United States, its territories and commonwealths), shall include a clause assuring

(a) Nondiscrimination on the basis of handicap, consistent with this part, by such contractors in activities performed on behalf of the carriers; and

(b) That contractor employers will comply with directives issued by carrier complaints resolution officials (CROs) under § 382.67.

Subpart B—Requirements Concerning Facilities

§ 382.21 Aircraft accessibility.

(a) The following requirements apply to new aircraft operated under 14 CFR part 121 and ordered by the carrier after the effective date of this part or delivered to the carrier more than two years after the effective date of this part:

(1)(i) Aircraft with 30 or more passenger seats on which passenger aisle seats have armrests shall have movable aisle armrests on at least one-half of passenger aisle seats.

(ii) Such armrests are not required to be provided on aisle seats on which a movable armrest is not feasible or aisle seats which a passenger with a mobility impairment is precluded from using by an FAA safety rule.

(iii) For aircraft equipped with movable aisle armrests as required by this paragraph, carriers shall configure cabins, or establish administrative systems, to ensure that an individuals with mobility impairments or other handicapped persons can readily obtain seating in rows with movable aisle armrests.

(2) Aircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair;

(3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory. This lavatory shall permit a qualified handicapped individual to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified handicapped individuals, including wheelchair users and persons with manual impairments;

(4)(i) Aircraft withmore than 60 passenger seats having an accessible lavatory, whether or not required to have such a lavatory by paragraph (a)(3) of this section, shall be equipped with an operable on-board wheelchair for the use of passengers.

(ii) The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 60 passenger seats on the request (with advance notice as provided in § 382.33(b)(8)) of a qualified handicapped individual who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat without the use of an on-board wheelchair.

(iii) On-board wheelchairs shall include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assitance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence. The chair shall be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(b)(1) Except as provided in paragraph (b)(2) of this section, aircraft in service on the effective date of this part shall not be required to be retrofitted for the sole purpose of enhancing accessibility.

(2) Each carrier, within two years of the effective date of this part, shall comply with the provisions of paragraph (a)(4) of this section with respect to all aircraft with more than 60 passenger seats operated under 14 CFR part 121.

(c) Whenever an aircraft operated under 14 CFR part 121 which does not have the accessibility features set forth in paragraph (a) of this section undergoes replacement of cabin interior elements or lavatories, or the replacement of existing seats with newly manufactured seats, the carrier shall meet the requirements of paragraph (a) of this section with respect to the affected feature(s) of the aircraft.

(d) Aircraft operated under 14 CFR part 121 with fewer than 30 passenger seats (with respect to the requirements of paragraph (a)(1) of this section), fewer than 100 passenger seats (with respect to the requirements of paragraph (a)(2) of this section) or 60 or fewer passenger seats (with respect to the requirements of paragraph (a)(4) of this section), and aircraft operated under 14 CFR part 135, shall comply with the requirements of this section to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations.

(e) Any replacement or refurbishing of the aircraft cabin shall not reduce existing accessibility to a level below that specified in this part.

(f) Carriers shall maintain aircraft accessibility features in proper working order.

§ 382.23 Airport facilities.

(a) This section applies to terminal facilities owned, leased, or operated on any other basis by an air carrier at an air carrier airport, including parking and ground transportation facilities.

(b) Such facilities and services shall, when viewed as a whole, be accessible to and usable by handicapped individuals.

(c) All such facilities designed, constructed, or altered after the effective date of this part shall be accessible to handicapped persons. Compliance with the requirements of the Uniform Federal Accessibility Standards (UFAS), or a substantially equivalent standard, shall be deemed compliance with this requirement. These facilities shall also provide the following additional accessibility features:

(1) The basic terminal design shall permit efficient entrance and movement of handicapped individuals while at the same time giving consideration to their convenience, comfort and safety. The design, especially concerning the location of means of vertical access, shall minimize any extra distance that wheelchair users must travel, compared to other persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(2) The ticketing system shall provide handicapped individuals with the opportunity to use the primary fare collection area to obtain a ticket and pay the fare.

(3) Outbound and inbound baggage facilities shall allow efficient baggage handling by handicapped individuals. Passenger baggage facilities shall be

designed and operated without unattended physical barriers, such as gates, which are inaccessible for handicapped individuals.

(4) Each terminal shall contain at least one telecommunications device for the deaf (TDD) to enable persons with hearing impairments to make phone calls from the terminal. The TDD(s) shall be placed in a clearly marked, readily accessible location, and airport signage shall clearly indicate the location of the TDDs.

(5) Terminal information systems shall take into consideration the needs of handicapped individuals. The primary information mode shall be visual words or letters, or symbols, using lighting and color coding.

Terminals shall also have facilities for providing information orally.

(6) Facilities for moving between the gate area and the aircraft, including, but not limited to, loading bridges and mobile lounges, shall be accessible to handicapped individuals.

(d) Each existing fixed facility shall be made accessible as soon as possible but no later than three years after the effective date of this part.

(1) Each such facility shall—

(i) Include at least one accessible route from an accessible entrance to those areas in which the carrier conducts activities related to the provision of air transportation; and

(ii) Include the accessibility features specified in paragraphs (c)(1) through (c)(6) of this section.

(2) An element or feature required by this paragraph to be accessible shall be deemed to be accessible if it meets the requirements of the standards referenced in paragraph (c) of this section. Departures from particular scoping and technical standards by the use of other methods are permitted where substantially equivalent or greater access to and usability of the buildings or other fixed facilities is provided. For this purpose, the special technical provisions of § 4.1.6(a)(4) of the UFAS apply.

(3) Operational arrangements in lieu of facility improvements shall be permitted for up to three years from the effective date of this part or during the time when a waiver is in effect where substantially equal access to the facilities is provided.

(e) Contracts or leases between carriers and airport operators concerning use of airport facilities shall set forth the respective responsibilities of the parties for compliance with accessibility requirements under this section and 49 CFR 27.71.

Subpart C—Requirements for Services

§ 382.31 Refusal of transportation.

(a) Unless specifically permitted by a provision of this part, a carrier shall not refuse to provide transportation to a qualified handicapped individual on the basis of his or her handicap.

(b) A carrier shall not refuse to provide transportation to a qualified handicapped individual solely because the person's handicap results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) A carrier shall not refuse to provide transportation to qualified handicapped individuals by limiting the number of such persons who are permitted to travel on a given flight.

(d) Carrier personnel, as authorized by 49 U.S.C. 1511, 14 CFR 91.8, or 14 CFR 121.533, may refuse to provide transportation to any passenger on the basis of safety, and may refuse to provide transportation to any passenger whose carriage would violate the Federal Aviation Regulations. In exercising this authority, carrier personnel shall not discriminate against any qualified handicapped individual on the basis of handicap and their actions shall not be inconsistent with the provisions of this Part. In the event that such action is inconsistent with the provisions of this Part, the carrier shall be subject to remedies provided under § 382.65.

(e) When a carrier refuses to provide transportation to any person on a basis relating to the individual's handicap, the carrier shall specify in writing to the person the basis for the refusal, including, where applicable, the reasonable and specific basis for the carrier's opinion that transporting the person would or might be inimical to the safety of the flight. This written explanation shall be provided within 10 calendar days of the refusal of transportation.

§ 382.33 Advance notice requirements.

(a) Except as provided in paragraph (b) of this section, a carrier shall not require a qualified handicapped individual to provide advance notice of his or her intention to travel or of his or her disability as a condition of receiving transportation or of receiving services or accommodations required by this part.

(b) A carrier may require up to 48 hours advance notice and one-hour advance check-in concerning a qualified handicapped individual who wishes to receive any of the following services, types of equipment, or accommodations:

(1) Medical oxygen for use on board the aircraft, if this service is available on the flight;

(2) Carriage of an incubator, if this service is available on the flight;

(3) Hook-up for a respirator to the aircraft electrical power supply, if this service is available on the flight;

(4) Accommodation for a passenger who must travel in a stretcher, if this service is available on the flight;

(5) Transportation for an electric wheelchair on a flight scheduled to be made with an aircraft with fewer than 60 seats;

(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device;

(7) Accommodation for a group of ten or more qualified handicapped individuals, who make reservations and travel as a group; and

(8) Provision of an on-board wheelchair on an aircraft that does not have an accessible lavatory.

(c) If a passenger does not meet advance notice or check-in requirements established by a carrier consistent with this section, the carrier shall nonetheless provide the service, equipment, or accommodation if it can do so by making a reasonable effort, without delaying the flight.

(d) Carriers' reservation and other administrative systems shall ensure that when advance notice is provided by qualified handicapped individuals as provided by this section, the notice is recorded and properly transmited to operating employees responsible for providing the accommodation concerning which notice was provided.

(e) If the qualified handicapped individual provides the notice required by the carrier for a service under paragraph (b) of this section, the carrier shall ensure that the requested service is provided.

(f) If a qualified handicapped individual provides advance notice to a carrier, and the individual is forced to change to the flight of a different carrier because of the cancellation of the original flight or the substitution of inaccessible equipment, the first carrier shall, to the maximum extent feasible, provide assistance to the second carrier in providing the accommodation requested by the individual from the first carrier.

§ 382.35 Attendants.

(a) Except as provided in this section, a carrier shall not require that a qualified handicapped individual travel with an attendant as a condition of being provided air transportation. A

concern on the part of carrier personnel that a handicapped individual may need to use inaccessible lavatory facilities or may otherwise need extensive special assistance for personal needs which carrier personnel are not obligated to provide is not a basis on which the carrier may require an attendant.

(b) A carrier may require that a qualified handicapped individual meeting any of the following criteria travel with an attendant as a condition of being provided air transportation, if the carrier determines that an attendant is essential for safety:

(1) A person traveling in a stretcher or incubator. The attendant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A person who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571 (a) (3) and (a)(4) or 14 CFR 135.117(b);

(3) A person with a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft;

(4) A person who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with carrier personnel, adequate to permit transmission of the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b).

(c) If the carrier determines that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with an attendant, contrary to the individual's self-assessment that he or she is capable of traveling independently, the carrier shall not charge for the transportation of the attendant.

(d) If, because there is not a seat available on a flight for an attendant whom the carrier has determined to be necessary, a handicapped person with a confirmed reservation is unable to travel on the flight, the handicapped person shall be eligible for denied boarding compensation under 14 CFR part 250.

(e) For purposes of determining whether a seat is available for an attendant, the attendant shall be deemed to have checked in at the same time as the handicapped person.

§ 382.37 Seat assignments.

(a) Carriers shall not exclude any qualified handicapped individual from any seat in an exit row or other location or require that a qualified handicapped individual sit in any particular seat, on the basis of handicap, except in order to comply with the requirements of an FAA safety regulation or as provided in this section.

(b) If a person's handicap results in involuntary active behavior that would result in the person properly being refused transportation under § 382.31, and the safety problem could be mitigated to a degree that would permit the person to be transported consistent with safety if the person is seated in a particular location, the carrier shall offer the person that particular seat location as an alternative to being refused transportation.

(c) If a service animal cannot be accommodated at the seat location of the qualified handicapped individual whom the animal is accompanying (see § 382.55(a)(2)), the carrier shall offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel with checked baggage.

§ 382.39 Provision of services and equipment.

Carriers shall ensure that qualified handicapped individuals are provided the following services and equipment:

(a) Carriers shall provide assistance requested by or on behalf of qualified handicapped individuals, or offered by air carrier personnel and accepted by qualified handicapped individuals, in enplaning and deplaning. The delivering carrier shall be responsible for assistance in making flight connections and transportation between gates.

(1) This assistance shall include, as needed, the services personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

(2) Boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are available. Where these means are not available, carriers shall use ramps, mechanical lifts, or other devices (not normally used for freight) for enplaning and deplaning qualified handicapped individuals who need them. Such devices shall be maintained in proper working order.

(3) Carriers shall not leave a handicapped passenger unattended in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes.

(4) In the event that physical limitations of an aircraft with less than 30 passenger seats preclude the use of existing models of lifts, boarding chairs or other feasible devices to enplane a handicapped person, carrier personnel are not required to carry the handicapped person onto the aircraft by hand.

(b) Carriers shall provide services within the aircraft cabin as requested by or on behalf of handicapped individuals, or when offered by air carrier personnel and accepted by handicapped individuals as follows:

(1) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(2) Assistance in preparation for eating, such as opening packages and identifying food;

(3) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(4) Assistance to a semiambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(5) Assistance in loading and retrieving carry-on items, including mobility aids and other assistive devices stowed on board in accordance with § 382.41.

(c) Carriers are not required to provide extensive special assistance to qualified handicapped individuals. For purposes of this section, extensive special assistance includes the following activities:

(1) Assistance in actual eating;

(2) Assistance within the restroom or assistance at the passenger's seat with elimination functions;

(3) Provision of medical services.

§ 382.41 Stowage of personal equipment.

(a) All stowage of qualified handicapped individuals' wheelchairs and other equipment covered by this Part in aircraft cabins shall be in accordance with 14 CFR 121.589 and 14 CFR 121.285(c) or 14 CFR 135.87, as applicable.

(b) Carriers shall permit qualified handicapped individuals using personal ventilators/respirators to bring their equipment, including non-spillable batteries that meet the requirements of 49 CFR 173.260(d) and any applicable FAA safety regulations, on board the aircraft and use it.

(c) Carriers shall permit qualified handicapped individuals to stow canes and other assistive devices on board the aircraft in close proximity to their seats, consistent with the requirements of FAA safety regulations for carry-on items.

(d) Carriers shall not, in implementing their carry-on baggage policies, count toward a limit on carry-on items any assistive device brought into the cabin by a qualified handicapped individual.

(e) Carriers shall provide for on-board stowage of passengers' wheelchairs as follows:

(1) Carriers shall permit the stowage of wheelchairs or components of wheelchairs in overhead compartments and under seats, consistent with the requirements of FAA safety regulations for carry-on items.

(2) In aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a folding wheelchair, the carrier shall designate priority stowage space, as described below, for at least one folding wheelchair in that area. A handicapped individual who takes advantage of a carrier offer of the opportunity to pre-board the aircraft may stow his or her wheelchair in this area, with priority over the carry-on items brought onto the aircraft by other passengers enplaning at the same airport. A handicapped individual who does not take advantage of a carrier offer of the opportunity to preboard may use the area to stow his or her wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(3) If an approved stowage area in the cabin is not available for a folding wheelchair, the wheelchair shall be stowed in the cargo compartment.

(f) When passenger compartment stowage is not available, carriers shall provide for the checking and timely return of passengers' wheelchairs and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except where this practice would be inconsistent with DOT regulations governing the transportation of hazardous materials.

(1) At the request of the passenger, the carrier may return wheelchairs or other assistive devices to the passenger at the baggage claim area instead of at the door of the aircraft.

(2) In order to achieve the timely return of wheelchairs, passengers' wheelchairs and other assistive devices shall be among the first items retrieved from the baggage compartment.

(3) Wheelchairs and other assistive devices shall be stowed in the baggage compartment with priority over other cargo and baggage. Where this priority results in passengers' baggage being unable to be carried on the flight, the carrier shall make its best efforts to ensure that the other baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

(g) Where baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept as baggage battery-powered wheelchairs, including the batteries, consistent with the requirements of DOT regulations on the transportation of hazardous materials (49 CFR parts 172, 173, and 175).

(1) Carriers may require that qualified handicapped individuals wishing to have electric wheelchairs transported on a flight check in one hour before the scheduled departure time for the flight. If such a handicapped individual checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) Whenever feasible, the carrier shall transport electric-powered wheelchairs secured in an upright position, so that batteries need not be separated from the wheelchair in order to comply with DOT hazardous materials rules.

(3) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for the batteries meeting the requirements of the DOT hazardous materials rules and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) Carriers shall not drain batteries.

(5) Handicapped individuals shall be permitted to provide written directions concerning the disassembling and assembling of their wheelchairs.

§ 382.43 Treatment of mobility aids and assistive devices.

(a) When wheelchairs or other assistive devices are disassembled by the carrier for stowage, the carrier shall reassemble them and ensure their prompt return to the handicapped passenger. Wheelchairs and other assistive devices shall be returned to the passenger in the condition received by the carrier.

(b) With respect to domestic flights, carriers shall not limit liability for loss, damage, or delay concerning wheelchairs or other mobility aids to any amount less than twice the liability limits established for passengers' luggage under 14 CFR part 254.

(c) Carriers shall not require qualified handicapped individuals to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.

§ 382.45 Passenger information.

(a) A carrier shall make available, on request, the following information concerning facilities and services related to the provision of air transportation to qualified handicapped individuals. This information shall pertain to the type of aircraft and, where feasible, the specific aircraft scheduled for a specific flight:

(1) The location of seats, if any, with movable armrests and any seats which the carrier, consistent with this part, does not make available to qualified handicapped individuals;

(2) Any limitations on the ability of the aircraft to accommodate qualified handicapped persons;

(3) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other equipment commonly used by handicapped persons;

(4) Whether the aircraft has an accessible lavatory.

(b) The following provisions govern the provision of individual safety briefings to qualified handicapped individuals:

(1) Individual safety briefings shall be conducted for any passenger where required by 14 CFR 121.571 (a)(3) and (a)(4) or 14 CFR 135.117(b);

(2) Carrier personnel may offer an individual briefing to any other passenger;

(3) Individual safety briefings for qualified handicapped individuals shall be conducted as inconspicuously and discreetly as possible;

(4) Carrier personnel shall not require any qualified handicapped individual to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers with respect to the general safety briefing, and shall not take any action adverse to a qualified handicapped individual on the basis that the person has not "accepted" the briefing.

(c) Each carrier shall ensure that qualified handicapped individuals, including those with vision or hearing impairments, have timely access to information the carrier provides to other passengers in the terminal or on the aircraft (to the extent that it does not interfere with crewmembers' safety duties as set forth in FAA regulations) including, but not limited to, information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, and the checking and claiming of luggage; *Provided,* That persons who are unable to obtain such information from the audio or visual systems used by carriers in airports or on aircraft shall request the information from carrier personnel. Carriers shall also provide information

on aircraft changes that will affect the travel of handicapped persons.

(d) Carriers shall have, at each airport they use, a copy of this part and shall make it available for review by handicapped persons on request.

§ 382.47 Accommodations for persons with hearing impairments.

(a) Each carrier providing scheduled air service, or charter service under section 401 of the Federal Aviation Act, and which makes available telephone reservation and information service available to the public shall make available a telecommunications device for the deaf (TDD) service to enable persons with hearing impairments to make reservations and obtain information. The TDD service shall be available during the same hours as the telephone service for the general public and the response time for answering calls shall be equivalent. Users of the TDD service shall not be subject to charges for a call that exceed those applicable to other users of the telephone information and reservation service.

(b) In aircraft in which safety briefings are presented to passengers on video screens, the carrier shall ensure that the video presentation is accessible to persons with hearing impairments.

(1) Except as provided in paragraph (b)(2) of this section, the carrier shall implement this requirement by using open captioning or an inset for a sign language interpreter as part of the video presentation.

(2) A carrier may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset could be placed in the video presentation without so interfering with it as to render it ineffective or would be large enough to be readable.

(3) Carriers shall implement the requirements of this section by substituting captioned video materials for uncaptioned video materials as the uncaptioned materials are replaced in the normal course of the carrier's operations.

§ 382.49 Security screening of passengers.

(a) Qualified handicapped individuals shall undergo security screening in the same manner, and be subject to the same security requirements, as other passengers. Possession by a qualified handicapped individual of an aid used for independent travel shall not subject the person or the aid to special screening procedures if the person using the aid clears the security system without activating it. *Provided*, That this paragraph shall not prohibit security personnel from examining a mobility aid or assistive device which, in their judgment, may conceal a weapon or other prohibited item. Security searches of qualified handicapped individuals whose aids activate the security system shall be conducted in the same manner as for other passengers. Private security screenings shall not be required for qualified handicapped individuals to a greater extent, or for any different reason, than for other passengers.

(b) Except as provided in paragraph (c) of this section, if a qualified handicapped person requests a private screening in a timely manner, the carrier shall provide it in time for the passenger to enplane.

(c) If a carrier employs technology that can conduct an appropriate screening of a handicapped passenger without necessitating a physical search of the person, the carrier is not required to provide a private screening.

§ 382.51 Communicable diseases.

(a) Except as provided in paragraph (b) of this section, a carrier shall not take any of the following actions, with respect to a person who is otherwise a qualified handicapped individual, on the basis that the individual has a communicable disease or infection:

(1) Refuse to provide transportation to the person;

(2) Require the person to provide a medical certificate; or

(3) Impose on the person any condition, restriction, or requirement not imposed on other passengers.

(b) The carrier may take actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection which has been determined, by the U.S. Surgeon General, the Centers for Disease Control, or other Federal public health authority knowledgeable about the disease or infection, to be transmissible to other persons in the normal course of a flight.

(c) If a qualified handicapped individual with a communicable disease or infection of the kind described in paragraph (b) of this section presents a medical certificate to the carrier, as provided in § 382.53(c)(2), the carrier shall provide transportation to the individual, unless it is not feasible for the carrier to implement the conditions set forth in the medical certificate as necessary to prevent the transmission of the disease or infection to other persons in the normal course of a flight.

§ 382.53 Medical certificates.

(a) Except as provided in this section, a carrier shall not require a person who is otherwise a qualified handicapped person to have a medical certificate as a condition for being provided transportation.

(b)(1) A carrier may require a medical certificate for a qualified handicapped individual—

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight, as provided in 14 CFR 121.574; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing a flight safely, without requiring extraordinary medical assistance during the flight.

(c)(1) If a qualified handicapped individual has a communicable disease or infection of the kind described in § 382.51(b), a carrier may require a medical certificate.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of a flight. The medical certificate shall state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of a flight. It shall be dated within ten days of the date of the flight for which it is presented.

§ 382.55 Miscellaneous provisions.

(a) Carriers shall permit dogs and other service animals used by handicapped persons to accompany the persons on a flight.

(1) Carriers shall accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags, or the credible verbal assurances of the qualified handicapped individual using the animal.

(2) Carriers shall permit a service animal to accompany a qualified handicapped individual in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation.

(3) In the event that special information concerning the

transportation of animals outside the continental United States is either required to be or is provided by the carrier, the information shall be provided to all passengers traveling with animals outside the continental United States with the carrier, including those traveling with service animals.

(b) Carriers shall not require qualified handicapped individuals to sit on blankets.

(c) Carriers shall not restrict the movements of handicapped persons in terminals or require them to remain in a holding area or other location in order to be provided transportation, to receive assistance, or for other purposes, or otherwise mandate separate treatment for handicapped persons, except as permitted or required in this part.

§ 382.57 Charges for accommodations prohibited.

Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified handicapped individuals.

Subpart D—Administrative Provisions

§ 382.61 Training.

(a) Each carrier which operates aircraft with more than 19 passenger seats shall provide training, meeting the requirements of this paragraph, for all its personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) The carrier shall ensure training to proficiency concerning:

(i) The requirements of this part and other DOT or FAA regulations affecting the provision of air travel to handicapped persons; and

(ii) The carrier's procedures, consistent with this part, concerning the provision of air travel to handicapped persons, including the proper and safe operation of any equipment used to accommodate handicapped passengers.

(2) The carrier shall also train such employees with respect to awareness and appropriate responses to handicapped persons, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of handicapped individuals.

(3) The carrier shall consult with organizations representing persons with disabilities in developing its training program and the policies and procedures concerning which carrier personnel are trained.

(4) The carrier shall ensure that personnel required to receive training shall complete the training by the following times:

(i) For crewmembers subject to training required under 14 CFR part 121 or 135, who are employed on the date the carrier's program is established under § 382.63, as part of their next scheduled recurrent training;

(ii) For other personnel employed on the date the carrier's program is established under § 382.63, within 180 days of that date;

(iii) For crewmembers subject to training requirements under 14 CFR part 121 or 135 whose employment in any given position commences after the date the carrier's program is established under § 382.63, before they assume their duties; and

(iv) For other personnel whose employment in any given position commences after the date the carrier's program is established under § 382.63, within 60 days of the date on which they assume their duties.

(5) Each carrier shall ensure that all personnel required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency.

(6) Each carrier shall provide, or require its contractors to provide, training to the contractors' employees concerning travel by handicapped persons. This training is required only for those contractor employees who deal directly with the traveling public at airports, and it shall be tailored to the employees' functions. Training for contractor employees shall meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(7) Current employees of each carrier designated as complaints resolution officials, for purposes of § 382.65 of this part, shall receive training concerning the requirements of this part and the duties of a complaints resolution official within 60 days of the effective date of this part. Employees subsequently designated as complaints resolution officers shall receive this training before assuming their duties under § 382.65. All employees performing the complaints resolution official function shall receive annual refresher training concerning their duties and the provisions of this regulation.

(b) Each carrier operating only aircraft with 19 or fewer passenger seats shall provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraphs (a)(1) and (a)(2) of this section and comply with the requirements of this part.

§ 382.63 Carrier programs.

(a)(1) Each carrier that operates aircraft with more than 19 passenger seats shall establish and implement, within 180 days of the effective date of this part, a written program for carrying out the requirements of this part.

(2) Carriers are not excused from compliance with the provisions of this part during the 180 days before carrier programs are required to be established.

(b) The program shall include the following elements:

(1) The carrier's schedule for training its personnel in compliance with § 382.61;

(2) The carrier's policies and procedures for accommodating handicapped passengers consistent with the requirements of this part.

(c)(1) Major and National carriers (as defined in the DOT publication *Air Carrier Traffic Statistics*), and every U.S. carrier that shares the designator code of a Major or National carrier (as described in 14 CFR 399.88), shall submit their program to the Department for review within 180 days of the effective date of this part.

(2) The Department shall review each carrier's program, which the carrier shall implement without further DOT action at the time it is submitted to the Department.

(3) If the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

(d) Other carriers shall maintain their programs on file, and shall make them available for review by the Department on the Department's request. If, upon such review, the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

§ 382.65 Compliance procedures.

(a) Each carrier providing scheduled service shall establish and implement a complaint resolution mechanism, including designating one or more complaints resolution official(s) (CRO) to be available at each airport which the carrier serves.

(1) The carrier shall make a CRO available to any person who complains of alleged violations of this part during all times the carrier is operating at the airport.

(2) The carrier may make the CRO available via telephone, at no cost to the passenger, if the CRO is not present in person at the airport at the time of the complaint. If a telephone link to the CRO is used, TDD service shall be available so that persons with hearing impairments may readily communicate with the CRO.

(3) Each CRO shall be thoroughly familiar with the requirements of this part and the carrier's procedures with respect to handicapped passengers.

(4) Each CRO shall have the authority to make dispositive resolution of complaints on behalf of the carrier.

(5) When a complaint is made to a CRO, the CRO shall promptly take dispositive action as follows:

(i) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this part, the CRO shall take or direct other carrier personnel to take action, as necessary, to ensure compliance with this part. *Provided,* That the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

(ii) If an alleged violation of a provision of this part has already occurred, and the CRO agrees that a violation has occurred, the CRO shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(iii) If the CRO determines that the carrier's action does not violate a provision of this part, the CRO shall provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.

(iv) The statements required to be provided in paragraph (a)(5) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section. This statement shall be provided in person to the complainant at the airport if possible; otherwise, it shall be forwarded to the complainant within 10 calendar days of the complaint.

(b) Each carrier shall establish a procedure for resolving written complaints alleging violation of the provisions of this part.

(1) A carrier is not required to respond to a complaint postmarked more than 45 days after the date of the alleged violation.

(2) A written complaint shall state whether the complainant has contacted a CRO in the matter, the name of the CRO and the date of the contact, if available, and include any written response received from the CRO.

(3) The carrier shall make a dispositive written response to a written complaint alleging a violation of a provision of this part within 30 days of its receipt.

(i) If the carrier agrees that a violation has occurred, the carrier shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(ii) If the carrier denies that a violation has occurred, the response shall include a summary of the facts and the carrier's reasons, under this part, for the determination.

(iii) The statements required to be provided in paragraph (b)(3) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section.

(c) Any person believing that a carrier has violated any provision of this part may contact the following office for assistance: Department of Transportation, Office of Consumer Affairs, 400 7th Street, SW., Washington, DC 20590, (202) 366-2220.

(d) Any person believing that a carrier has violated any provision of this part may file a formal complaint under the applicable procedures of 14 CFR part 302.

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Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25821; Amdt. No. 121-214 and 135-36]

RIN 2120-AC75

Exit Row Seating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule regulates exit row seating in aircraft operated by U.S. air carrier and commercial operators (certificate holders), except on-demand air taxis with nine or fewer passenger seats. It requires that only persons who are determined by the certificate holder to be able without assistance, to activate an emergency exit and to take the additional actions needed to ensure safe use of that exit in an emergency may be seated in exit rows. This action is intended to further safety for all passengers.

DATES: Effective Date: April 5, 1990. Compliance Date: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Irene H. Mields or Mr. John Walsh, General Legal Services Division (ACC-100), Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-3473.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the docket number of this final rule.

Persons interested in being placed on the mailing list for future notices of proposed rulemaking (NPRM's) and final rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

In an effort to make this information available in an accessible format to individuals who are blind or visually impaired and to other individuals who are print handicapped, the Federal Aviation Administration (FAA) will make available for copying a number of audio cassette tapes of the entire amendment (and the accompanying regulatory evaluation) in the FAA Rules Docket, Room 915G, FAA Headquarters, 800 Independence Avenue, SW., Washington, DC. In addition, single cassette tapes will be available in the Public Affairs offices of the agency's nine regional headquarters; at the Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma; and at the FAA Technical Center, Atlantic City, New Jersey.

Background

Introduction

This rule prescribes requirements relating to the seating of airline passengers near emergency exits. The FAA has determined that a rule is necessary to establish clearly understood, consistent, and predictable practices regarding the seating of passengers in so-called "exit rows," and to prevent instances of arbitrary, unexpected, or unwarranted treatment by airline employees.

The issues addressed by the rule are among the most difficult and controversial ever addressed by the FAA, for they require, in the interest of what is essential for the safety of all

passengers, that some passengers be treated differently from other passengers, depending on their physical abilities.

The FAA must be satisfied that any differences in prescribed treatment are fully justified by the incremental gains in safety achieved thereby. The criteria set forth in the present rule have been weighed against this standard with the greatest care. The FAA is persuaded that, in this case, the standard has been met.

Mishaps in commercial aviation are extremely infrequent, but when they occur, survivability is a function of a great many regulatory decisions relating to the design and construction of the aircraft and its interior and to the procedures invoked by airline employees. Some of those decisions, in isolation, may seem small or "on the margin," but all are necessary elements to the total safety equation.

A critical prerequisite to survivability in many such circumstances is the fastest possible evacuation of the aircraft. Essential to the objective is the fastest possible safe opening of emergency exit doors, followed by the fastest possible movement of passengers through those exits and toward safety.

The FAA has determined, in light of the importance of maximizing the likelihood of a successful evacuation in the event of a mishap, and because of the pivotal role played by those passengers seated in closest proximity to airplane exits, that it is necessary to issue a rule, based on verifiable qualifications, establishing passenger eligibility to sit in an exit row.

Summary of the Rule

A passenger aircraft crashes. Inside the cabin, there are many survivors. A fire begins. If the passengers are to stay alive, they must get out of the aircraft as soon as they can. Seconds mean the difference between life and death. This is the scenario on which a crashworthiness standard is based. Many other FAA rules are intended to prevent a crash from ever happening. A crashworthiness rule assumes that a survivable crash has happened and then specifies certain actions to maximize people's chances of getting out alive.

This rule on exit row seating provides a crashworthiness standard. Exit doors must be opened quickly and properly if an emergency evacuation is to succeed. Often, crewmembers are not in a position to lead or conduct this part of the evacuation. Passengers sitting near the doors must perform the functions on which their lives, and the lives of their fellow passengers, depend.

What are some of these functions? *First, a passenger must be able to locate the door and quickly follow the instructions, written and oral, for its use.* Door operations and instructions differ from aircraft to aircraft. A delay in figuring out how to operate the door can cost precious seconds; operating it improperly can injure or result in the deaths of passengers.

Second, a passenger must be able physically to open the door. Doors are often heavy and clumsy to manipulate, and not every passenger can open them quickly.

Third, a person must be able to determine when to open the door. This involves being able to respond to shouted or hand-signalled instructions from flight attendants, as well as being able to tell when opening an exit would be too dangerous (e.g., because of fire on the adjacent wing).

Fourth, a person must be able to go quickly through the open exit, in order not to cause a traffic jam at the door, and perhaps to assist other passengers to leave the danger zone around the aircraft.

Fifth, a passenger must devote full attention to his or her emergency task. A passenger who must care for small children, for example, may be unable to do so.

The rule says simply that airlines shall seat in exit rows only persons who appear able to perform these and other relevant functions in an emergency evacuation. Persons who do not appear able to perform all the functions may sit in any other seat. Airlines also must take steps to inform passengers sitting in exit rows about what may be required of them in an emergency evacuation. By following these requirements, airlines will minimize the likelihood of passenger-caused evacuation delays that could cost lives.

In addition to the critical nature of the tasks just cited for opening the exit doors quickly, it is equally important that queues form readily and that evacuation proceeds as rapidly as possible. Therefore, in drafting this rule, the FAA had to consider not only the requirements for quickly opening the exit door (when and where appropriate) but also the requirements for initiating the orderly progression of the evacuees to safety, beginning at the exit rows.

As discussed further herein, this rule has been promulgated with full consideration of the Air Carrier Access Act of 1986 (ACAA), which prohibits discrimination in air transportation on the basis of handicap, but also requires that measures to eliminate such discrimination take into account the safety of all passengers.

During a regulatory negotiation to implement the ACAA, the participating groups representing persons with disabilities, the industry groups, and the Government were unable to reach agreement on the exit row seating issue. Accordingly, the Office of the Secretary of Transportation (OST), in an NPRM to implement the ACAA, formulated its own proposal on exit row seating (53 FR 23574; June 22, 1988). It took cognizance of the safety implications of exit row seating by proposing that carriers be prohibited from excluding persons from any seat on the basis of handicap, except in order to comply with an FAA safety rule.

This rule addresses the safety aspects of exit row seating and will result in some persons being seated in seats other than those in exit rows, based on the application of neutral, functional criteria. For example, young children, persons who are too large or too small, persons with some disabilities, and elderly persons who are physically frail will be seated in a location other than an exit row. This rule does not affect exit row seating in the on-demand operations of air taxis that have nine or fewer passenger seats. The purpose of a charter flight very well may be to carry a person whose disabilities make other commercial flights unavailable.

Summary of Comments

Notice of proposed rulemaking No. 89-8 was published in the **Federal Register** on March 13, 1989 (54 FR 10484). The comment period closed June 12, 1989. The FAA, in accordance with its standard policy, continued to accept comments and to consider them so far as possible without incurring expense or delay. Approximately 650 respondents registered their comments in the public docket on the proposed regulation as of July 28, 1989. Of that number, approximately 550 opposed the NPRM, while 90 supported it.

Individuals provided over 600 of the comments, while 40 came from various public or private associations and organizations. The largest number of individual comments came from blind persons or friends, associates, and relatives of blind persons. Individual comments also came from other persons with disabilities, passengers who have no disabilities, students, and flight attendants, pilots, and other persons connected currently or in the past with the aviation industry.

Representatives of organizations of persons with disabilities also commented. Again, the largest number came from groups with blind membership: the National Federation of

the Blind (NFB), the New Mexico Commission for the Blind, the Golden Triangle Council of the Blind, the American Foundation for the Blind, the American Council for the Blind, and various state or local affiliates of the NFB in Indiana, Alaska, Pennsylvania, Florida, Maine, New York City, Colorado, Kansas, Wisconsin, Maryland, Nebraska, South Carolina, Oregon, Georgia, and Connecticut, as well as from the NFB Federation Center for the Blind.

In addition, the national office of the NFB filed 2 volumes of materials and a 13-page unsigned document identified on the first page only as being from the "National Federation of the Blind." After the comment period closed, the NFB wrote to the Secretary of Transportation (the Secretary), concerning the exit row seating issues, reiterating the NFB's position and disagreeing with an internal, deliberative FAA memorandum which had come into the NFB's possession. This letter and the agency reply also were submitted to the docket. The FAA received over 200 form letters of several types, many without return addresses and/or legible signatures. We believe these also came from NFB members, since the comments made repeated those made by the national office, its chapters, and identifiable members. The FAA acknowledges these, but it has not included them in the count of commenters who wrote their own letters.

Commenters representing groups of persons with a variety of disabilities included: the National Association of the Physically Handicapped, the Society for the Advancement of Travel for the Handicapped, the State of Washington Governor's Committee on Disability Issues and Employment, the Paralyzed Veterans of America, the Disability Advocacy Organization, and the Southwest Center for Independent Living. The Architectural and Transportation Barriers Compliance Board (ATBCB), a Federal organization devoted to monitoring the implementation of the Architectural Barriers Act and related statutes and regulations, also commented.

In general terms, most of the blind individuals and their organizations oppose the NPRM, as do most of the organizations representing persons with other disabilities. Supporters of the NPRM, however, include some individuals and organizations who are blind or who have other disabilities. Also, while the NFB and its members oppose the entire NPRM and *any* seating restrictions, the other organizations are more selective in their comments, opposing portions of the NPRM and offering alternatives.

The following organizations, representing facets of the aviation industry, commented: the Association of Professional Flight Attendants, the Retired Airline Pilots Association, the Association of Flight Attendants (AFA), the Air Transport Association of America (ATA), the National Transport Safety Association, Inc., Airport Safety Services, International, the Interaction Research Corporation, and the Regional Airlines Association (RAA). The National Transportation Safety Board (NTSB), an independent safety agency of the Federal government, also commented.

Those connected with the aviation industry are unanimous in their support of the NPRM. The ATA and the RAA, however, provided detailed comments on changes their members wanted to see reflected in a final rule.

The FAA also considered the comments and questions of Members of Congress who wrote to the Secretary, to the Administrator, or to the docket regarding the NPRM or related matters; a variety of published interviews or articles on the exit row seating issue; studies; accident records; the record of a hearing before the Subcommittee on Aviation, Committee on Commerce, Science, and Transportation, United States Senate, on March 14, 1989; relevant news articles and videotapes, and information made available to the FAA regarding an evacuation test held by World Airways at the request of the NFB. The relevant materials were placed in the docket.

Since most of the comments came from the National Federation of the Blind (NFB), its affiliates, and members, the NFB's issues will be presented first, along with the positions of other commenters on these issues.

Discussion of the Issues

The NFB focused on seven specific issues in its formal comments within the two volumes it filed. The NFB's affiliates and individual members tended to comment on several of the seven issues, but not on all of them. The seven issues, however, really made three major points, so they are grouped together, as indicated below, to reflect this.

Whether the FAA Has a Genuine Evidentiary Basis for the Exit Row Seating Rule

This issue combines points 1, 2, and 7 of the NFB's formal comments that question whether the FAA has substantial evidence, flight safety evidence, or other evidence that there is a safety necessity for the NPRM. Basically, the NFB criticizes the evacuation study conducted by the Civil Aeromedical Institute (CAMI) of the FAA. Chiefly, the NFB criticizes the FAA for measuring blind persons only for their rate of movement from a given seat to the exit door or window; for not testing blind persons' capacity to perform other functions related to an emergency evacuation; for not limiting the test group to blind persons who are frequent fliers; and for using simulated blind persons in testing emergency evacuation through an over-the-wing exit. The NFB also alleges that the FAA's failure to issue a rule after completion of the CAMI study in 1973 shows that the study does not warrant such action.

The NFB also criticizes FAA's reliance on accident reports and other studies, stating that none of them show that blind persons ever caused an accident or slowed an evacuation. It alleges that in 1968 and 1976, blind persons actually were instrumental in the evacuation of passengers during aircraft emergencies. The NFB also alleges that an experiment the NFB conducted with World Airways in 1985 proves that exit row seating restrictions should not apply to blind persons. The NFB says that blind persons are capable of performing the functions that may be the responsibility of those persons sitting in emergency exit rows.

The Society for the Advancement of Travel for the Handicapped, whose former spokesperson also is blind, concurs in large measure with the NFB. The Paralyzed Veterans of America (PVA) comments adversely on the studies, stating that the FAA has not performed statistically valid tests on passengers with a variety of impairments, including old age, obesity, pregnancy, sobriety, and those related to various types of disabilities.

The criticism of the American Council for the Blind (ACB), another major organization with blind membership, is based chiefly on the limited number of functions tested by CAMI, but the ACB agrees with the FAA that it might not be feasible to test all the functions, especially those that could result in injury. It suggests additional testing and careful study of the World Airways experiment.

The aviation industry, conversely, supports the NPRM, the CAMI study, and the other data on which tha FAA based its proposal. The RAA finds the CAMI data "compelling." The ATA states: "The studies cited in the NPRM are persuasive, empirical evidence that what common sense tells us is true: to allow persons with known physical

deficits to sit in exit rows will impede the process." All the other aviation groups and organizations support the FAA findings directly or indirectly by focusing on the need for speed in initiating the emergency evacuation, the dangers of any delay in the beginning phases of an evacuation, and the wisdom of placing persons in exit rows who are not limited by a physical or mental disability.

In regard to additional testing of functions that might have to be performed during an emergency evacuation, none of the disability groups commented on the fact that the FAA invited representatives of disability groups to accompany FAA staff to a certificate holder's flight attendants' training facility to enable them to demonstrate the proficiency of persons with disabilities in finding mechanisms, opening doors, removing over-the-wing exits, responding to flight crew instructions, and other evacuation functions. None of the disability groups accepted this invitation. Representatives from the ATBCB and the Association of Flight Attendants, however, did participate.

The information available from this training program is instructive. In the training devices of this certificate holder alone, there are at least 11 types of doors or emergency exits, each of which requires varying degrees of strength and agility to open and each of which operates somewhat differently from the others. During the notice period, several FAA representatives visited another major certificate holder's training facility where similar observations were made. It is reasonable to conclude that, given the differences in operating instructions and techniques, sight also would play a major role in successfully opening the door or exit in a timely fashion.

Findings of CAMI Study

The CAMI study, conducted in 1973, was designed to assess the effects of handicapped passengers aboard an aircraft during an emergency evacuation. CAMI's project was undertaken in response to the Civil Aeronautics Board's (CAB) request for clear safety standards in this area. Basically, the position of the CAB in 1972 was similar to that of the FAA today. It recognized that handicapped persons were encountering inconsistent practices and policies in the provision of air carriage. The CAB recommended that appropriate actions be taken, looking towards the issuance of safety regulations on this pressing problem. "Flight Standards Technical Division Report on Air Transportation of Handicapped Persons," June 1973, p. 3.

As discussed further herein, the FAA elected not to regulate directly, in regard to exit row seating or other issues relating to the carriage of handicapped persons. Instead, by Amendment 121-133 (42 FR 18392; April 7, 1977) the FAA issued § 121.586 of the Federal Aviation Regulations (FAR), "Authority to refuse transportation," which allows air carriers to establish their own procedures for persons who may need assistance in an emergency evacuation.

In light of the FAA's experience under the current regulation, FAA finds that the CAMI research supports restrictions on exit row seating. A CAMI report on the subject states that:

> The average ambulatory handicapped passenger appears to possess adequate mobility for escape. He could be seated anywhere in the cabin except in an exit row or a primary overwing exit route * * *
>
> "Emergency Escape of Handicapped Air Travelers," Report FAA-AM 77-11, July 1977, p. 36. (A copy of this report was entered in the Regulatory Docket).

This report was prepared for possible publication in scientific journals and, therefore, includes certain observations and tests conducted by the researchers that are not contained in the 1973 report by the FAA's Flight Standards Service, "Air Transportation of Handicapped Persons," Project Report No. 73-740-120A. Although both reports are based on the tests conducted in 1973, only the 1973 report, which contains no direct conclusions on exit row seating, was available at the time Amendment 121-133 was adopted. The research does make a number of findings relevant to the seating of persons with disabilities in exit rows. The agency simply did not have available the full, considered opinions of the researchers at the time Amendment 121-133 was adopted. Among the research findings are the following:

> Persons with disabilities increased the exit time through floor-level exits in all cases, ranging from 3.9 seconds to 49.8 seconds. In the case of window exits, the increases ranged from 3.4 to 42.5 seconds.
>
> *Id.*, Tables 10 and 11, at 31 and 32.
>
> Although the time needed to evacuate anthropomorphic dummies was somewhat higher than would have been the case for most human beings, the times required by actual persons with disabilities also were greater than those of the able persons.
>
> *Id.*, at 29.

These findings are relevant because, if these delays occur at the beginning of an exit queue during an emergency, the effect will be felt throughout the entire evacuation flow, as traffic backs up.

Rapid aircraft evacuation is necessary, of course, due to the hazards of fire, smoke, explosion, and flooding in the event of an inadvertent water landing. It is vital, therefore, to minimize evacuation delays in every possible way. In the CAMI study, the researchers concluded that aircraft passenger seating location could be used to minimize the delays.

In the CAMI study, information for the study of seat location was drawn from a variety of tests. These included:

(1) An evaluation of individuals with handicaps, where individuals moved from one of three designated seat locations to a specific exit;

(2) Evaluation of handicapped passengers who required assistance to move to an exit;

(3) Evaluation of the evacuation of totally incapacitated passengers;

(4) Evaluation of the evacuation of grouped handicapped passengers;

(5) Evaluation of mixed group evacuations;

(6) Evaluation of the effect of exit configuration on evacuation; and

(7) A separate evaluation of the evacuation of a paraplegic subject. *Id.*, at 4 through 28.

Subjects were recruited from a variety of sources. Nonhandicapped subjects were FAA employees or were hired through the University of Oklahoma Office of Research Administration. Most handicapped subjects were recruited from participating organizations, such as the Oklahoma Foundation for the Disabled, the Oklahoma League for the Blind, the United Cerebral Palsy Rehabilitation Workshop of Greater Oklahoma City, and The Carver School. *Id.*, at 2.

One hundred sixty-two subjects, ranging in age from 15 to 84 years, participated. Eight had disabilities resulting from cerebral palsy; four from arthritis; three from polio; four from multiple sclerosis; two from muscular dystrophy; and five from birth defects. Eighteen were paraplegics; 2 were quadriplegics; and 15 were hemiplegics. Twelve were classified as elderly, either on the basis of age alone or on their physical condition. Their ages ranged from 55 to 84. Fifteen were totally blind. In addition, another person was classified as legally blind, and eight other persons were partially sighted. In addition, 22 normally-sighted persons performed as simulated blind passengers. Two were in casts and seven had fractures, amputations, or breaks that had mended poorly and affected their mobility. Seventeen had mental deficiencies and 7 had mental illnesses (depression or schizophrenia).

Two had no handicap and were capable of speed running. Four were obese, and four were deaf. *Id.*, appendix B.

Especially relevant to this rule are the results of the CAMI tests on group evacuations. The research team found that seating of handicapped passengers in a normal passenger population during normal flight conditions results in, at most, an occasional minor inconvenience to other passengers. They found, however, that under circumstances where the passenger cabin must be speedily evacuated, placement of the handicapped passengers becomes important.

Information for the study of seat location (for persons with non-sensory handicaps) was drawn from three test series: using an actual handicapped passenger in a passenger population of 24; using simulated handicapped passengers in a passenger population of 23; and using simulated handicapped passengers in a passenger population of 50. The simulated passengers were anthropomorphic dummies, to avoid injury to persons with actual disabilities.

Five tests involving the actual handicapped person, who required an assistant to carry him from the plane, showed that better evacuation times generally resulted when the handicapped passenger and his assistant were seated away from the exit. The implication of this finding is that evacuation times would be longer if the person were seated very near the exit, as in an exit row. This enabled the assistant to position the handicapped person on his back properly, without delaying passengers behind him and without experiencing difficulties himself, due to crowding and shoving. *Id.*, at 19.

In tests involving subjects simulating total incapacitation, one man assisting a fairly light dummy worked skillfully into the flow of passengers without delay. Evacuation of a 200-pound dummy from a seat near the exit was more difficult, and a delay of about 3 seconds resulted. *Id.*, at 19.

Placing the dummies at the farthest point from the exit, the extreme end of the passengar population, allowed the cabin attendant to establish a good evacuation flow immediately. The total evacuation of 23 live passengers took only 25.04 seconds. There was little delay in this test because most passengers were not detained by the action required to move the dummies and because their assistants had ample time to position them for transport while the forward line of passengers was evacuating. *Id.*, at 23.

When the simulated handicapped persons were placed in forward positions (i.e., nearer the exit), only 6 passengers (including 2 dummies) exited in the same time (20 seconds) that 17 passengers exited when the dummies were placed at the farthest point from the exit. *Id.*, at 23.

Passengers with upper limb and sensory handicaps had the least delaying effect on passenger flow times once their seatbelts were released. *Id.*, at 34. The tests, however, measured only their capacity to move from their seats to an exit under optimum conditions. To safeguard the subjects, none were asked to use evacuation slides. None were asked to open emergency exits and to perform the other tasks addressed in this rule, all of which are much more demanding than the relatively simple task of leaving a seat and moving forward to an exit without the dangers of flame, smoke, debris, and panic.

It was suggested by some persons that there may be little or no relationship between a passenger's rate of movement from a seat to an emergency exit and his or her ability to open the exit and perform the other functions stated in the proposed rule. The FAA requested commenters to provide copies of any study that supports that thesis, but none was submitted to the docket. The CAMI study does not point to that conclusion.

Videotapes of the experiments, copies of which have been placed in the docket, show the effect of various disabilities on movement from the passenger seats to the emergency exit doors. In many cases, it is readily apparent that the cause of slow progress, such as the immobilized arm of a stroke victim, also would affect the person's ability to open an emergency exit door.

The videotapes also show that some passengers with a fairly good rate of movement down an airplane passenger compartment aisle would have trouble, nevertheless, opening the emergency exit door. A paraplegic with strong shoulders and arms, for example, could drag himself or herself toward the exit but would not have the stability to stand and remain upright to operate the emergency exit door or emergency overwing exit mechanisms.

The tests revealed that evacuation of the control group (persons with no handicaps) consistently was faster than that of groups with handicaps of all types. Further, the evacuation time increased in all handicapped groups when the evacuation test involved a window exit rather than a floor-level exit. It is significant that this rather modest increase in complexity, from a floor-level to a window exit test, resulted in increased evacuation times.

It is logical to conclude that additional complexity, such as finding and manipulating emergency exit opening mechanisms, would impose additional burdens on persons with handicaps and cause delays.

Given the results of the tests, the researchers concluded that ambulatory handicapped passengers could be seated anywhere in the cabin except in an exit row or an overwing exit route, where he or she might impede the early stages of an evacuation or be injured by the rush of other passengers.

Further, the researchers also found that "if nonambulatory passengers are seated in a group, the group should be seated in the cabin so that they, and their assistants, would be at the end of a line of evacuees so as not to interfere with the evacuation of other passengers and to avoid crowding by other passengers during their preparation for evacuation." *Id.*, at 36. Clearly, this preferred seating position for nonambulatory persons is incompatible with sitting in an exit row, which by its nature is likely to be at the beginning of a line of evacuees.

It should be noted that seating "at the end of a line of evacuees" does not necessarily mean being seated at the back of the airplane or being the last person to evacuate. The location of the emergency exits determines the end of the line. Between a forward exit door and a window exit, for example, it is likely that two exit flows will develop—one toward the door and one toward the window. The break between the two flows will tend to come at midpoint between the two exits.

While it always is possible that one of the exits will become inoperable in an emergency, thereby changing the anticipated passenger flow, the FAA studies show that this rule promotes the expeditious evacuation of the greatest number of passengers.

The FAA reviewed scenes from a videotape, made at the time of the 1973 CAMI study, which shows actual, as well as simulated, handicapped persons, in the process of evacuating a simulated transport category airplane fuselage section. While the study's statistics provide ample evidence of the difference between the evacuation times of passengers with and without disabilities, the film provides very graphic evidence of the difficulties of movement associated with certain types of disabilities. This tape is also part of the rulemaking docket.

The FAA also reviewed a study completed in October 1970 by the Office of Aviation Medicine of the FAA, entitled, "Survival in Emergency Escape

from Passenger Aircraft." (Document No. AM 70-16). This document discusses human factors relating to survival in emergency escapes from passenger aircraft. Data was secured from three actual accidents, with a total of 261 passengers, 105 of whom lost their lives.

The accidents involved a United Airlines DC-8, which crashed during a landing at Stapleton Field, Denver; a United Airlines Boeing 727, which crash-landed at Salt Lake City Municipal Airport; and a Trans World Airlines (TWA) Boeing 707-331, which crashed on takeoff from Fiumicino Airport in Rome, Italy. The study, a copy of which was entered in the Regulatory Docket, deals in detail with the emergency evacuations; the behavior of the passengers; their seat locations, the age, sex, and other characteristics of the passengers; the causes of death or injury, and the effect of the crashes on the emergency exits.

This study concluded that:

> In aircraft accidents in which decclerative forces do not result in massive cabin destruction and overwhelming trauma to passengers, survival is determined largely by the ability of the uninjured passenger to make his way from a seat to an exit *within time limits imposed by the thermotoxic environment.*
>
> (Emphasis added) *Id.* at 57.

That is, it is crucial that people evacuate quickly before heat, flames, toxic fumes, or an explosion kill or injure them.

In addition, the FAA reviewed a "Protection and Survival Laboratory Memorandum," No. AAM-119-87-6, dated November 5, 1987, based on CAMI "Accident/Incident Bio-Medical Data Reports." This memorandum was placed in the rulemaking docket. At the time of the November 5, 1987, memorandum, the CAMI Cabin Safety Data Bank contained 3,382 entries. Of these, 132 pertained to problems of persons with handicaps or with characteristics that are likely to affect their ability to activate an emergency exit and to take the additional actions needed to ensure safe use of that exit in an emergency. The memorandum focused on 50 of these entries in the data bank. While information in such a document is subject to additional evaluation or change on review of the data, conduct of additional testing, or receipt of additional facts, the memorandum lends support to the CAMI conclusions regarding problems encountered by the disabled and others during evacuation. The FAA also reviewed the 50 entries individually. All included problems affecting persons with physical disabilities, the aged, children, the obese, and others having characteristics which could affect the evacuation process.

While the memorandum includes some reports of successful, rapid evacuation by persons with disabilities, the reports show rather dramatically that certain factors generally impede rapid evacuation—advanced age or extreme youth; parental responsibilities for minors; physical disabilities; obesity; injury or ill health; etc. Many of the persons impeded by these factors required the assistance of others to escape.

As a result of the studies and the other available data and information referred to herein, the FAA has concluded that it is more probable than not that persons with handicaps that prevent them from performing certain evacuation functions would be likely to impede emergency evacuation if seated in an exit row. This is especially true in an emergency where an exit row occupant is responsible for opening the exit. The data provide support for the FAA's conclusion that rulemaking is necessary to avoid the establishment or continuation of practices that are in derogation of the safety of all passengers.

The World Airways experiment, which was videotaped, has achieved considerable importance in light of the NFB's contention that it proves that exit row seating restrictions should not be applied to blind people. Since the NFB has not made the unedited videotape available either to the FAA or to World Airways, the FAA has relied on several eyewitnesses to the event. The eyewitnesses include two flight attendants and the managing editor of *Ninnescah*, a magazine that is published by an organization devoted to improving air travel for persons with disabilities. The flight attendants provided signed declarations, and the managing editor provided a copy of the issue in which he reported on the experiment. The FAA also studied the Report of a Senate Subcommittee on Aviation hearing held on exit row seating in Washington, DC, on March 14, 1989. At the hearing, the NFB leader, Dr. Kenneth Jernigan, discussed certain aspects of the experiment. These materials were entered in the docket.

After studying these materials, the FAA cannot agree, for the following reasons, that the World Airways exercise constituted a scientific experiment or valid study for the support of the NFB's position:

(1) There was no testing protocol;

(2) There appears to have been no pre-arrangement regarding the matter of neutral observers or instructions on what and where to observe;

(3) No formal report was issued;

(4) The only published report was written as a magazine article from memory or informal notes 2 years after the exercise;

(5) There was confusion as to the purpose of the NFB visit to the World Airways airplane; and

(6) practice sessions were used by the NFB to open the exit.

Other information which refutes the NFB's contention that the World Airways experiment proves that blind persons can perform the functions that may be the responsibility of persons seated in emergency exit rows include problems reported by the flight attendants who participated. These included the inability of the group to form a double line; hesitancy to jump without being pushed out; insistence by a woman with a guide dog that she be allowed to sit down, holding the dog, instead of jumping without it; inability to leave the slide rapidly at the bottom; and failure to catch some passengers when blind persons assisted at the bottom of the slide. One flight attendant reported that she was in danger of being shoved out of the exit due to her need to move forward to push some of the evacuees in order to make them jump

The managing editor and the flight attendants reported in depth on a second evacuation, with the blind persons holding their canes, that had to be aborted due to the danger posed by the canes to flight attendants, other passengers, and the assistants at the bottom of the slide.

In addition, practice sessions were used by the NFB prior to opening the door. One flight attendant reported on the difficulty of briefing blind persons and of translating such terms as "red" and "white" tabs and "short" and "long" handles for persons without sight. In her briefing, she specifically pointed out that there were certain things they would not be able to do without the aid of a sighted person.

Finally, the exit row seating proposal contemplates aircraft evacuation performance by passengers, with or without the help of a flight attendant. In the World Airways experiment, flight attendants and other World Airways aircraft evacuation employees were involved in all of the evacuation processes.

In sum, the World Airway experiment had none of the scientific planning, controls, measurement, or analysis of the CAMI study on which the FAA relies. In the World Airways experiment, it appears that only one person actually opened an emergency exit door, and then only after repeated

practice. Only a limited group assisted at the bottom of the emergency exit slide, and no one opened an over-the-wing exit.

The question has arisen as to whether certificate holders should ensure that at least one seat is occupied in each emergency exit row. The FAA does not believe that such a requirement is necessary. Nearby passengers who are able to perform the necessary functions could move into an empty row rapidly to perform the necessary functions.

Some commenters suggest that the seats in all exit rows be removed or the aisles widened. The FAA does not believe that either approach would remove the need for positioning persons capable of performing the necessary functions near enough to the emergency exits to perform the evacuation functions that may be required.

Following are additional NFB comments:

Whether the FAA's Exit Row Seating Proposal Discriminates Against Persons With Disabilities, Especially the Blind

The NFB's 3rd, 4th, 5th, and 6th points are interrelated in that all deal in some manner with discrimination. Succinctly stated, the NFB contends that exit row seating restrictions for blind persons: (a) are contrary to the Air Carrier Access Act of 1986; (b) promote unlawful discrimination against the blind: and (c) result in a disproportionate restrictive impact on blind persons as compared with sighted persons.

Many of the individual blind commenters and the affiliates of the NFB appear to be under the impression that the NPRM singled out blind persons in regard to exit row seating restrictions. This same theme appeared in the official NFB comment and is difficult to understand, given the scope of the NPRM and the many other persons and types of disabilities covered. All organizations representing blind persons were notified that the NPRM and its related documents were available on audio cassettes for taping. It may be that some of these commenters were not made aware of that fact.

In varying degrees, the other disability groups concur that the proposal is discriminatory. They base this view largely on the fact that unseen disabilities will allow persons to sit in exit rows, while identifiable ones will not. The NFB also feels that blindness is not a disability and that it is discriminatory for the FAA to include blind persons in the category of "disabled." If this position were to be accepted, however, blind persons would be denied the protection of laws, such as the ACAA, that prohibit discrimination against persons with disabilities.

The aviation community and other groups and individuals supporting the NPRM strongly disagree that exit row seating restrictions are discriminatory. One group of 12 individual signatories writes:

> Some of us would probably be denied seats in an exit row under the proposed rule, due to age and/or questionable strength to handle an over-the-wing emergency door. We do not consider such denial 'discrimination.' On the contrary, in an emergency we would welcome being relieved of the responsibility for the prompt and safe evacuation of our fellow passengers. We plan when making future reservations by phone, mail, or through a travel-agent, to indicate that we do not want to be seated in an exit row.

The ATA's comment makes it clear that the ATA considers exit row seating a safety issue. It enclosed editorials from the New York Times and Aviation Week and Space Technology, both of which disagree that discrimination is involved.

The comments concerning discrimination were analyzed by the FAA in light of the ACAA and the Rehabilitation Act, both of which prohibit discrimination on the basis of handicap, and in light of relevant case law. The Air Carrier Access Act of 1986 (Pub. L. 99–435, October 2, 1986) prohibits discrimination in air transportation on the basis of handicap. The ACAA also requires that measures taken to eliminate such discrimination take into account the safety of all passengers. Specifically, it provides:

> (c)(1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.
>
> (2) For the purposes of paragraph (1) of this subsection the term "handicapped individual" means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.
>
> * * * * *
>
> Sec. 3. Within one hundred and twenty days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with the safe carriage of all passengers on air carriers.

In order to formulate regulatory proposals implementing the ACAA, the Secretary of Transportation formed an advisory committee consisting of representatives from groups of persons with disabilities, the Government, and the air transportation industry (52 FR 19881; May 28, 1987). The Committee began meeting on June 3, 1987, under the guidance of the Federal Mediation and Conciliation Service and was scheduled to present its recommendations to the Secretary in December 1987.

The Committee was unable to reach a consensus regarding a recommendation on exit row seating, which had been an issue of some concern to the Committee. Consequently, the Department (OST) had the responsibility of proposing its own provision on this subject, which it did in a notice of proposed rulemaking (NPRM) published June 22, 1988 (53 FR 23574). Concerning exit row seating, that NPRM proposed that carriers be prohibited from excluding persons from any seat on the basis of handicap, except in order to comply with an FAA safety rule. This rule is an FAA safety rule within the terms of the ACAA NPRM. This final rule, amending 14 CFR Parts 121 and 135, places restrictions on exit row seating on the basis of neutral, nondiscriminatory criteria applicable to all passengers. The statutory authority for Part 121 is 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S C. 106(g) (Revised Pub. L. 97–449, January 12, 1983). The statutory authority for Part 135 is 49 U.S.C. 1354(a), 1355(a), 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Exit row seating has been the subject of FAA rulemaking in the past. In Notice 74–25 (July 2, 1974; 39 FR 24667), the FAA proposed a regulation, § 121.584, which would have provided that a handicapped person capable of traveling alone (e.g., a blind or a deaf person) could not be denied transportation so long as the person could be seated in any seat other than:

> The two seats nearest an exit, and any seat in a row immediately adjacent to an exit with the exception of the farthest seat from the exit in that row.

In other words, the two seats nearest an exit would have been unavailable to all handicapped persons in all cases, and other seats in an exit row would have been unavailable as well, depending on the length of the row, with the exception of the seat farthest from the exit.

That proposal was not adopted. The FAA chose instead to adopt in Amendment 121–133 a rule allowing each certificate holder to develop procedures appropriate to its own operations and aircraft. The FAA, however, issued an advisory circular (AC 120–31; March 25, 1977, the same date as Amendment 121–133) to assist certificate holders in developing their own procedures, which provided

guidance on seating. Paragraph 9 of the advisory circular states:

9. *SEATING HANDICAPPED PASSENGERS.* FAA's Civil Aeromedical Institute has conducted research to determine where handicapped passengers should be seated in an aircraft operated under parts 121 and 135 so that, in the event of an emergency evacuation, they can leave the aircraft, either unassisted or assisted, by the safest and most expedient route while not slowing the evacuation.

a. Those nonambulatory handicapped passengers should be seated in aisle seats where they would be near the end of lines of passengers being evacuated through floor-level, nonoverwing exits. Tests revealed that due to the narrow aisle width, an accompanying attendant trying to lift the handicapped person would temporarily block the aisle and hinder other passengers attempting to evacuate. Once the mainstream of evacuating passengers has passed, the attendant and the handicapped passenger can normally catch up to the flow since there is a bunching at the exit. Two nonambulatory passengers with attendants should not be seated directly across the aisle from each other because their attendants would interfere with each other while attempting to remove the nonambulatory passengers from their seats.

b. To determine the amount of assistance nonambulatory passengers will require to evacuate the aircraft, an agent should first ask the passengers what their capabilities are. If there is some question as to whether an individual is ambulatory or nonambulatory, the agent may ask him to perform a simple test such as transferring from a wheelchair, unaided, to another seat. Additionally, the passenger may furnish evidence of his capability, such as a driver's license or a statement signed by a qualified professional person (e.g. a physician or physical therapist).

c. Ambulatory handicapped passengers should be seated in areas in which evacuation would normally occur through a floor-level, nonoverwing exit.

The FAA's intent, in issuing this advisory circular, was that carriers would adopt reasonable seating policies consistent with the FAA's advice and consequently, to a significant extent, consistent with other carriers' policies.

The FAA's experience, including a review of a large number of carrier policies carried out in connection with the work of the advisory committee, suggested that FAA's intent had not been realized fully. Some carriers had not established seating policies fully consistent with the advisory circular. Carrier policies appeared to be inconsistent with one another in a number of cases.

Further, information available to the advisory committee showed that certificate holder personnel, in excluding persons from exit row seats, may have done so in the mistaken notion that an existing FAA regulation required it or may have alluded to a non-existent regulation to "settle the argument." This, in turn, led to increased pressure from persons with disabilities to remove restrictions on seating handicapped persons in exit rows. Under these circumstances, the FAA determined that it was necessary to consider regulatory requirements concerning exit row seating.

The need to review and reconsider the FAA position was heightened by the provision of the ACAA NPRM, referred to above. Concerning seat assignments, proposed § 382.31 states:

> Carriers shall not exclude any person from a seat in an exit row or other location or require that a person sit in a particular seat, on the basis of handicap, except in order to comply with the requirements of an FAA safety regulation.

This formulation contemplates consideration of an FAA proposal on this subject. Unless the FAA promulgated a safety regulation on exit row seating, the proposed provision of the rule implementing the ACAA would abolish all air carrier seating policies in effect, and it would prohibit the institution of new ones, regardless of valid safety considerations. For all the foregoing reasons, the FAA determined to reexamine the issue of exit row seating from the standpoint of both discrimination and safety.

Whether the FAA Exit Row Seating Rule Will Compromise Air Safety

The NFB believes: (1) That it would be safer to populate exit rows with blind persons than with persons who imbibe alcoholic beverages, and (2) that blind persons perform better in the dark than sighted persons and thus could be more effective than others during an emergency evacuation.

The blind community is joined by the ATBCB in identifying the service of alcohol in exit rows as a problem. The comments, generally, discuss alcoholism as an abstract problem, rather than accounts of actual experiences with inebriated passengers. The NFB's submissions do include an article published in the "Braille Monitor," on this topic. The article includes, among other things, statistics on the amount of liquor sold on air carriers; comments by a spokesperson for AFA on drinking as a problem on air carriers; and the results of blood alcohol level tests of passengers after an emergency landing by an Air Canada DC-9 in 1983. The ATA comments that its members believe that sufficient protection would be provided by current § 121.575 of the FAR, which prohibits boarding inebriated persons or serving alcohol to those who become inebriated while on board, and by the proposed exit row seating rule. In addition, this exit row seating rule applies to *all* persons who appear incapable, for whatever reason, of performing the functions necessary during an emergency evacuation. If a crewmember has reason to suspect that a person is inebriated, even if he or she is not showing easily discernible signs of such inebriation, the crewmember will have the authority to refuse to seat the person in an exit row or to move that passenger to another seat. In view of these authorities, the FAA does not believe that further restrictions are necessary at this time. The FAA will consider carefully, however, any evidence brought to its attention regarding this issue in the future and take such action as may be necessary.

The NFB's argument regarding the performance of blind persons in a smoke-filled or otherwise totally-dark cabin may have some merit. It appears to be based on the assumption, however, that darkness is the rule rather than the exception.

Most of the aviation organizations that commented focus on the need to see external fires as one of the important functions that must be performed. Such fires provide light, as do daylight, floor lights, door lights, and airport lights. Even in smoke-filled cabins, it often is the case that a glimpse of light finally leads people to safety. The NFB cites two instances in which blind persons ostensibly led others to safety in emergency evacuations. The FAA has insufficient information on the conditions of the evacuations, the locations of these two individuals on board the aircraft, the extent of their disabilities, etc., in order to form a judgment. Even conceding that these two individuals performed heroically, however, the FAA believes that two actions cannot outweigh the clear advantage of sight in most evacuations.

This was illustrated dramatically during the NBC "Today Show," July 20, 1989, when two survivors of the recent crash of United Air Lines Flight 232 were interviewed. When the DC-10 crashed, en route from Denver to Chicago, it burst into flames, and smoke filled the cabin. Eventually a glimpse of light enabled one of the interviewed passengers to make his way out of the aircraft.

The same passenger, by spotting an external fire, decided not to open an exit that would have admitted the smoke and/or flames into that part of the cabin. A second passenger was responsible for leading to safety two other passengers, including a woman who had arrived in a wheelchair but had

some mobility. A videotape of these interviews was entered in the docket, along with other comments and documents that were late, but which the FAA was able to take into consideration.

It is the view of the FAA, therefore, that this rule does not compromise safety as alleged by the NFB but carries out the concern of Congress that safety not be sacrificed in the course of implementing the ACAA.

While the ACAA protects the civil rights of handicapped persons, it also by its terms mandates continued concern for safety. The legislative history amplifies the safety theme. The Senate Report focused on this issue at several points. It states that the statute "does not mandate any compromise of existing DOT or Federal Aviation (FAA) safety regulations." Sen. Rept. 99–400, August 13, 1986, p. 4. The FAA's existing rules allow carriers to establish their own procedures for persons who may need assistance in an emergency evacuation (§ 121.586 of the FAR), but they do not cover specifically the role of exit row seating in air safety. Consequently, the FAA found it necessary to address the issue directly. In drafting this final rule to regulate exit row seating, the FAA remained mindful of both the words of the Act and the expressed Congressional intent regarding safety and civil rights.

The FAA notes, for example, that the Senate Report states that it was intended that certificate holders will not "impose upon handicapped travelers any regulations or restrictions unrelated to safety and unrelated to the nature and extent of any individual's handicap." *Id* at 4. This rule is wholly consistent with the ACAA.

It is clear that the principles enunciated by the courts with respect to discrimination under Section 504 of the Rehabilitation Act apply to the ACAA. The legislative history shows that Congress passed the ACAA specifically to close a gap in the Rehabilitation Act. During consideration of the Senate bill, S. 2703, Senator Dole stated specifically that the purpose of the legislation is to "overturn the recent Supreme Court decision in the case of Paralyzed Veterans of America versus the Department of Transportation. This case, which was handed down by the high court in the closing days of its spring term, held that section 504 of the Rehabilitation Act of 1973 'is not applicable' to U.S. carriers, except for those few small regional carriers who receive direct Federal subsidies." Congressional Record, August 15, 1986, at S11784. Senator Alan Cranston and Senator Howard M. Metzenbaum also addressed this point. *Id.* at S11787.

Similarly, in discussing the House version of the bill, H.R. 5274, Congressman John Paul Hammerschmidt stated:

> Unfortunately, our efforts on behalf of the handicapped were set back by the recent Supreme Court decision in the case of Paralyzed Veterans of America versus DOT. In that case, the Court decided that the Rehabilitation Act, which prohibits discrimination against the handicapped, did not apply to [unsubsidized] air travel * * *

Congressional Record, September 18, 1986, at H7193.

Congressman Gary L. Ackerman expressed similar intent:

> As you know, Mr. Speaker, last summer I introduced similar legislation to amend the Federal Aviation Act immediately following the Supreme Court ruling that major airlines cannot be forced to comply with the Rehabilitation Act because they do not receive direct Federal assistance.

Id., at H7194.

Given this recognition of the interrelationship between the Rehabilitation Act and the ACAA, logic requires that the standards set by the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979) and in *Alexander* v. *Choate*, 469 U.S. 287, 105 S. ct. 712 (1985), regarding "reasonable accommodation" and "meaningful access" under Section 504 of the Rehabilitation Act, apply to the ACAA as well. The exit row seating restriction established by this rule is narrowly defined and does not constitute a barrier to meaningful access to air carrier transportation.

In addition, the rule is in accord with other governing judicial decisions. The Supreme Court has held that nondiscrimination on the basis of handicap does not require the imposition of undue financial and administrative burdens, nor does it require modifications that would result in a fundamental alteration of the nature of a program. *Southeastern*, 3 at 405; *American Public Transit* v. *Lewis*, 665 F.2d 1272 (D.C. Cir. 1981). In *Alexander*, the Supreme Court again examined the extent of accommodation required for persons with disabilities, finding that in *Southeastern* a balance was struck between "two powerful but countervailing considerations—the need to give effect to the statutory objectives and the desire to keep Section 504 [of the Rehabilitation Act] within manageable bounds." *Alexander*, at 299.

The Supreme Court concluded in *Alexander* that "the balance struck in *Davis* [*Southeastern*] requires that an otherwise qualified handicapped individual must be provided with *meaningful access* to the benefit that the grantee offers * * * to assure meaningful access, *reasonable accommodations* in the grantee program or benefit may have to be made." (Emphasis supplied.) *Alexander*, at 301.

These principles and section 3 of the ACAA require carriers to ensure meaningful access to air transportation and the FAA to consider the potential safety impact of seating policies that are necessary for transporting passengers with the maximum degree of safety. Banning all persons with disabilities from particular seats, or requiring all disabled persons to sit in particular seats, would be unlawful discrimination because such a policy would be overbroad or unreasonable; but the exclusion of persons with certain disabilities from the seats covered by the rule for legitimate safety reasons does not deprive them of "meaningful access" to air carrier transportation. Exit rows provide only a small fraction of the available seating in the air carrier fleet. The rule does not bar any person from a seat unless that seating location adversely affects his or her safety or that of other passengers. It is the intent of the rule that a person with a disability not be denied transportation as a result of the safety restrictions established by the rule. There is a remote possibility, however, that such a denial could occur. Denial of transportation conceivably could occur when the aircraft configuration is such that, due to the nature of the person's handicap, the only seat which can physically accommodate the person is one that is covered by the rule. Such a situation is most apt to involve a small aircraft having only one exit. In such circumstances, there is often no flight attendant, and the need for a passenger to perform the emergency functions set forth in the rule is vital.

The FAA also received many technical comments from both the disability and the aviation groups. Some issues were raised only by one type of group, without comment by the other, depending on the vantage point or orientation of the commenter. The disability and the aviation issues are presented below.

Whether a Solution Can Be Found by Removing All the Seats in Exit Rows

Many persons who opposed the NPRM would not oppose removal of the exit row seats to enhance safety. These commenters do not specify what should be done about the other rows nearest the exits. There would remain the question as to whether seating

restrictions should be applied to those rows, if the exit row seats were removed. If nearby rows were not restricted, it is conceivable that their occupants would not be the persons with the greatest potential for assuming successfully the emergency evacuation duties.

Whether a Solution Can Be Found By Leaving All Exit Row Seats Vacant

A number of persons who oppose the NPRM would not be opposed to leaving all exit row seats vacant. There still would remain the question as to whether seating restrictions should be applied to other rows. The aviation industry did not raise or comment on this issue.

Whether the FAA Should Concentrate on Studying Seat Configurations, Aisle Widths, the Number of Seats, Door Mechanisms, and Other Factors That Affect Evacuations, Rather Than the Abilities of Persons With Disabilities to Lead an Evacuation

The ATBCB and several disability groups recommend that the FAA find other ways to ensure rapid emergency evacuations, such as improving seating configurations and other factors, instead of focusing on restricting persons with disabilities. One commenter recommends strongly that the FAA require seats to be reversed to face the aft section of the aircraft, claiming that this configuration has been proved safer. A recent article in "FAA World," by a president emeritus of the Flight Safety Foundation, addresses this point, indicating that it is questionable that backward seating enhances safety sufficiently to offset other dangers and discomforts which would arise. A copy of this article was entered in the docket.

The AFA, on the other hand, credits the FAA with its overall concern for passenger survivability, stating: "[W]e believe that the FAA's proposal to regulate exit row seating is non-discriminatory, as well as long overdue. It is nondiscriminatory because the agency is not singling out one aspect of cabin safety to raise to a high standard, while leaving the rest at some modest level." The AFA mentions specifically the following recent or current FAA rulemaking projects: requirements for seat fire-blocking layers; new flammability rules for the entire cabin interior; new seat strength standards for new aircraft types; floor-level lighting; automatic fire extinguishers in lavatories; new carry-on baggage rules; new requirements for cargo liners; the placement of better seats on existing aircraft; fire extinguishers in cargo compartments that currently lack them; and a maximum distance restriction between exits. As the AFA has indicated, the FAA is addressing a wide spectrum of cabin safety problems, and it will continue to do so. The FAA believes, however, that exit row seating constitutes one of these problems and warrants attention at this time.

Whether Passenger Information Cards Should Be Made Available in Braille, on Tape, or in Large Print

The ACB and some blind individuals recommend the provision of passenger information cards in Braille and in large print, regardless of whether blind passengers sit in exit rows, in order to facilitate their emergency evacuation. This suggested action also is outside the scope of the NPRM. It is the understanding of the FAA, however, that some air carriers already are carrying a limited number of Braille cards to make available to blind passengers. Further, a conference held by the FAA on aircraft occupant safety in November 1988 resulted in a recommendation for improved communication of safety information to blind or otherwise handicapped passengers. Although action on this would be outside the scope of the NPRM on exit row seating, the FAA intends to support improved communication and the availability of a certain number of Braille cards through an advisory circular.

Whether Written Procedures for Making Determinations Regarding Exit Row Seating Should Be Available in Braille, Large Print, and on Cassettes at All Loading Gates and Ticket Counters, Along With Information on How Aggrieved Passengers May Appeal to the FAA

The ACB proposes the above. The ATA, conversely, objects to any requirement to maintain written copies of procedures at all passenger loading gates and ticket counters, stating that the cost of complying with this requirement would far outweigh the potential benefit. As an alternative, the ATA suggests that written copies of any sort should be maintained at a central location. The RAA also proposes that copies should be maintained at a central location, namely, where the contract of carriage is kept. Neither the ATA nor the RAA addresses the issue of procedures in Braille, large print, or on cassettes.

At the regulatory negotiations relating to the ACAA, representatives from disability groups voiced their strong concern and frustration regarding the general unavailability of the procedures and information affecting air transportation for persons with disabilities. The FAA believes their comments and similar ones received in response to the NPRM have merit.

The FAA recognizes that, in general, it is satisfactory and certainly more economical to maintain the various procedures and other documents relevant to an air carrier's operations in a central location. The FAA believes, however, that the rule lends itself to relatively simple procedures which can be reproduced at minimum cost and made available to interested persons at the gates and counters.

Whether the Procedures Will Require Testing or Quizzing and Medical Expertise on the Part of Air Carrier Personnel or Crew

Both the ATA and the RAA comment that the NPRM seems to call for quizzing or testing passengers as to their capacity to perform the emergency evacuation procedures. They state that this would require medical expertise on the part of the air carrier personnel or crew, since they would have to evaluate the responses of the passengers. The ATA and the RAA also state that quizzing or testing would be demeaning and embarrassing to the passengers. The view of the ATA and the RAA is that air carriers should be required only to make reasonable decisions based upon observation.

The FAA agrees that quizzing or testing passengers as to the state of their mental or physical disabilities and their capacity to perform the evacuation functions would impose an undue burden on the air carriers. In drafting the NPRM, the FAA did not envisage such procedures. It is clear that even a full-scale physical and mental examination would not be foolproof. A person in excellent health could faint with fright during an emergency. Athletes with no record of illness have been known to suffer heart attacks. Strokes can occur with little or no warning.

This rule cannot guarantee that exit row passengers will be able to perform the necessary functions. It only can maximize the chances for selecting persons most able to begin and lead an emergency evacuation. Further, it must do so in a practical way—a way that can be implemented in the midst of a busy airport, with a multitude of passengers waiting in line or boarding, and with schedules to meet.

The FAA also concurs with the ATA and the RAA that most quizzing and testing would embarrass passengers. The FAA believes, however, that there may be a few situations where some

minimal questioning would be appropriate. If there is doubt regarding a person's capacity to hear, speak, or understand the English language, flightcrew or other personnel could ask a simple question. This would not involve a medical determination. Questions of this nature simply would ascertain a fact. They should prove no more embarrassing than queries as to whether a certain piece of luggage will fit beneath the seat or whether a person's seat belt is fastened.

The FAA does not anticipate, therefore, that a carrier's procedures for selecting exit row occupants will include detailed standards regarding the physical or mental abilities of passengers. It is the FAA's view that the rule is sufficiently explicit regarding the criteria for selection and the functions to be performed to allow the air carriers to make determinations based upon reasonable observation.

The procedures must contain, in addition to the selection criteria and the functions to be performed, as set forth in the rule, information on when and by whom the determinations will be made; identification of the office or person to whom to complain in the event of a disagreement; how moves to other seats will be handled; and other similar aspects of the process.

The FAA intends to provide detailed guidance on these aspects of a carrier's procedures, but it assumes that determinations will be made largely on the basis of observation and perhaps on some simple questions as discussed above.

Whether Passengers Who Are Seated by Mistake in Exit Rows Should Be Moved

The ACB raises the issue of reseating, but its comments are not entirely clear. It states initially that § 121.585(k) of the FAR "should be clarified to make it crystal clear that determinations once made by a carrier employee to assign a passenger to an exit row seat will not be changed, if the passenger prefers to keep that seat."

The ACB also states, however, that "If this rule is adopted and if a blind person is assigned to such a seat by mistake, the carriers must be forced to correct the mistake in the most discreet, courteous, and sensitive manner."

The ACB also states: "We believe that if a blind person is moved from an exit row seat against his will and it is not possible to place him in a comparable seat on the same plane, he should be compensated to the maximum possible extent *vis-a-vis* reaccommodations on the next flight, cash payment, and payment for consequential damages."

Objection to movement was universal on the part of those who commented on this, but for different reasons. The handicapped groups cite humiliation and discrimination. The industry groups cite delay or movement at an inappropriate and dangerous time, such as after the plane has started taxiing or before the captain permits unfastening seat belts after takeoff. The ATA comments on some loss of control over passengers, where the movement results from a passenger's decision to "opt out" of an exit row (whether based on health, fear, or unwillingness to perform emergency evacuation functions).

The ATA also objects to reseating on the basis that this would require "testing" on the part of the flight attendants, rather than the use of best efforts to keep out of exit rows those passengers who do not appear to be able to perform the functions required. It states that subsequent moves, coupled with the movement of persons who themselves "opt out" of the exit row seating, could result in tremendous delays.

The ATA points out that on an average day, more than 18,000 commercial passenger flights carry 1.25 million passengers. If an average of 10 passengers on each flight must be evaluated and if only 3 minutes are spent confirming their qualifications or reseating them, the total time spent complying with this requirement would be 9,000 hours per day.

The RAA also comments unfavorably on the movement of persons that may be seated in exit rows erroneously, but it supports "opting out," if done prior to takeoff.

In regard to its objection to allowing persons to "opt out," the ATA believes that persons should not be given this option, since it believes some persons may use this simply as an opportunity to obtain another seat more to their liking and will delay other passengers unnecessarily.

The RAA suggests that "opting out" should occur prior to entering the plane. It suggests that briefing cards be given to exit row passengers by the ticket agent. If, after reading the briefing cards, passengers do not wish to sit in the exit rows, they would be issued new seat assignments at the gate, minimizing the need for onboard reseating. The RAA points out that this also would eliminate the need for a lengthy oral briefing to the general passenger population. The RAA suggests that flight attendants or the second officers could collect the cards when the final cabin check is made.

The FAA concurs that onboard reseating should be minimized and believes the RAA suggestion should be followed whenever possible. Clearly, this would provide maximum control and eliminate delays in most cases. The exceptions would be cases where persons have second thoughts after enplaning, where persons attempt to hide disabilities, or where persons believe their disability to be inconsequential, even though the air carrier does not.

In these cases, and in all others where the air carrier notes that an error has been made, the passenger should be moved prior to takeoff, if at all possible. If taxiing has begun or takeoff already is underway, this rule does not require that the passenger be moved. Obviously, this would create dangers as great or greater than allowing the person to remain in place until the craft is airborne. To some extent, the crew's discovery of the problem already will have ameliorated some of the danger. They can remain alert in regard to the location of the problem until they are airborne; they can prepare the passenger to move; and they can alert another passenger to be ready for a seat exchange.

In regard to lengthy oral briefings, the FAA concurs that these might be counter-productive. A brief reference to the special cards in the exit rows, regarding the emergency functions to be performed, should suffice, if delivered with appropriate emphasis. Such emphasis already is being given to limiting carry-on luggage to two pieces and to stowing it completely under the seat or in the overhead compartment. Some air carriers already are asking persons to forego conversation or reading during the briefing and to look at the cards or a video while the flight attendant reviews the safety features as a whole.

Whether the FAA Should Consolidate This Rulemaking With a Rulemaking Pursuant to the ATA/RAA Petition for Rulemaking on Limiting the Number of Passengers With Disabilities and on Requiring Attendants for Passengers with Certain Disabilities

The ATA and the RAA petitioned the FAA to consolidate the exit row rulemaking with rulemaking regarding two issues: (1) limiting the number of passengers with certain disabilities that could be carried at one time on any given flight, and (2) requiring assistants for passengers with certain disabilities.

This is a very specific rulemaking concerning a specific safety issue that the FAA has identified. It would be well beyond the scope of this rulemaking to consider other, far broader issues raised in the ATA and RAA petitions. The

issues of refusal of service (including number limits) and attendant requirements are being considered as part of the rulemaking implementing the ACAA, in which ATA's and RAA's extensive comments are being fully taken into account. Consequently, it would be inappropriate to consider these issues as part of this rulemaking.

Further, the CAMI study demonstrates that any form of disability increases the exit time of an individual and can increase the overall exit time of the passengers as a whole. The salient question then becomes: "What practical steps can be taken to ensure that both the able and disabled passengers complete the emergency evacuation in the least amount of time possible?"

The FAA, after full analysis of the problem, believes that one practical step is to establish exit row seating restrictions. The exit row functions are definable, clear-cut, and absolutely essential to the emergency evacuation process. Even if an exit becomes unusable, this does not alter the need for capable passengers in that row to identify that the exit *is* unusable, to redirect other passengers, or to lead the way to another exit. When considering the factors that affect emergency evacuations, exit row seating is a variable that consistently remains of prime importance. It always will impact upon the capacity of all passengers to evacuate the airplane. Only if *all* the passengers in *all* the exit rows become incapacitated or if *all* exits become unusable will the requirement be moot.

In contrast, the presence of attendants and limitations on the number of persons with disabilities constitute variables of less demonstrable significance. It is possible to demonstrate conclusively that the inability to open an exit door always will affect other passengers. It is not possible to demonstrate conclusively that the presence of an attendant always will affect positively the egress of other passengers. The attendant may fail to assist his or her disabled companion, who may or may not then block other passengers. Able passengers, who were not required to have attendants upon boarding, may be injured and become disabled by virtue of the accident itself. A non-working exit door may alter the flow of traffic and affect the attendant's ability to move a disabled companion without blocking others. The attendant, in fact, may become disabled.

In short, while it is certain that exit row seating will influence the overall speed of the evacuation, it is conjectural that the presence of one or more attendants will do so. The FAA recognizes, of course, that attendants may be necessary to assist persons with certain disabilities in the course of ordinary activities, such as eating, stowing carry-on baggage, taking medication, or moving about the aircraft. That is a service question, however, and not a safety one.

It is somewhat less conjectural that the number of passengers with disabilities will affect the evacuation rate, but the FAA believes that limitations may not be feasible, except where the size and configuration of the aircraft demand them. The right to travel has been interpreted by the courts to be constitutionally protected. As already discussed, the law also requires meaningful access to air transportation for persons with disabilities. In the case of exit row seating, the right to travel is not infringed, and meaningful access is assured. Further, the exit row seating restrictions apply not only to persons with disabilities, but to parents with small children, obese persons, pregnant women, the elderly frail—a wide spectrum of the passenger population. It could be argued that persons in these categories, therefore, also will affect the speed of evacuation and should be restricted by number.

Clearly, it is not desirable to limit air travel to adults in the prime of their lives, both from the standpoint of age and health. Even limitations short of that would require, in the estimation of the FAA, concrete evidence of detriments to safety that require restrictions on the right to travel. This was not produced during the NPRM comment period. If such evidence is brought to the attention of the FAA, it will reopen the question.

Whether Additional Testing Should Be Undertaken by the FAA, Regarding Attendants and Number Limitations

In 1986, the Office of Science and Technology Policy (OSTP), Executive Office of the President, published a notice regarding a "Proposed Model Federal Policy for Protection of Human Subjects," as a response to the First Biennial Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (51 FR 20204; June 3, 1986). The OSTP's response was made on behalf of all the affected Federal agencies, including the Department of Transportation, which had concurred with the Model Federal Policy. *Id.*, at 20216.

While the OSTP has not as yet issued a final statement of policy, the Department of Transportation has voluntarily adopted the principles of the proposed model Federal policy. With certain exceptions not relevant to this discussion, the policy applies to all research involving human subjects conducted, supported, or otherwise subject to regulation by any Federal department or agency that takes appropriate administrative action to make the policy applicable to such research. The Department of Transportation has not taken formal action to make the policy applicable; but, as stated above, it has concurred with the policy.

In brief, the policy calls for careful review of all proposed research involving human subjects, to make certain that:

(1) Risks are minimized;

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to the subjects;

(3) Selection of the subjects is equitable;

(4) Informed consent has been given by each subject or the subject's legally authorized representative, and the informed consent is appropriately documented;

(5) The data collected will be monitored to ensure the safety and privacy of subjects; and

(6) Subjects likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons are afforded additional safeguards to protect their rights and welfare.

In view of this, the FAA has not performed studies that replicate certain types of external or internal hazardous conditions. The FAA has not performed studies that include a panic situation in an emergency evacuation, nor has it sponsored competitive emergency evacuations.

In Great Britain, on the other hand, competitive emergency evacuations are performed for experimental purposes. In effect, volunteer "passengers" are rewarded financially for being first to exit the plane or for escaping within a given time. Persons are encouraged to perform as they would during an actual emergency.

Behavior under such circumstances can be extreme. Unlike the orderly progress toward exits required in FAA experiments, competitive emergency evacuations can and do include shoving, screaming, climbing over other passengers, etc. Common sense indicates that under such conditions, volunteers can be injured, especially if physical or mental disabilities add to their vulnerability.

The FAA believes that the end result of such competitive testing would not differ, except in degree, with studies already performed.

Whether the Requirements Regarding Children in Exit Rows Should Be Simplified by Eliminating All Children From Exit Rows

The ATA suggests that the final rule be simplified by directly banning all children from exit rows. As written, the NPRM affected small children by indirection only, whether traveling alone or with an adult, by describing the types of functions that must be performed during an emergency evacuation and the skills necessary for performing those functions. All of the required functions clearly are beyond the capabilities of small children. The intent of the NPRM was to eliminate young persons who would require the assistance of an adult companion (relative, guardian, etc.) during an emergency evacuation or who, due to their age or size, would not have the cognitive or physical ability to perform emergency evacuation functions, if traveling alone.

The FAA concurs that simplification is desirable and that children should be banned from emergency exit rows. Dictionaries define a "child" variously as someone between "infancy" and "youth" or a person between "birth" and "puberty" or "adolescence." Since persons vary in their maturation and growth, it is difficult to establish a clear cut-off point between childhood and adolescence. A number of existing laws, regulations, and practices, however, point to the age of 15 as a turning point into adulthood. In many States it is the age when driver's licenses and work permits become available. In view of this, the FAA has selected 15 as the necessary minimum age for exit row occupancy.

Whether the Definition of "Exit Row" Should Be Narrowed To Take Into Account Varying Fleet Configurations Among Airlines

The ATA comments that certain exit rows could be excluded from the scope of the rule, if all of the following criteria are met:

(a) The nearest seat in the exit row is at least 36 inches from the exit;

(b) The width of the access aisle is at least 22 inches; and

(c) The exit is a floor level exit (one without a sill).

The ATA claims that exit rows meeting the above criteria would not be blocked by a person who does not meet the functional requirements listed in the NPRM. The RAA requests clarification of the definition of an "exit row," since in some aircraft there is no clearly discernible aisleway. This would cause confusion as to what is considered a floor-level exit row.

The NFB, in the past, and other commenters have suggested that the rule could be made less restrictive by restricting only the seats next to the exit doors. The ATA suggestion also would result in a less restrictive rule and was given very careful consideration by the FAA in view of this. Many persons with disabilities voiced their displeasure during the ACAA regulatory negotiations, however, with air carrier instructions to remain seated until they could be assisted. The FAA believes it would not be realistic to consider that persons with disabilities would not attempt to unbuckle their seat belts or attempt to move toward the exit immediately. This could occur at the critical point of initiating sufficient momentum for the evacuation flow.

Further, seating persons with disabilities in those rows would result in some time loss, as other passengers or crewmembers made their way to the exits. These functions involve a cooperative group effort. Persons in an over-the-wing exit row, for example, may have to move out of the way rapidly while the person in the window seat removes the exit and places it upon the seat or maneuvers it over the back of the seat.

In cases where the exit is not immediately adjacent to the row, an accident requiring an emergency evacuation might create obstacles that would impede getting to the exit to begin the evacuation process. An able-bodied person would be in a better position to cope with a disabled flight attendant strapped in a rearward-facing bulkhead seat immediately adjacent to the exit.

The initial evacuees should be able to hold down the slide and to assist people in getting away from the slide. If the one non-handicapped person in the row is incapacitated, by default the others in that row will become those who must not only open the exit but perform the balance of the team functions.

The FAA recognizes the dilemma of the RAA in designating "exit rows," since many smaller aircraft have no seats adjacent to floor-level exit doors. In view of this, the definition of an "exit row" has been modified to include the closest row or any seat which has direct access to an exit or has no obstruction between it and the exit.

Whether the Functions and Criteria and a Statement About Passengers' Performing Exit Row Duties Should Be Included in Passenger Information Cards at Seats Affected by the Rule and in Passenger Briefings

The ATA believes that excessive information on cards (the cards required by §§ 121.571 and 135.117 of the FAR to supplement the oral passenger briefings also required by these sections) and lengthy briefings will be ignored by passengers and will create anxiety. ATA recommends that, instead, all passengers should be advised by a simple notice on the existing information cards, or as part of the standard safety briefing, that they may be called upon to open an exit or otherwise assist the crew in the event of an emergency.

The RAA comments that in 1985, the NTSB completed a study on briefing cards. The study concluded that the use of illustrations and minimal verbiage resulted in more passengers reading the cards. The RAA suggests that a special briefing card be offered to exit row passengers and that other cards not be changed.

As previously discussed, other groups such as the ACB opt for more information, rather than less, and want it in Braille, large print, and on tapes. Several persons suggest that the locations and types of mechanisms may pose problems for persons other than those with disabilities. They recommend more detailed instructions on both the passenger evacuation cards and near the emergency exits for everyone's benefit.

The FAA concurs that briefing cards must be kept simple and succinct to encourage passengers to read them. The FAA believes, however, that safety will be enhanced if passengers are given additional information on emergency evacuation functions. While these functions may fall only to persons seated in exit rows, it is conceivable that incapacitation of one or more exit row occupants may require assistance from other passengers. Further, if all passengers are aware of the procedures, it may elicit greater cooperation on their part, such as not crowding the exit row occupants while the exit is being opened, moving back to allow stowage of an over-the-wing exit door, and even readily accommodating a transfer of seating before takeoff.

In view of this, the FAA final rule requires that all briefing cards for the general public contain the basic illustrations regarding emergency

evacuations already found on briefing cards, concerning the following:

(1) The location and types of exits;

(2) The opening mechanisms;

(3) The use of the opening mechanisms;

(4) The activation and/or use of slides;

(5) Use of the wings for emergency evacuations;

(6) Movement away from the airplane after reaching the ground;

(7) Emergency evacuations over water ("ditching");

(8) Use of oxygen masks; and

(9) Any other information/illustration needed to impart information on emergency evacuations of the particular airplane involved or new developments in evacuation techniques and procedures.

In addition, this rule requires that the safety functions stated in §§ 121.585 and 135.127 of the FAR be listed on all briefing cards. Some, but not all, of these functions already are illustrated on the cards now used by certificate holders. The listing will serve to reinforce the graphic information and also will draw attention to functions that are not illustrated easily.

Finally, this rule requires that each certificate holder shall include on passenger information cards, at all seats affected by these sections, presented in the languages used by the certificate holder for passenger information cards, the criteria set forth in paragraph (b) of §§ 121.585 and 135.127 of the FAR, to enable passengers to self-identify if they are or believe they are incapable of performing the functions. Multilingual cards may be necessary to enable passengers to self-identify. Exit row occupants, however, must be capable of understanding the crew's oral commands. Proficiency in the English language is not necessary, but exit row occupants should be able to understand simple instructions in English. This requirement must be made clear on the cards.

As previously discussed, the matter of providing cards in Braille or large print for passengers seated in non-exit rows is outside the scope of this rulemaking. The FAA encourages certificate holders to do so, however, and to design the cards in a manner that will ensure maximum independence for blind passengers who desire this during an emergency evacuation.

Whether a Less Stringent Standard for Exit Row Seating Should Be Adopted for Regional Carriers Due to Smaller Cabin Size

The RAA strongly opposes a less stringent standard, commenting that the absence or small number of flight attendants on aircraft with limited seating makes it even more imperative that able persons be seated near the exits to assist.

It is apparent from the RAA's reference to flight attendants that the RAA's comment concerns commuter flights. The FAA concurs with the RAA in regard to commuters, and the rule sets the same standard for all U.S. air carriers and commercial operators (certificate holders) of this type.

The FAA has decided, however, to exempt the on-demand operations of air taxis with nine or fewer passenger seats from this rule. Persons with disabilities, to whom other types of commercial flights are unavailable, should have access to air travel. Since these chartered flights may carry only the handicapped person, or, at most, friends, family, or assistants, instead of large numbers of passengers, the FAA has determined that exit row seating restrictions should not apply.

Whether Written Procedures Should Be Approved by the Local Principal Operations Inspector Rather Than by the Director of the Flight Standards Service

The RAA states that the requirement for final approval in FAA Headquarters could cause situations where a carrier's procedures will be unenforceable until the approval is granted, with exit row restrictions not implemented for several months.

The FAA believes that the RAA's comment is premised on the belief that the FAA expects complicated procedures regarding the identification of exit row passengers. This is not the case. As already discussed, the FAA believes that the functions and criteria stated in the rule are clear and sufficiently self-explanatory to be adopted by certificate holders and to serve as the procedures for the selection of exit row passengers. The balance of the procedures, which will relate to the personnel making the selections, the filing of complaints, and other administrative actions, should be fairly simple. The final product, therefore, should not require prolonged review. The main thrust of that review will be to determine that the certificate holders have not added criteria and functions that are not in accord with the rule or which go beyond what is required for safety.

During the ACAA regulatory negotiations, organizations representing persons with disabilities strongly recommended that any procedures developed relative to their constituents be reviewed by high-level management to ensure that the nondiscriminatory purposes of the ACAA be carried out. The FAA recognizes that this is a valid request in regard to the exit row seating rule, as well. In the concern for air safety, it is sometimes difficult to keep other important concerns in mind, both within the FAA and among the certificate holders. Approval by the Director of the FAA's Flight Standards Service will highlight the necessity of accomplishing the aim of safety without detriment to the goal of nondiscrimination.

Discussion of Emergency Evacuations—Exit Row Passenger Functions

In the NPRM, the FAA discussed the types of functions which may be necessary for exit row occupants to perform. While these are contained in the rule, the FAA believes it is appropriate to repeat the discussion material found in the NPRM in order to provide certificate holders and other interested parties with a single document that encompasses all the FAA thinking on this issue.

Note: Some portions of the following discussion have been modified to reflect the impact of comments or rearrangement of the information in response to a comment.

From a safety standpoint, a person who sits in an exit row or, in cases where there is no aisle, in any seat that has direct access to an exit must be able to accomplish a number of tasks under a variety of conditions without assistance. These include:

Locating the Exit

In order to be able to locate the exit in an emergency, the passenger in an exit row must be able to comprehend and identify that he or she is in such a row. The primary means of such comprehension and identification is seeing the exit, as well as its placards, and recognizing their significance. Although a person familiar with one or more aircraft seating configurations might be able to recognize that he or she is in an exit row by counting seat rows, that method is not reliable. Seating configurations vary from certificate holder to certificate holder and even from aircraft to aircraft in the same fleet. Further, the ability to remember seating configurations is not something that can be discerned by ordinary means of observation. It would not be practical to expect that a certificate holder assigning seats could identify a person with that ability, or be sure that one who claims such ability actually has it. It has been suggested that special briefings could be given to blind persons to inform them of their exit row

occupancy and to familiarize them with the door or window opening mechanism. During an actual evacuation, however, there is no guarantee that the nearest exit will be operable or should be used. The FAA's study of three major accidents (Report AM-70-16) includes data on this point. In the Denver accident, the left window exits became unusable due to fire on the wing. Debris blocked the main, rear boarding door. Fire destroyed the slide at the aft galley door after about 20 persons used it. Other passengers then had to jump—a situation with special hazards for blind and other handicapped passengers. In the Salt Lake City accident, fire on the left side of the fuselage drove persons away from the window exits there to the right side instead. In the Rome crash, fire spread to the left side of the aircraft, hampering the escape of passengers from that side. Further, the forward galley door was not used due to fire. "Survival in Emergency Escape from Passenger Aircraft," at 11, 12, 22, 31, and 33. Clearly all passengers benefit if the persons seated in an exit row can determine quickly whether its door or window exit remains operable or conditions outside allow its us.

Recognizing, Comprehending the Instructions for Use, and Operating the Exit Opening Mechanism

These tasks call for the ability to locate and identify the mechanism and the range and direction of motion required to use the mechanism effectively. They require the ability to perceive and understand the normally available directions pertaining to use of the mechanism. Ascertaining the complete directions for opening an exit often requires observation of both the exit itself, which may have on it a graphic illustration regarding the direction in which the mechanism must be moved to open the exit, and a passenger information card and/or video tape presentation. These contain further graphic illustrations of the complete set of actions required for use of the opening mechanism.

It should be emphasized that these presentations rely on graphic displays as well as on words. Reliable oral interpretation of the graphics for the benefit of a blind person by another passenger depends on the ability of the person attempting to convey the information. There would be no practical way to test this in advance. Similarly, relying on another passenger to translate instructions would be impractical in the case of persons who do not speak the same language. In addition, other passengers have no legal duty to convey such information to a handicapped, non-English speaking, or illiterate passenger, and it would not be feasible to require them to demonstrate such an ability.

Further, many passenger information cards focus on main handles of the exit, on the assumption that passengers will be able to see or read further instructions or find adjunct mechanisms. To illustrate, during the FAA's visit to the training facility for flight attendants, the following were noted:

An overwing window exit generally will have a handle marked "Pull" or "Pull Down," but no placard or information concerning the other hand grip that must be located and grasped at the same time as the movable handle. Both must be grasped to enable the person opening the exit window to move it out of the way to prevent blockage of the exit.

Certain operating mechanisms are not integral parts of the exit doors but may be located adjacent to the exit door. Still others have covers, labeled with words indicating they should be removed to allow use of the mechanism in an emergency.

On power-assisted exit doors, in addition to the mechanism for opening it, there often is an arming device located near the opening handle. If activated by mistake, it will prevent the door from opening. Sighted persons can differentiate this handle from the door mechanisms, which are fully labelled. No instructions are provided to passengers in connection with the arming devices because they are intended for crew use only. Yet, their proximity to the opening handles presents a chance that a person, who cannot discern the difference between the two mechanisms, inadvertently could render the exit useless. Once this occurs, it is not reversible without the assistance of trained mechanics.

Assessing Conditions

This requirement includes both sensory and cognitive abilities. The primary sense involved is sight. Cognitive abilities include the capacity to judge danger. Young children, for example, may lack the ability to make the required judgments. Opening an exit in an emergency may increase the danger to which all passengers are exposed, if doing so allows an external fire or even its smoke to enter the cabin. Danger to passengers also can be increased if they are encouraged to use an exit that might open onto dangerous conditions, such as jagged metal, ice, water, unexpected distance to the ground or some other condition that might be avoided by using another exit.

It has been suggested that a blind person could be advised orally of a sighted person's assessment without derogating the safety of others. The FAA does not agree that this offers a practical alternative to excluding blind people from exit rows. Emergencies are more likely than not to foster confusion. To add a requirement for one person to assess conditions and relay that assessment to another before an emergency exit can be opened, solely to allow the latter to sit in an exit row, would be to increase risk unnecessarily.

It also has been suggested that a blind person can assess the danger presented by external fire through the sense of touch. The argument is that a blind person could sense an external fire by feeling the inside of the door. While that may be true in some cases, this argument is not valid in the case of fire that is not yet near enough to the airplane or of sufficient intensity to cause the inside of the door to be warm enough to warn against opening the door. Large, modern aircraft are extremely well-insulated. At 30,000 feet, a passenger cannot feel the intense cold (as low as −70 degrees centigrade) by placing a hand on the fuselage.

In addition, this assertion does not deal with the dangers presented by smoke, jagged metal, water, and other hazards such as those mentioned above. Certificate holders train crewmembers to "feel" the door while looking out the window to assess conditions, but this action is designed to cause a pause for assessment of viewed conditions before reaching for the exit operating mechanism. It is not considered an independent means of assessment.

In some doors, prism windows now allow visual assessment along the full length of the aircraft all the way to the ground to determine whether fire or obstacles are present. Clearly, blind persons cannot make such an assessment.

Automatic slides fail from time to time. When this happens, the person nearest the exit must recognize that manual deployment will be necessary, find the manual deployment handle, and operate it. If this fails, it may be necessary to find and communicate the need for a totally different means of escape. Sighting flashing door lights, following floor lights, or seeing the hand signals of others may be necessary for effective escape leadership. While this leadership may fall to a passenger outside the exit row, it will do so more rapidly if those in the exit row can quickly and accurately assess the state of that exit.

Finally, it has been suggested that blind persons are better able to function in the dark and actually may be more useful than sighted persons in an emergency evacuation. As previously discussed, it is not certain, however, that in any given crash scenario darkness will be so complete as to render sight useless.

Assessing Whether a Slide Can Be Used Safely

This includes judging whether the slide has extended, whether it terminates in a safe area, whether the physical integrity of the slide is adequate for its use, and whether passengers are accumulating on the slide in such numbers as to threaten its integrity.

Stowing or Securing the Exit Door

The action needed to stow or secure the exit door expeditiously and safely varies widely. On power-assisted doors, no separate action beyond turning the handle may be required. Removal of a window exit, however, will require maneuvering a 40- to 80-pound, approximately 2- × 3-foot window over the adjacent seat back into the row behind the exit or onto seats in the balance of the exit row. This requires strength, sight to ensure that others are out of harm's way of the detached window, and speaking ability to issue the appropriate orders or warnings to passengers in the way.

In stowing doors that swing outward, such as those on some Boeing 727 models, care must be taken to avoid falling out of the airplane. A handle near the door is provided for just this purpose, and its purpose is obvious to a sighted person attempting to open the door. In the passenger information cards of one major certificate holder, this handle is visible in pictures of the door, but its use is not discussed. This makes it unlikely that it would be revealed to a blind person being apprised of the exit operating instructions by a sighted companion. Such communication was suggested by at least one witness appearing before the advisory committee as being all a blind person would need to function as effectively as a sighted person in regard to opening an emergency exit safely and expeditiously. A similar argument could be made with respect to passengers who cannot understand the language in which crew commands are given. It is the FAA's position that such instruction or explanation by another person constitutes an unnecessary delay factor and simply points to the need not to place persons needing such explanation in exit rows.

Safely Using the Exit

This includes passing expeditiously through the exit and assessing, selecting, and following a safe path away from the exit. A person leading the way out of an exit in an emergency should have the agility to exit quickly, the strength to assist other passengers, and the ability to avoid hazards such as water, jagged metal, unexpected heights (such as might be caused by failed or damaged slides), and rescue vehicles and associated equipment.

Following Oral Directions or Hand Signals From a Crewmember

During an anticipated evacuation, survival may depend on the ability of persons in exit rows to see, hear, and understand the instructions issued by crewmembers. As discussed previously herein, exits may become inoperable or unavailable due to fire, structural damage, or damage to slides. In some situations, opening an exit may exacerbate the danger by allowing flames or smoke to rush into the cabin. The potential for such danger is increased if persons in those exit rows cannot see it or hear and understand shouted directions and warnings from crewmembers.

Other Options for Exit Row Seating

The FAA invited comments on other options previously considered by the FAA as well as any other options the agency may not have considered. As discussed below, the FAA did not find alternative exit row seating plans persuasive.

The first option is the approach originally proposed in Notice 74.25 in 1974. Basically, this would prohibit handicapped passengers from sitting in all exit row seats except the seat farthest from the exit. The FAA did not select this approach for the following reasons: (1) in the event the remaining seats in the exit row were not assigned, the sole passenger in that row could be a handicapped person; (2) similarly, if the other passengers became incapacitated, the sole passenger in that row could be a handicapped person; and (3) even if the other passengers were able-bodied, a handicapped person in the exit row would be more likely than an able-bodied person to cause some delay in establishing the evacuation flow, as demonstrated in the CAMI study.

The second option was suggested by a representative of one of the groups of persons with disabilities. This calls for only the seat adjacent to a window exit to be reserved for persons capable of performing the necessary functions. Again, this approach presupposes the survival or undiminished capacity of this able-bodied person during an accident or emergency landing. Further, it would allow handicapped persons to be seated in a row of seats adjacent to a floor-level exit row. This approach is not viable, given the available data on evacuation flow.

The FAA's objective in this rule is to maximize the likelihood for survival. In order to do so, it is necessary that only persons capable of performing the necessary functions be seated in exit rows, to enhance the ability of all passengers to evacuate safely. As already discussed, persons in exit rows may have to work as a team. In the window exit rows, for example, the task of removing the window hatch ordinarily would fall to the person next to the window hatch. Window hatches weigh 45 to 80 pounds and must be maneuvered either over the back of the seat to the next row or placed on the seat next to the window exit seat. In either case, nearby passengers must be able to recognize the need for moving out of the way rapidly and have the capacity to do so. In addition, everyone in the row must be capable of performing the necessary functions because the seat adjacent to the emergency exit may be unoccupied.

The FAA reiterates that initial evacuees also may have to work as a team on the ground. In a high wind, it may be necessary for several persons to hold down a slide and to catch passengers (especially disabled ones) and assist them away from the slide.

Another concern that was expressed relates, in the commenters' view, to the questionable need for exit row seating restrictions, in light of the allegedly negligible probability that a crash would occur with a handicapped person sitting in an exit row. The suggestion is that this limited chance should be balanced against the inconvenience to persons who are removed from exit row seats assigned by mistake or inadvertence.

This comment overlooks the purpose of crashworthiness rules such as proposed herein. Crashworthiness rules are designed to deal with the post-crash environment by creating the greatest possible chance for survivors to escape the aircraft. Another example of a crashworthiness measure is the use of seatbelts. It is well-established that a fastened seatbelt may be the difference between saving and losing a life. Although seldom needed, they always are required. As discussed herein in conjunction with the matters of attendants and limitations on numbers of passengers with disabilities, the FAA

recognizes that the crashworthiness standard does not stand alone. It is subject to technical limitations and competing social aims. The social aims, however, must rise above the level of mere inconvenience.

The FAA's goal in this matter is safety for the maximum number of people possible. It is clear from the studies that any delay in beginning the flow of persons through an exit works to the detriment of all those trying to use the exit. The FAA studies show that persons without handicaps are less likely to cause such delays than are persons with handicaps. The studies also show that a handicapped person, who might cause a substantial delay at the head of an exit queue, can be accommodated once the queue is established and moving, without detriment to the exit flow rate or to his or her own escape through an exit.

The FAA sought additional studies or data concerning the issues raised by this rulemaking. The FAA was able to obtain further information on an evacuation exercise the National Federation of the Blind conducted in conjunction with World Airways in 1985. No other experiments, exercises, or studies came to light.

Requirements for Compliance With the Rule

In order to comply with the regulations, certificate holders must develop procedures and revise their pertinent handbooks, for review and approval by the principal operations inspectors (POI's) at the FAA Flight Standards District Offices that are charged with the overall inspection of their operations. A carrier's procedures will not become effective until final approval is granted by the Director, Flight Standards Service, at FAA Headquarters.

To ensure that the procedures of all certificate holders are consistent with the regulations, explicit criteria for the selection of exit row occupants have been included in the rule. To be approved, a certificate holder's procedures must include the criteria and address all of the functions enumerated in the regulations as ones that may fall to a person in an exit row.

The procedures also must include provisions by each certificate holder to make available at all loading gates and counters at each airport it serves, and at each seat affected by the regulations, the information advising the occupying passenger that he or she may be called upon to perform the enumerated functions. Passenger information cards for other rows and seats also shall enumerate the emergency evacuation functions.

Certificate holders also must include provisions verify the appropriateness of exit row seating assignments prior to takeoff and to brief passengers on the need to identify themselves and to move out of the exit row if they cannot meet the criteria or do not wish to be responsible for performing the required functions. For example, a procedure might consist of a flight attendant asking questions to ensure that a person seated in an exit row can hear and understand English. The flight attendant would then instruct the passenger briefly as to the responsibilities of sitting in that seat, and the person would indicate whether he or she feels capable of performing those functions and responding to oral commands in English from the crew.

Approval will be based solely upon the safety aspects of the certificate holders' procedures. The FAA's approval of procedures will not insulate the certificate holder, therefore, from challenges based upon discrimination or other matters not related to safety.

As with any changes to part 121 or 135 of the FAR, certificate holders' procedures must provide for training, as already required by FAA regulations in 14 CFR part 121, specifically, §§ 121.415, "Crewmember and dispatcher training requirements"; 121.417, "Crewmember emergency training"; 121.418, "Differences training: Crewmembers and dispatchers"; 121.421, "Flight attendants: Initial and transition ground training"; 121.417. "Recurrent training"; 135.295, "Initial and recurrent flight attendant crewmember testing requirements"; and 135.319, "Crewmember training requirements." Accordingly, §§ 121.585 and 135.127 of the FAR contain no separate requirement for training.

In developing the foregoing proposed compliance procedures, the FAA considered eliminating the requirement for submission of the procedures to the FAA for approval. The rationale presented for nonsubmission includes:

(1) The rule is very explicit and could be implemented with minimal written procedures;

(2) Passengers with complaints based on either safety or discrimination have adequate recourse to the FAA or the Office of the Secretary of Transportation, whether or not written procedures have been submitted for approval; and

(3) Since the rule will be implemented with minimal written procedures, there will be little to review and approve, and the cost of submission will not be warranted.

On the other hand, the FAA considered the following factors:

(1) Representatives of handicapped groups have expressed strong disapproval of the fact that the procedures developed by certificate holders under § 121.586 of the FAR, "Authority to refuse transportation," were submitted solely for review and not for approval by the FAA. A compliance mechanism that eliminates even the submission of the procedures may be considered a step in the wrong direction, regardless of the rule's level of detail;

(2) If the procedures are not submitted for approval, the FAA will have to rely solely on complaints to determine the compliance of the certificate holders;

(3) Without ready access to the procedures, the FAA will be in a less informed position, when attempting to resolve a problem informally; and

(4) There is no guarantee that each certificate holder will interpret the rule in exactly the same way.

The requirements are applicable to the operations of all part 135 air taxi operators, except the operations of on-demand air taxis with nine or fewer passenger seats, and commercial operators, as well as to part 121 domestic, flag, and supplemental air carriers and commercial operators of large aircraft. The FAA considered limiting the applicability of § 135.129 of the FAR, however, to aircraft having a passenger seating configuration of more than 19 passengers, but was persuaded by the comments of the RAA that this would not be advisable.

Compliance Dates

As previously discussed herein, OST has proposed a rule to implement the ACAA, to which the FAA's exit row rule relates. It is the intention of the Department that both rules, if adopted, become effective simultaneously to the extent possible, to avoid a hiatus between the existing procedures of certificate holders, concerning exit row seating, and the requirements established through amending parts 121 and 135 of the FAR.

While OST recognizes that the existing procedures of certificate holders may have shortcomings, at present they constitute the only available mechanism for monitoring emergency exit row seating from the standpoint of safety. A hiatus would not be in the best interests of safety, and the present procedures must be used until §§ 121.585 and 135.129 of the FAR become effective.

The present air carrier procedures also must remain in effect until the certificate holders complete any training

that may be necessary for crewmembers and other personnel; make appropriate revisions to their manuals; and complete production of new passenger information cards for occupants of aisle seats as well as other informational material that may be necessary under the rule. The FAA believes that these actions can be accomplished within 180 days of the effective date of this rule, and the compliance date has been set accordingly.

Regulatory Evaluation

Economic Impact Summary

This section summarizes a regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this rule. The full evaluation quantifies, to the extent practicable, estimated costs to the private sector; consumers; and Federal, State, and local governments, as well as anticipated benefits and impacts.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" proposals except those responding to emergency situations or other narrowly defined exigencies. A "major" proposal is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition, or one that is highly controversial.

The FAA has determined that this rule is not "major" as defined in the Executive Order; therefore, a regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to the rule, has not been performed. Instead, the FAA has prepared a regulatory evaluation of just this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Analysis of Benefits and Costs

The FAA has estimated the costs and benefits associated with this proposed rule by analyzing it section by section.

This rule replaces the industry's varying policies and inconstant practices with a uniform and uniformly applicable rule. The rule provides a comprehensive set of procedures, based on explicit criteria, that can be carried out with only minimal training cost. Changes to the certificate holders' operations manuals, appropriate parts of the crewmembers' manuals, and appropriate segments of airlines' training programs are made periodically as a matter of routine. The provisions of this rule will be incorporated routinely into those manuals and training programs at little additional cost. Factors such as an accelerated training schedule, if used, could result, however, in some additional training costs. Presently, the FAA does not anticipate this will be necessary.

The requirement for passengers to comply with instructions, or be subject to denial of transportation at the discretion of the certificate holder, will impose no cost because such a requirement is presently industry practice reflecting section 902(j) of the Federal Aviation Act of 1958 (49 U.S C. 1472(j)).

The requirement that certificate holders make available, at each seat affected, information advising the occupant of the functions he or she might be called upon to perform in an emergency and the requirement that passenger information cards be presented in multiple languages will cost, at maximum, approximately $220,000 for all potentially affected seats under the applicability in both part 121 and part 135 of the FAR. The maximum approximate cost per aircraft will range from $20 to $60 for part 135 commuters with more than 19 seats and airplanes operating under part 121 of the FAR. The approximate cost per aircraft for part 135 commuters with 19 or fewer seats and for large air taxis (10–19 seats) will be $5.

The cost of making copies of the criteria available at airports will be negligible. The incremental cost of printing the procedures and making them available at each airport will range from less than $100 to probably no more than $1,000 per year for each part 121 operator and part 135 commuter operator, depending on the number of airports each operator serves.

The requirement for verification of appropriately occupied affected seats prior to closing all passenger entry doors preparatory to taxi or pushback will be accomplished during the currently-required baggage stowage check with no delay of flight or incremental cost.

The required inclusions in the passenger briefings are minimal expansions and will be accomplished at no cost.

Accommodating a passenger being relocated from an exit row seat when non-exit row seats are fully booked will involve no cost. That person will not be denied transportation, nor will any cost result from moving another passenger, who is willing and able to assume the evacuation functions that may be required, into an exit row seat. (In a rare case, it may be impossible to relocate a handicapped passenger due to his or her particular handicap and the particular configuration of an aircraft; e.g., the only seat on the aircraft that can accommodate a leg cast will be in an exit row.)

The certificate holder's submission of procedures to the FAA will involve a negligible administrative cost for the transaction.

Since it is highly unlikely that a passenger will be denied transportation, there will be no, or, at the most, a negligible loss of revenue.

The potential benefits that will be derived from this rule are substantial. The FAA estimates the benefits based on a broad body of information which is discussed in detail elsewhere in this rule. Of particular import is the information contained in a study completed in October 1970 by the FAA's Office of Aviation Medicine, entitled "Survival in Emergency Escape from Passenger Aircraft" (Report No. AM–70–16). The study concluded that in aircraft accidents in which decelerative forces do not result in massive cabin destruction and overwhelming trauma to passengers, survival is determined largely by the ability of the uninjured passenger to make his or her way from a seat to an exit within time limits imposed by the thermotoxic environment. Seconds can mean the difference between life and death in the aftermath of a crash inasmuch as evacuation might be terminated abruptly by an explosion at any point.

The reason for this rulemaking is a concern for potential derogation of safety. Any effort to calculate monetary values for expected saved lives would be speculative, since there is no historical base from which to derive valid estimates. Nevertheless, the FAA estimates that the rules will account for a benefit of substantial numbers of lives saved as contrasted with potential loss of life in the absence of such regulations.

The prevention of only one life lost in an accident will alone more than pay for the cost of this rule. The data clearly indicate that the rule will be justified on

a benefit-to-cost basis. Each affected section in part 121 and part 135 of the FAR is identified and explained in the detailed section-by-section analysis contained in the full Regulatory Evaluation placed in the docket.

Regulatory Flexibility Determination

Since there will be only negligible cost associated with this rule for an operator, the FAA has determined that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

Trade Impact Statement

Since this rule will affect only part 121 and part 135 certificate holders (except operations of on-demand air taxis with nine or fewer passenger seats) regarding seating of passengers in exit rows, the FAA has determined that the regulation will not have an impact on international trade.

Paperwork Reduction Act Clearance

This rule imposes information collection requirements (i.e., procedures to be submitted to the FAA, revision of passenger information cards in exit rows, and dissemination of procedures at airports served by the air carriers). A Paperwork Reduction Act clearance request has been submitted to the Office of Management and Budget. The information collection requirement does not go into effect until OMB clearance and the assignment of an OMB control number. We will publish a **Federal Register** notice when the OMB control number is received.

Federalism Implications

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291 and certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects:

14 CFR Part 121

Air carriers, Air safety, Air transportation, Aircraft, Airplanes, Handicapped, Safety, Transportation.

14 CFR Part 135

Air safety, Air carriers, Air transportation, Aircraft, Airplanes, Aviation safety, Handicapped, Safety, Transportation.

The Rule

Accordingly, the FAA amends parts 121 and 135 of the Federal Aviation Regulations (14 CFR parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for 14 CFR part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. New § 121.585 is added to read as follows:

§ 121.585 Exit row seating.

(a) Each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy a seat in a row of seats that provides the most direct access to an exit (including all of the seats in the row from the fuselage to the first aisle inboard of the exit or, in cases where there is no aisle, in the closest row or in any seat that has direct access to an exit, hereafter referred to as exit row seats), in accordance with this section. These determinations shall be made in a non-discriminatory manner consistent with the requirements of this section, by persons designated in the certificate holder's required operations manual.

(b) No certificate holder may seat a person in a seat affected by this section if the certificate holder determines that it is likely that the person would be unable to perform one or more of the applicable functions listed in paragraph (d) of this section because—

(1) The person lacks sufficient mobility, strength, or dexterity in both arms and hands, and both legs:

(i) To reach upward, sideways, and downward to the location of emergency exit and exit-slide operating mechanisms;

(ii) To grasp and push, pull, turn, or otherwise manipulate those mechanisms;

(iii) To push, shove, pull, or otherwise open emergency exits;

(iv) To lift out, hold, deposit on nearby seats, or maneuver over the seatbacks to the next row objects the size and weight of over-wing window exit doors;

(v) To remove obstructions similar in size and weight to over-wing exit doors;

(vi) To reach the emergency exit expeditiously;

(vii) To maintain balance while removing obstructions;

(viii) To exit expeditiously;

(ix) To stabilize an escape slide after deployment; or

(x) To assist others in getting off an escape slide;

(2) The person is less than 15 years of age or lacks the capacity to perform one or more of the applicable functions listed in paragraph (d) of this section without the assistance of an adult companion, parent, or other relative;

(3) The person lacks the ability to read and understand instructions related to emergency evacuation provided by the certificate holder in printed, handwritten, or graphic form or the ability to understand oral crew commands in the English language;

(4) The person lacks sufficient visual capacity to perform one or more of the applicable functions in paragraph (d) of this section without the assistance of visual aids beyond contact lenses or eyeglasses;

(5) The person lacks sufficient aural capacity to hear and understand instructions shouted by flight attendants, without assistance beyond a hearing aid;

(6) The person lacks the ability adequately to impart information orally to other passengers; or,

(7) The person has:

(i) A condition or responsibilities, such as caring for small children, that might prevent the person from performing one or more of the applicable functions listed in paragraph (d) of this section; or

(ii) A condition that might cause the person harm if he or she performs one or more of the applicable functions listed in paragraph (d) of this section.

(c) Each passenger shall comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit row seating restrictions established in accordance with this section.

(d) Each certificate holder shall include on passenger information cards, presented in the languages used by the certificate holder for passenger information cards, at each seat affected by this section, information that, in the event of an emergency in which a crewmember is not available to assist, a passenger occupying an exit row seat may use if called upon to perform the following functions:

(1) Locate the emergency exit;

(2) Recognize the emergency exit opening mechanism;

(3) Comprehend the instructions for operating the emergency exit;

(4) Operate the emergency exit;

(5) Assess whether opening the emergency exit will increase the hazards to which passengers may be exposed;

(6) Follow oral directions and hand signals given by a crewmember;

(7) Stow or secure the emergency exit door so that it will not impede use of the exit;

(8) Assess the condition of an escape slide, activate the slide, and stabilize the slide after deployment to assist others in getting off the slide;

(9) Pass expeditiously through the emergency exit; and

(10) Assess, select, and follow a safe path away from the emergency exit.

(e) Each certificate holder shall include on passenger information cards, presented in the languages used by the certificate holder for passenger information cards, at all seats affected by this section, the selection criteria set forth in paragraph (b) of this section, and a request that a passenger identify himself or herself to allow reseating if he or she:

(1) Cannot meet the selection criteria set forth in paragraph (b) of this section;

(2) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(3) May suffer bodily harm as the result of performing one or more of those functions; or,

(4) Does not wish to perform those functions.

A certificate holder shall not require the passenger to disclose his or her reason for needing reseating.

(f) Each certificate holder shall make available for inspection by the public at all passenger loading gates and ticket counters at each airport where it conducts passenger operations, written, procedures established for making determinations in regard to exit row seating.

(g) No certificate holder shall allow all passenger entry doors to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that no exit row seat is occupied by a person the crewmember determines is likely to be unable to perform the applicable functions listed in paragraph (d) of this section.

(h) Each certificate holder shall include in its passenger briefings a reference to the passenger information cards, required by paragraphs (d) and (e), the selection criteria set forth in paragraph (b), and the functions to be performed, set forth in paragraph (d) of this section.

(i) Each certificate holder shall include in its passenger briefings a request that a passenger identify himself or herself to allow reseating if he or she—

(1) Cannot meet the selection criteria set forth in paragraph (b) of this section;

(2) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(3) May suffer bodily harm as the result of performing one or more of those functions listed in paragraph (d) of this section; or,

(4) Does not wish to perform those functions listed in paragraph (d) of this section.

A certificate holder shall not require the passenger to disclose his or her reason for needing reseating.

(j) Each certificate holder shall honor expeditiously a passenger's request to be relocated to a non-exit row seat.

(k) In the event a certificate holder determines in accordance with this section that it is likely that a passenger assigned to an exit row seat would be unable to perform the functions listed in paragraph (d) of this section, or a passenger requests a non-exit row seat, the certificate holder shall relocate the passenger to a non-exit row seat.

(l) In the event of full booking in the non-exit row seats, the certificate holder shall move a passenger, if necessary to accommodate a passenger being relocated from an exit row seat, who is willing and able to assume the evacuation functions that may be required, to an exit row seat.

(m) A certificate holder may deny transportation to any passenger under this section only because—

(1) the passenger refuses to comply with instructions given by a crewmember or other authorized employee of the certificate holder, implementing exit row seating restrictions established in accordance with this section, or

(2) the only seat that will physically accommodate the person's handicap is an exit row seat.

(n) In order to comply with this section certificate holders shall—

(1) Establish procedures that address:

(i) The criteria listed in paragraph (b) of this section;

(ii) The functions listed in paragraph (d) of this section;

(iii) The requirements for airport information, passenger information cards, crewmember verification of appropriate seating in exit rows, passenger briefings, seat assignments, and denial of transportation as set forth in this section;

(iv) How to resolve disputes arising from implementation of this section, including identification of the certificate holder employee on the airport to whom complaints should be addressed for resolution; and,

(2) Submit their procedures for preliminary review and approval to the principal operations inspectors assigned to them at the FAA Flight Standards District Offices that are charged with the overall inspection of their operations.

(o) Certificate holders shall assign seats prior to boarding consistent with the criteria listed in paragraph (b) and the functions listed in paragraph (d) of this section, to the maximum extent feasible.

(p) The procedures required by paragraph (n) of this section will not become effective until final approval is granted by the Director, Flight Standards Service, Washington, DC. Approval will be based solely upon the safety aspects of the certificate holder's procedures.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)

4. New § 135.129 is added to read as follows:

§ 135.129 Exit row seating.

(a) Except for on-demand air taxis with nine or fewer passenger seats, each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy a seat in a row of seats that provides the most direct access to an exit (including all of

the seats in the row from the fuselage to the first aisle inboard of the exit or, in cases where there is no aisle, in the closest row or in any seat that has direct access to an exit, hereafter referred to as exit row seats), in accordance with this section. These determinations shall be made in a non-discriminatory manner consistent with the requirements of this section, by the pilot in command, in those cases described in § 135.21(a), when an operations manual is not required, or by persons designated in the certificate holder's manual if it is required by that section.

(b) No certificate holder may seat a person in a seat affected by this section if the certificate holder determines that it is likely that the person would be unable to perform one or more of the applicable functions listed in paragraph (d) of this section because—

(1) The person lacks sufficient mobility, strength, or dexterity in both arms and hands, and both legs:

(i) To reach upward, sideways, and downward to the location of emergency exit and exit-slide operating mechanisms;

(ii) To grasp and push, pull, turn, or otherwise manipulate those mechanisms;

(iii) To push, shove, pull, or otherwise open emergency exits;

(iv) To lift out, hold, deposit on nearby seats, or maneuver over the seatbacks to the next row objects the size and weight of over-wing window exit doors;

(v) To remove obstructions of size and weight similar over-wing exit doors;

(vi) To reach the emergency exit expeditiously;

(vii) To maintain balance while removing obstructions;

(viii) To exit expeditiously;

(ix) To stabilize an escape slide after deployment; or

(x) To assist others in getting off an escape slide;

(2) The person is less than 15 years of age or lacks the capacity to perform one or more of the applicable functions listed in paragraph (d) of this section without the assistance of an adult companion, parent, or other relative;

(3) The person lacks the ability to read and understand instructions related to emergency evacuation provided by the certificate holder in printed, handwritten, or graphic form or the ability to understand oral crew commands in the English language.

(4) The person lacks sufficient visual capacity to perform one or more of the applicable functions in paragraph (d) of this section without the assistance of visual aids beyond contact lenses or eyeglasses;

(5) The person lacks sufficient aural capacity to hear and understand instructions shouted by flight attendants, without assistance beyond a hearing aid;

(6) The person lacks the ability adequately to impart information orally to other passengers; or,

(7) The person has:

(i) A condition or responsibilities, such as caring for small children, that might prevent the person from performing one or more of the applicable functions listed in paragraph (d) of this section; or

(ii) A condition that might cause the person harm if he or she performs one or more of the applicable functions listed in paragraph (d) of this section.

(c) Each passenger shall comply with instructions given by a crewmember or other authorized employee of the certificate holder, implementing exit row seating restrictions established in accordance with this section.

(d) Each certificate holder shall include on passenger information cards, presented in the languages used by the certificate holder for passenger information cards, at each seat affected by this section, information that, in the event of an emergency in which a crewmember is not available to assist, a passenger occupying an exit row seat may be called upon to perform the following functions:

(1) Locate the emergency exit;

(2) Recognize the emergency exit opening mechanism;

(3) Comprehend the instructions for operating the emergency exit;

(4) Operate the emergency exit;

(5) Assess whether opening the emergency exit will increase the hazards to which passengers may be exposed;

(6) Follow oral directions and hand signals given by a crewmember;

(7) Stow or secure the emergency exit door so that it will not impede use of the exit;

(8) Assess the condition of an escape slide, activate the slide, and stabilize the slide after deployment to assist others in getting off the slide;

(9) Pass expeditiously through the emergency exit; and

(10) Assess, select, and follow a safe path away from the emergency exit.

(e) Each certificate holder shall include on passenger information cards, presented in the languages used by the certificate holder for passenger information cards, at all seats affected by this section, the selection criteria set forth in paragraph (b) of this section, and a request that a passenger identify himself or herself to allow reseating if her or she:

(1) Cannot meet the selection criteria set forth in paragraph (b) of this section;

(2) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(3) May suffer bodily harm as the result of performing one or more of those functions; or,

(4) Does not wish to perform those functions.

A certificate holder shall not require the passenger to disclose his or her reason for needing reseating.

(f) Each certificate holder shall make available for inspection by the public at all passenger loading gates and ticket counters at each airport where it conducts passenger operations, written procedures established for making determinations in regard to exit row seating.

(g) No certificate holder shall allow all passenger entry doors to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that no exit row seat is occupied by a person the crewmember determines is likely to be unable to perform the applicable functions listed in paragraph (d) of this section.

(h) Each certificate holder shall include in its passenger briefings a reference to the passenger information cards, required by paragraphs (d) and (e), the selection criteria set forth in paragraph (b), and the functions to be performed, set forth in paragraph (d) of this section.

(i) Each certificate holder shall include in its passenger briefings a request that a passenger identify himself or herself to allow reseating if he or she—

(1) Cannot meet the selection criteria set forth in paragraph (b) of this section;

(2) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(3) May suffer bodily harm as the result of performing one or more of those functions; or,

(4) Does not wish to perform those functions.

A certificate holder shall not require the passenger to disclose his or her reason for needing reseating.

(j) Each certificate holder shall honor expeditiously a passenger's request to be relocated to a non-exit row seat.

(k) In the event a certificate holder determines in accordance with this section that it is likely that a passenger assigned to an exit row seat would be unable to perform the functions listed in paragraph (d) of this section, or a passenger requests a non-exit row seat,

the certificate holder shall relocate the passenger to a non-exit row seat.

(l) In the event of full booking in the non-exit row seats, the certificate holder shall move a passenger, if necessary to accommodate a passenger being relocated from an exit row seat, who is willing and able to assume the evacuation functions that may be required, to an exit row seat.

(m) A certificate holder may deny transportation to any passenger under this section only because—

(1) The passenger refuses to comply with instructions given by a crewmember or other authorized employee of the certificate holder, implementing exit row seating restrictions established in accordance with this section, or

(2) The only seat that will physically accommodate the person's handicap is an exit row seat.

(n) In order to comply with this section certificate holders shall—

(1) Establish procedures that address:

(i) The criteria listed in paragraph (b) of this section;

(ii) The functions listed in paragraph (d) of this section;

(iii) The requirements for airport information, passenger information cards, crewmember verification of appropriate seating in exit rows, passenger briefings, seat assignments, and denial of transportation as set forth in this section;

(iv) How to resolve disputes arising from implementation of this section, including identification of the certificate holder employee on the airport to whom complaints should be addressed for resolution; and,

(2) Submit their procedures for preliminary review and approval to the principal operations inspectors assigned to them at the FAA Flight Standards District Offices that are charged with the overall inspection of their operations.

(o) Certificate holders shall assign seats prior to boarding consistent with the criteria listed in paragraph (b) and the functions listed in paragraph (d) of this section, to the maximum extent feasible.

(p) The procedures required by paragraph (n) of this section will not become effective until final approval is granted by the Director, Flight Standards Service, Washington, DC. Approval will be based solely upon the safety aspects of the certificate holder's procedures.

Issued in Washington, DC, on February 28, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-4997 Filed 3-2-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

[Docket No. 46812; Notice 90-11]

RIN 2105-AB61

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice of proposed rulemaking asks for comment on three proposals to amend the provisions of the Department's rule to implement the Air Carrier Access Act of 1986. The proposals concern terminal transportation systems, standards for boarding chairs, and substitute transportation service in cases in which persons were unable to board small aircraft.

DATES: Comments should be received by June 4, 1990. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 46812, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). A taped copy of the SNPRM is available on request.

SUPPLEMENTARY INFORMATION: The Department is considering three additions to the final rule (14 CFR part 382) to implement the Air Carrier Access Act of 1986. These proposed additions concern standards, drafted by the Architectural and Transportation Barriers Compliance Board (ATBCB), for boarding chairs; terminal transportation systems; and substitute service for persons denied the opportunity to fly because of inaccessible small aircraft.

1. *Airport transportation systems.* Many airports have their own transportation systems, such as bus or vans that shuttle among terminals or between terminals and parking lots or internal systems like moving sidewalks or electric carts. These features appear to be operated or controlled by the airport operator or its contractors in most instances, rather than by carriers. However, carriers may own or control these systems in some cases.

The Department seeks comment on ways to make airport transportation systems accessible, for inclusion in 49 CFR 382.23, the final rule's section on airport accessibility. The Department did not include such a requirement in the final rule because we had not previously asked for comment on it and because there may be a number of feasibility and cost issues on which comment would be useful.

For example, to what extent are such systems now accessible? Where such systems are inaccessible, what, if any, provision is made for alternative service to disabled passengers? Where vehicles are used, is it feasible to make existing vehicles and/or new vehicles accessible (e.g., by installing lifts) and, if so, what are the likely costs? Are moving sidewalks and other internal "people mover" systems typically accessible at this time? If not, what are the technical and cost implications of making them so? Are there alternatives to facilities accessibility for these systems that are adequate and consistent with the ACAA?

The Department is raising similar issues for comment in its NPRM to amend 49 CFR section 27.71, the provision in the Department's section 504 rule applying to Federally-assisted airports. The rule text proposed in this SNPRM is identical to that proposed in the NPRM to amend 49 CFR section 27.71.

2. *Boarding Chair Standards.* In its comment to the docket for the final Air Carrier Access Act rule, the ATBCB suggested certain standards for boarding chairs. The standards are set forth in the rule text portion of this SNPRM.

The Department seeks comment on whether it should adopt these standards. The Department also would like information in response to various questions about the standards. Would existing models of boarding chairs meet the standards? If not, would it be feasible, technically and economically, to change boarding chairs to meet standards? If the standards were adopted, should there be modifications? Given the potential for the development and use of lifts, are boarding chairs likely to become obsolete, such that adopting standards is irrelevant? Are boarding chairs meeting the ATBCB standards useful for assisting passengers to board all types of aircraft, or would different standards be needed, for example, for use with small aircraft?

3. *Substitute service or compensation.* The Air Carrier Access Act rule (14 CFR section 382.39(a)(3)) provides that, in the event that the physical limitations of an aircraft with less than 30 passenger seats preclude the use of existing models of lifts, boarding chairs, or other feasible devices to enplane a handicapped person, the carrier is not required to carry the handicapped person onto the aircraft by hand. The development of lifts for small aircraft is under way; the Department intends that once they are available, they must be used.

In the meantime, there are likely to be instances in which some handicapped persons will be unable to fly on some small aircraft. These situations can sometimes arise unexpectedly, as when a smaller aircraft is substituted for an originally scheduled aircraft for mechanical, weather, or passenger load reasons. Such a situation could also arise under the FAA's exit row rule, if the only seat which a handicapped person could reach via the boarding chair or other means of entry to the aircraft happened to be a seat adjacent to an exit (e.g., if, because of a narrow aisle, a boarding chair could only get to the first row, which was next to the door). To mitigate these problems, the Department is proposing that carriers be required, where feasible, to provide substitute service by another flight, motor vehicle or other means, or to provide denied boarding compensation (DBC) to the person, just as if the person had been bumped in an overbooking situation.

For example, suppose that a handicapped person is unable to board a commuter flight in Small City X to travel to Hub Y. The commuter carrier would have a number of options. It could provide an accessible van that would drive the handicapped passenger to Hub Y. If service from X to Y were available on another air carrier within a reasonable time, the aircraft of which are accessible to the passenger, the first carrier could arrange service to Y on the second carrier. If accessible service to Y from the nearby Hub Z were available on another carrier within a reasonable time, the first carrier could provide van service to Z where passenger could use the second carrier's service. In all cases, the first carrier's substitute service would be offered to the handicapped passenger without extra charge. As an

alternative to substitute service, the carrier could offer the passenger DBC, which would be required, in any case, if substitute service meeting the requirements of the rule were not available.

This substitute service requirement would apply only where feasible. For example, in Alaska, there may not be roads between some points, precluding sutstitute van service. Some flights may be over water (e.g., to islands off the New England Coast), and accessible alternate air transportation or ferry service is not available. In these situations, payment of DBC would be the only option open to the carrier.

The Department seeks comment on the cost and feasibility of this proposed requirement, as well as on operational considerations. For example, what, if any, advance notice would it be reasonable to require in order for carriers to provide this substitute service? Should there be time frames for the service different from those provided in the proposed rule text? Should a similar requirement pertain to situations in which a handicapped person can enter a plane but the aircraft cannot accommodate the person's wheelchair? That is, if there is no room in the baggage compartment for a wheelchair, should the carrier be required to provide substitute service for the wheelchair so that it can catch up with the passenger as soon as possible? Where substitute service is not provided, should denied boarding compensation be required? Should the passenger have a choice, in any case, between substitute service and denied boarding compensation?

Regulatory Process Matters

This is neither a major rule under Executive Order 12291 nor a significant rule under the Department's Regulatory Policies and Procedures. The Department certifies, under the Regulatory Flexibility Act, that the proposal, if adopted, would not have a significant economic effect on a substantial number of small entities. There are not sufficient Federalism impacts to warrant the preparation of a Federal assessment. The NPRM has been reviewed and approved by the Office of Management and Budget under Executive Order 12291.

List of Subjects in 14 CFR Part 382

Aviation, Handicapped.

Issued this 28th day of February 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend title 14 of the Code of Federal Regulations, part 382, as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN AIR TRAVEL

1. The authority citation for part 382 continues to read as follows:

Authority: Sections 404(a), 404(c), and 411 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374(a), 1374(c), and 1381).

2. By adding a new paragraph (c)(7) to § 382.23 thereof, to read as follows:

§ 382.23 Airport facilities.

(c) * * *

(7) Systems for moving within or among terminals shall, when viewed as a whole, be accessible to and usable by qualified handicapped individuals.

* * * * *

3. By adding new paragraphs (a)(5), (a)(6), and (a)(7) to § 382.39 thereof, to read as follows:

§ 382.39 Provision of services and equipment.

* * * * *

(a) * * *

(5) Chairs used to assist in enplaning and deplaning mobility impaired persons shall be designed to safely support the 99th percentile male, with a safety factor of three, shall be designed to be compatible with the maneuvering space, aisle width and seat height of the aircraft on which they are intended to be used, shall be movable while in the upright position, and shall meet the applicable wheelchair structural and stability standards prescribed by the American National Standards Institute (ANSI). In addition, the following conditions shall be met;

(i) Adequate restraint systems, designed to prevent incorrect connection, shall be provided to stabilize passenger's torso, hips and legs and to prevent feet slipping off footrests (where carrying up or down stairs is required, a more extensive system may be needed than for ramp boarding);

(ii) A locking mechanism shall be provided which prevents the chair from moving while the passenger is transferring to or from the boarding chair and which will hold the chair in place on slopes typically found in the aircraft boarding bridges or ramps;

(iii) Movable or removable armrests shall be provided with sufficient strength to aid in body positioning;

(iv) Backrest height shall not interfere with passenger transfer to or from the boarding chair; the seat shall slant back slightly; where carrying up or down stairs is required, a movable or removable headrest/backrest should be provided to support the passenger's head and upper torso;

(v) Footrest(s) shall be provided that adequately support passenger's feet;

(vi) Structurally sound handles shall be provided, for pushing and maneuvering the occupied chair by carrier or other personnel, at the upper backrest and, if carrying is required, in the vicinity of the footrests; gripping surfaces shall be slip-resistant, appropriately shaped and positioned for easy use, and clearly identifiable; and

(vii) The seat shall be padded, covered in a material which does not interfere with body repositioning.

(6) If, in the circumstances provided in paragraph (a)(4) of this section, a qualified handicapped person is unable to board an aircraft, the carrier shall offer substitute service to the passenger, at no additional cost, in one of the following ways, unless doing so is infeasible:

(i) Using an accessible motor vehicle, driving the passenger to his or her destination or the next hub airport at which service to the destination is available and accessible to the passenger. The motor vehicle shall depart within one hour of the scheduled departure time of the flight on which the passenger could not be accommodated; or

(ii) Ensuring that the passenger is provided air transportation on another carrier's flight to his or her destination, or to the next hub airport at which service to the destination is available and accessible to the passenger. The alternate air transportation shall be on a flight the scheduled departure time of which is within three hours of the scheduled departure time of the flight on which the passenger could not be accommodated.

(7) If substitute service is infeasible, or is not provided within the time frames set forth in paragraph (a)(5) of this section, the carrier shall provide to the passenger compensation in the amounts provided for denied board compensation for overbooking in 14 CFR part 250. The carrier may offer the passenger denied boarding compensation as an alternative to substitute service, which the passenger may choose to accept.

* * * * *

[FR Doc. 90-4994 Filed 3-2-90; 8:45 am]

BILLING CODE 4910-62-M

14 CFR Part 382

[Docket No. 46811; Notice 90-10]

RIN 2105-AB60

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This advance notice of proposed rulemaking asks for comment on a number of issues related to the rulemaking to implement the Air Carrier Access Act of 1986, on which the Department believes that more information is necessary before decisions can be made. The Department will propose to amend its final Air Carrier Access Act rule if we conclude, in response to comments to this notice, that additional provisions or changes in existing provisions are warranted.

DATES: Comments should be received by July 5, 1990. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 46811, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Donald Trilling or Ira Laster, Office of Policy and International Affairs, Department of Transportation, 400 7th St., SW., room 9117, Washington, DC 20590. Telephone 202-366-4813. A taped copy of the ANPRM is available upon request.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking (ANPRM) requests comment on two features of great importance to those with mobility impairments: (1) Lifts and other boarding equipment for use in regional and commuter aircraft and air taxis, and 2) accessible lavatories and narrowbody (i.e., aircraft with only one aisle) and smaller aircraft. The ANPRM also seeks comment on matters concerning additional accommodations for persons with hearing impairments that were mentioned in comments to the docket on the Air Carrier Access Act rule.

The Department made specific proposals on the provision of boarding equipment (including use of ground wheelchairs, boarding chairs, ramps or mechanical devices) to assist passengers in enplaning and deplaning, and proposed a series of design and equipment requirements for accessible lavatories in the June 22, 1988 NPRM. That NPRM requested comment on whether mechanical lifts should be required, as opposed to other means (e.g., boarding chairs, handlifting) to assist disabled passengers on and off aircraft, and whether specific standards should be set for boarding chairs. With regard to the accessible lavatory proposals, comments were requested on: (1) What alternative arrangements which would best protect the privacy of on-board chair passengers in using such lavatories and (2) how best to implement accessible features in lavatories without removal of revenue seats.

The Department received few useful comments on these issues. Disability groups stated that nothing in the ACAA exempts any aircraft from providing accessible lavatories regardless of a revenue seat loss. The airline industry opposed any requirement for accessible lavatories on aircraft under 199 seats until it becomes technically feasible to reconfigure cabin interiors at reasonable cost without removing revenue seats.

Regarding boarding equipment, disability groups stated that mechanical lifts should be required; that technology exists to provide safe, dignified boarding of disabled persons, and that such assistance should be required on all size aircraft, including lifting persons by hand if necessary, and if requested. The airline industry proposed exempting small aircraft from boarding requirements, stating that lifting devices to fit small aircraft do not exist, and strong opposition to hand-carrying passengers.

These comments contained little, if any, new data on the costs, number of revenue seats requiring displacement, and other advantages and disadvantages of alternative approaches to meet accessible lavatory and boarding assistance requirements. The Department does not have sufficient data of its own, at the present time. In the absence of such information, it would be premature to promulgate final regulations. Consequently, the Department decided to publish this ANPRM to acquire additional information needed to further implement the Air Carrier Access Act (ACAA).

Establishing a requirement for accessibility is consistent with DOT policy; the questions we have relate to technical feasibility and cost. With adequate information not forthcoming in the response to the NPRM of June 1988, and in light of the commercial aviation system not having developed such facilities, the Department feels it has the responsibility to lead a collaborative effort to achieve consensus regarding these accessibility features so needed by those with severe mobility impairments. It intends to begin this process through this ANPRM. Subsequently, the Department would convene a conference concerning all of these topics. We would intend to engage aircraft designers, lift designers, representatives of the disability groups, and the carriers, in an effort to find solutions which could provide a substantive basis for rulemaking in these areas. If necessary to provide information or develop facilities, the Department would also commit resources to a research contract or project for these purposes.

The Department requests technical and economic information to complete its rule in the following areas:

A. *Boarding Assistance on Small Airplanes*—The situation is very unclear on the present state-of-the-art technology in lift devices and boarding chairs being used by operators of small aircraft (below 30 seats) to assist in boarding and deboarding persons with limited mobility. With respect to such devices, the Department seeks comments concerning their practicality, the safety of the disabled passengers and the crew trying to assist their boarding/deboarding, and the capital, operating and maintenance costs.

A long-standing but nevertheless urgent problem is the need for a device that will facilitate the boarding and deboarding of many regional and commuter aircraft by persons with mobility impairments. Almost all such aircraft board from the tarmac and passengers with severe mobility impairments sometimes are hand-carried up and down narrow stairs built into the aircraft door, which have weight limitations.

Hand-carrying a person up stairs is dangerous and often can cause physical stress and potential injury both to the passenger and to carrier or airport personnel. Further, many operators of small aircraft have few personnel at some terminals, necessitating special advance planning to accommodate persons with severe mobility limitations. For these reasons, the final ACAA rule does not require hand-carrying.

Code sharing arrangements between major carriers and regional and commuter carriers has been increasing the tendency for persons with severe disabilities to travel on small aircraft. Adding to the difficulties for small carriers are stringent schedules which often require short turn-around times. Some carriers hand carry passengers on and off planes because it is the quickest way to load them and avoid flight delays.

A related problem is the need for a "boarding chair", specifically designed to fit narrow cabin spaces, that can maneuver their narrow aisles. Carriers claim that two personnel are needed to lift passengers who are completely physically immobile from boarding chairs to a cabin seat.

The Department desires to assure the widespread availability of mechanical lift devices and the regional airline industry has made a concerted effort to have such devices developed. Eventually, DOT hopes to be able to facilitate their use through rulemaking, but it cannot do so yet without definitive data on the availability and workability of existing devices. If a suitable device does not exist, the Department will encourage the development of such devices capable of lifting passengers from ground level to the aircraft door and visa versa. These vertical conveyance devices should be developed and put into service at the earliest possible date.

In 1987, $250,000 was provided by the Congress to the FAA to foster the development of a lifting device that would provide improved access by handicapped persons to commercial aircraft. The FAA formed a working group consisting of the Paralyzed Veterans of America, the Regional Airline Association, and the American Association of Airport Executives to consider how best to utilize these funds. Based on their deliberations, the FAA has issued a solicitation to develop a boarding chair to fit cabin dimensions of ten different small planes.

Concurrently, this working group is considering the alternatives regarding vertical conveyance devices. This work has not advanced to the point where there could be certainty in imposing a particular set of requirements through rulemaking.

The Department also is aware that Mid-Canada Equipment Sales, Ltd., has built a prototype lift device which has been tested successfully with a DeHavilland Dash 8 aircraft. Mid-Canada has completed five devices that will be evaluated by five regional carriers. The present design, however, is not compatible with at least two models of aircraft currently in service.

From the comments received in response to the NPRM, the Department is not aware of any other efforts to build a device intended to assist persons with mobility limitations to board and deboard small aircraft.

With respect to lifting devices the Department seeks comments concerning:

- The names and addresses of manufacturers;
- The names and addresses of carriers who have or are currently using such devices;
- Types of aircraft served;
- Dimensions;
- Principle of operation;
- Transportability;
- Maneuverability;
- Stability;
- Source of power (e.g., on board, electrical, etc.);
- Costs of acquisition and operation;
- General characteristics such as lift platforms, controls and safety features; and
- Operational experience.

B. *Accessible Lavatories*—The ability to provide lavatory access varies widely with regard to individual aircraft interior cabin designs. A rule that lavatories must be fully or partially accessible could require substantial loss of revenue seats due to the present constraints in the configurations of some aircraft cabins. While the final rule implementing the ACAA will require such lavatories for wide-body airplanes, on the premise that most are of sufficient size that such special arrangements can be accommodated, narrowbody (e.g., 727, 737, DC-9 and smaller airplanes) would require major design changes in the lavatory and adjacent area, and in some cases, galley relocation, to provide reasonable access and privacy. The Department seeks comment concerning lavatory design possibilities and associated costs on all such aircraft models which would allow accessible lavatory objectives to be met without loss of seats, or minimal loss of seats, and would not jeopardize safety.

The NPRM for the ACAA final rule addressed accessibility of aircraft lavatories at two levels. The fully accessible level, proposed for larger aircraft, considered a lavatory with specific accessible hardware features and large enough to permit a person using an on-board chair to enter, maneuver, transfer and leave. A second partially accessible level lavatory, with the same accessible hardware was proposed for smaller planes. Such lavatories would not require full entrance by passengers using the on-board wheel chair, nor would the means of privacy have to be equivalent to that of other persons.

The June 1988 NPRM sought comment on how the disabled user's privacy can best be protected. What features could be implemented at reasonable cost? Could a curtain or screen arrangement provide adequate privacy? Could a door or privacy curtain be installed without causing seats to be removed, especially in smaller aircraft? Could there be space to allow a wheelchair to maneuver at the door and allow a person to enter the lavatory without causing the removal of seats, especially on smaller aircraft? What lead time would be needed to allow for the technical development of an adequate facility? If a facility could not be developed to meet these requirements would a lesser degree of privacy be acceptable (e.g., a privacy curtain over the door)?

Based on the comments received, there was little agreement on what degree of accessibility was possible on narrowbody planes. The Department has determined that this is a complex question tied more to specific aircraft type than to aircraft size categories which could not be answered with sufficient certainty for rulemaking. What is needed is additional technical and economic information focusing on these issues from those who design the interiors of airplanes, the disabled individuals who would use these facilities, and the air carriers to whom this will be one more added feature to be included as part of their service to the disabled community a broad segment of the public.

Narrowbody Aircraft (100–199 seats)—Clearly it is possible to require a fully or partially accessible lavatory in narrowbody planes but only at the high costs of roughly 3 to 6 lost revenue seats and considerable inconvenience for other passengers. The Department estimates the cost for such requirements would range from $80 to $200 million annually by the year 2000.

Some have suggested an accessible lavatory could be provided on narrowbody aircraft by combining two adjacent lavatories or 2 cross-aisle lavatories. This raises questions as to what inconvenience would result to other passengers, with aisles and lavatories blocked off, and/or aisles occupied by beverage carts. Passenger traffic through the galley areas and the ability of the flight crew to perform necessary functions in the galley are also concerns. Taking away galley space to free space for accessible lavatories also presents service problems for other

passengers. Thus, there remain major questions as to what such arrangements would do to traffic flows through the fuselage, and how such altered traffic patterns would impair safety and interfere with flight crew functions.

Small Aircraft (10–100 seats)—The airline industry, the Boeing Company and General Aviation Manufacturers Association (GAMA) representatives assessed the existing cabin space and lavatory space in current 60–100 seat aircraft as being very tight: no room to disrobe, no room for an attendant, and the toilet is opposite the door in most cases requiring a person in an on-board chair to execute a 180 degree turn to transfer to the toilet seat. In their opinion, there is no available room in some present aircraft configurations to create a privacy area outside the lavatory without the possible removal of one to three revenue seat per aircraft.

GAMA was not firm on the seat loss estimate pointing out that the problem will differ by manufacturer, depending on the aircraft configuration. Their representative speculated on a number of possible ways to meet the NPRM requirements which might avoid loss of seats. For example, most lavatories on such aircraft are located at the farthest point in the rear cabin where people can stand up, and it might be possible in some configurations to hook up a curtain across the aisle in front of the lavatory and create a privacy area, providing a galley is not located in the rear.

Newly manufactured aircraft of current certificated type designs with both the lavatory and galley located in the rear cabin (more than 50% of aircraft have this configuration) might be redesigned to create a privacy area by relocating the galley up front in the cabin where a coat closet presently exists in most models. GAMA cited many potential problems associated with this option e.g., the galley may not be able to fit in the coat closet or other space up front in the cabin without seat removal; many galleys are built directly into the aircraft and manufacturers must assure that the new galley would withstand bearing load in a crash situation. A very rough order of magnitude estimate of the average cost of galley relocation is $75,000 to $100,000 per lavatory. The cost of redesigning the BAE 146 model aircraft to relocate the galley in the front of the cabin was estimated at roughly $200,000 total cost per aircraft. GAMA does not foresee a reduction in these costs due to future economies of scale, because the total number of aircraft in this class to be replaced annually is too small to justify amortization of the costs. Thus, galley relocation would be expensive; probably as expensive as removing seats to create a privacy area.

The ATA cited alternatives for accessible lavatories including reconfiguration or removal of a galley which would entail extreme expense and constitute a clear undue financial burden.

For the purposes of this ANPRM, the Department solicits comment on the following questions:

- For the various cabin configurations of different aircraft types (under 200 seats), what physical layouts are possible to offer passengers at least visual privacy, and the ability to maneuver in the lavatories?
- What physical layouts are possible which would provide disabled passengers full maneuvering room using the on-board chair inside the lavatory? What layouts would provide partial accessibility, meaning a privacy area/curtain outside the lavatory?
- Which designs can be accomplished without the loss of revenue seats? Which design can be accomplished with only a minimal loss of revenue seats?
- How would such arrangements impact on the passenger traffic within the cabin, flight attendant duties in galleys, and the opportunity for passengers to use other lavatories?
- How might such arrangements impair safety?
- In small planes, where can the aisle chairs be stored?
- Down to what size airplanes and what types can such requirements reasonably be imposed?
- Should the requirements for accessible lavatories be made a function of stage length (i.e., the length of the flight which the aircraft performs) instead of airplane size, and if so for what stage lengths should such requirements be imposed?

C. *Additional Accommodations for Hearing Impaired Persons*—In the comments to the ACAA rulemaking docket, commenters asked for some additional accommodations for persons with hearing impairments. Because the Department is unsure of the technical or economic feasibility of these suggestions, we felt it was not appropriate to dispose of them in the final rule.

The first was for captioning of in-flight movies. Many hearing impaired persons could not fully enjoy in-flight movies because they could not hear the sound track on the headphones. Captioning movies would alleviate this problem. The Department seeks comment on the cost and feasibility of captioning movies. The Department also seeks comment on the indirect economic impact of doing so (i.e., if movies were captioned, many persons in addition to those with hearing impairments would be able to more fully enjoy movies without renting a headset, which could adversely affect headset revenue).

The second suggestion was for providing telecommunications devices for the deaf (TDDs) in on-board phone banks. This service is provided on some aircraft. Where it is, should there be TDD as well as voice phone service available? What cost and feasibility considerations are involved? What degree of usage of TDD service is it reasonable to expect?

Regulatory Process Matters

The discussion in this notice is not designed to resolve matters of policy, but rather to determine how best to overcome technical and economic limitations constraining policy. This calls for a somewhat innovative procedure, different from standard rulemaking. Therefore, through this ANPRM, the Department is requesting comments on the above issues from all interested parties: disability groups, lift designers and manufacturers, airplane designers and manufacturers and air carriers within 90 days. The comments will be reviewed and, if necessary, the Department will publish summaries of the various viewpoints.

The Department anticipates a conference of these same interest groups to bring designers and users from the disabled community together for an exchange of information. If necessary, the Department would also engage a contractor to study one or more of the issues. After a review of the information we obtain, the Department will make a decision on taking additional regulatory action covering the areas of inquiry.

This ANPRM is not a major rule under Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures. Because the document requests comments on feasibility and cost issues about which the Department currently has little information, the Department is not preparing a regulatory evaluation at this time. An evaluation would be prepared with respect to any future rulemaking resulting from this ANPRM. There are not any Federalism implications to this ANPRM, and a Federalism Assessment consequently has not been prepared. The Department will determine, at a later time, whether there are any small entity impacts for whatever proposals derive from this notice. A Regulatory Flexibility Analysis would be premature at this point.

Issued this 28th day of February 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 90-4995 Filed 3-2-90; 8:45 am]

BILLING CODE 4910-62-M

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49 CFR Part 27

[Docket No. 46813; Notice 90-12]

RIN 2105-AB62

Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department is proposing to amend the portion of its rule to implement section 504 of the Rehabilitation Act of 1973, as amended, concerning federally-assisted airport facilities 49 CFR (27.71). The proposed amendment would harmonize the rule with a parallel provision in 14 CFR part 382, which implements the Air Carrier Access Act of 1986. The proposed rule would also specifically apply the Department's section 504 rule to air carriers receiving Federal financial assistance under the Essential Air Service (EAS) program.

DATES: Comments should be received by June 4, 1990. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 46813, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). A taped copy of the NPRM is available on request.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule concerns accessibility of aviation facilities to persons with disabilities. The proposal would implement section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs receiving Federal financial assistance, and is related to requirements under the Air Carrier Access Act of 1986 (ACAA), which prohibits discrimination on the basis of handicap by air carriers providing air transportation.

The Department's section 504 rule, first published in 1979, included accessibility requirements for Federally-assisted airports. The Department's rule to implement the ACAA (14 CFR part 382), published elsewhere in today's **Federal Register**, includes a provision (14 CFR 382.23) requiring air carriers to ensure that portions of terminals under their control meet accessibility standards.

The Department had been concerned, for some time, that 49 CFR 27.71 had assigned to airport operators accessibility responsibilities for some facilities or services often controlled by air carriers. The new 14 CFR 382.23, together with this proposed revision to 49 CFR 27.71, is intended to ensure that the proper party, at each airport, has responsibility for ensuring that given facilities and services meet accessibility requirements.

Proposed Revision to 49 CFR 27.71

The proposed revision to 49 CFR 27.71 is virtually identical to 14 CFR 382.23. It is also very similar to the existing 49 CFR 27.71 in most respects. There are, however, a number of changes from the existing rule on which the Department seeks comment. First, the Uniform Federal Accessibility Standards (UFAS) would be the basic accessibility standard for airports. Requirements spelled out in the current 49 CFR 27.71 that are not specifically mentioned in the proposed revision were deleted because they are covered by UFAS. Second, accessibility requirements for terminal transportation systems (e.g., inter-terminal vans or buses, electric carts used for transportation within terminals, moving sidewalks) would be added.

Third, there would be a provision that calls on airport operators to settle, in their contracts or leases with carriers, issues of who is responsible for compliance with accessibility requirements. Fourth, there would be a new definition of "air carrier airport,"which would result in applying accessibility standards only to those airports with scheduled airline service that enplane at least 2,500 passengers per year. This definition would replace the existing part 27 definition of the term, which was based on provisions of FAA's Airport Improvement Program which have since been changed.

For unusual circumstances not provided for in the rule, which would make compliance impracticable with a given provision of the regulation, recipients would have access to the exemption procedures of 49 CFR 5.11. For example, a case in which an exemption might be appropriate would be one in which the recipient would otherwise have to make extensive modifications to a terminal scheduled to be torn down in the near future when a new, accessible terminal was opened. An exemption in such a circumstance could be conditioned, for example, on other (e.g., operational) accommodations being made in the meantime.

It should be pointed out that airport operators have been subject to very similar rules since 1979, and all terminals that receive Federal financial assistance were to have been made accessible by 1982 under the 1979 requirements. Consequently, it is unlikely that many airport operators will have to make significant modifications in their facilities, unless, for some reason, they had failed to comply with the existing requirements.

The one new requirement being proposed concerns terminal transportation systems, which the proposed rule would require to be made accessible when viewed as a whole. (By "when viewed as a whole," the Department means, consistent with normal practice under section 504, that not every part of a facility or every vehicle need necessarily be accessible, if the overall facility and service are accessible to and usable by individuals with handicaps.) The Department seeks comment on any cost or feasibility problems that airport operators or others see in this provision. For example, is vehicle retrofit likely to be necessary in order to meet this requirement within the three year time frame of the proposal? If a longer time were permitted (e.g., five years), could vehicle accessibility be achieved without retrofit? Are there alternatives to vehicle accessibility that would suffice? What are the likely costs of various alternatives? What technical problems, if any, are there with making in-terminal systems (e.g., electric carts, moving sidewalks) accessible to handicapped passengers?

The proposed rule would cover "terminal facilities and services,"

including parking and ground transportation facilities, that are "owned, leased, or operated on any other basis...by an airport operator." The Department seeks comment on whether, and to what extent, this provision should apply to services and facilities which are provided by contractors or concessionaires. For example, parking management or inter-terminal transportation may be provided by a private firm under contract to the airport operator. Concessions like restaurants, bookstores, and gift shops are typically provided by private businesses who lease space in the terminal. Should coverage extend to these facilities and services, or should the rule reach only those facilities and services directly operated by the airport operator? Should a distinction be made between facilities and services directly related to transporation, like parking and terminal transportation systems, and those which are not, like concessions?

It is likely that most federally-assisted airports will have already established transition plans, as the 1979 rule required. However, this proposed rule would provide that any existing federally-assisted airport covered by the rule that has not done so must do so within a year of the effective date of the section.

Coverage of EAS Carriers

In 1985, the Department inherited the Essential Air Service (EAS) program from the former Civil Aeronautics Board (CAB). The EAS program provides Federal subsidies to some carriers (mostly regional carriers) to provide service to small cities. The original CAB version of 14 CFR part 382, issued under the authority of section 504, required EAS carriers, as a condition of financial assistance, to follow requirements for accessible facilities and services.

Since EAS recipients are air carriers within the meaning of the ACAA, their operations are fully covered under the new 14 CFR part 382. However, since the new part 382 does not implement section 504, EAS carriers would no longer be subject, under that regulation, to section 504 coverage and the subsidy cutoff sanctions that go with it. This proposal is intended to close this gap, by requiring, under the authority of section 504, that EAS carriers comply with the requirements of part 382 as a condition of receiving Federal financial assistance.

Regulatory Process Matters

This is neither a major rule under Executive Order 12291 nor a significant rule under the Department's Regulatory Policies and Procedures. The Department certifies, under the Regulatory Flexibility Act, that the proposal, if adopted, would not have a significant economic effect on a substantial number of small entities. There are not sufficient Federalism impacts to warrant the preparation of a Federalism assessment. The NPRM has been reviewed and approved by the Department of Justice under Executive Order 12250 and the Office of Management and Budget under Executive Order 12291.

List of Subjects in 49 CFR Part 27

Aviation, Handicapped.

Issued this 28th day of February 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend title 49 of the Code of Federal Regulations, part 27:

PART 27—(AMENDED)

1. The authority citation continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142 note. Subpart E is also issued under sec. 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

Source: 44 FR 31468, May 31, 1979, unless otherwise noted.

2. In § 27.5, the definition of "Air Carrier Airport" is revised to read as follows:

§ 27.5 Definitions.

* * * * *

"Air Carrier Airport" means a public, commercial service airport which enplanes annually 2500 or more passengers and receives scheduled passenger service of aircraft.

* * * * *

3. Section 27.71 thereof is revised to read as follows:

§ 27.71 Airport facilities.

(a) This section applies to terminal facilities and services, including parking and ground transportation facilities, owned, leased, or operated on any other basis at an air carrier airport by a recipient of Federal financial assistance from DOT for an airport. The requirements of this section apply to terminal facilities and services even if the airport operator received Federal financial assistance only for other airport improvements.

(b) Such facilities and services shall, when viewed as a whole, be accessible to and usable by individuals with handicaps.

(c) All such facilities designed, constructed, or altered after the effective date of this section shall be accessible to individuals with handicaps. Compliance with the requirements of the Uniform Federal Accessibility Standards (UFAS), or a substantially equivalent standard, shall be deemed in compliance with this requirement. These facilities shall also provide the following additional accessibility features:

(1) The basic terminal design shall permit efficient entrance and movement of individuals with handicaps while at the same time giving consideration to their convenience, comfort and safety. The design, especially concerning the location of means of vertical access (e.g., elevators, escalators), shall minimize any extra distance that wheelchair users must travel, compared to other persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(2) The ticketing system shall provide individuals with handicaps the opportunity to use the primary fare collection area to obtain a ticket and pay the fare.

(3) Outbound and inbound baggage facilities shall allow efficient baggage handling by qualified handicapped individuals. Passenger baggage facilities shall be designed and operated without unattended physical barriers, such as gates, which are inaccessible for individuals with handicaps.

(4) Each terminal shall contain at least one telecommunications device for the deaf (TDD) to enable persons with hearing impairments to make phone calls from the terminal. The TDD(s) shall be placed in a clearly marked, readily accessible location, and airport signage shall clearly indicate the location of the TDDS.

(5) Terminal information systems shall take into consideration the needs of qualified handicapped individuals. The primary information mode shall be visual words or letters, or symbols, using lighting and color coding. Terminals shall also have facilities for providing information orally.

(6) Facilities for moving between the gate area and the aircraft, including, but not limited to, loading bridges and mobile lounges, shall be accessible to individuals with handicaps.

(7) Systems for moving within or among terminals shall, when viewed as a whole, be accessible to and usable by qualified handicapped individuals.

(d) Each existing terminal shall be made accessible as soon as possible but no later than three years after the effective date of this rule.

(1) Each such facility shall

(i) Include at least one accessible route from an accessible entrance to those areas in which the carrier conducts activities related to the provision of air transportation; and

(ii) Include the accessibility features specified in paragraphs (c)(1) through (c)(7) of this section.

(2) An element or feature required by this paragraph to be accessible shall be deemed to be accessible if it meets the requirements of the standards referenced in paragraph (c) of this section. Departures from particular scoping and technical standards by the use of other methods are permitted where substantially equivalent or greater access to and usability of the buildings or other fixed facilities is provided. For this purpose, the special technical provisions of 4.1.6(a)(4) of the UFAS apply.

(3) Operational arrangements, in lieu of facility improvements, shall be permitted for up to three years from the effective date of this Part.

(e) Contracts or leases between airport operators and air carriers concerning use of airport facilities shall set forth the respective responsibilities of the parties for compliance with accessibility requirements under this section and 14 CFR 382.23.

(f) If a recipient of Federal financial assistance from DOT for an existing airport facility has not already done so, the recipient shall submit to the FAA a transition plan meeting the requirements of 49 CFR 27.65(d).

4. A new §27.77 is added to subpart D to read as follows:

§ 27.77 Recipients of Essential Air Service Subsidies.

Any air carrier receiving Federal financial assistance from the Department of Transportation under the Essential Air Service program shall, as a condition of receiving such assistance, comply with applicable requirements of 14 CFR part 382, concerning nondiscrimination on the basis of handicap in air travel.

[FR Doc. 90-4996 Filed 3-2-90; 8:45 am]

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federal register

Tuesday
March 6, 1990

Part VII

Health and Human Services Department

Human Development Services Office

Runaway and Homeless Youth Program: Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS/ACYF/RHYP 13.623-90-1]

Runaway and Homeless Youth Program: Availability of Financial Assistance

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS).

ACTION: Announcement of availability of financial assistance for Basic Center grants.

SUMMARY: The Family and Youth Services Bureau of the Administration for Children, Youth, and Families announces the availability of fiscal year 1990 funds for the Runaway and Homeless Youth Basic Center Grant Program.

Competition for new Basic Center awards will be possible in all States and Territories except Alaska, Arkansas, Delaware, the District of Columbia, Hawaii, Idaho, Kentucky, Maine, Montana, Nevada, North Dakota, Rhode Island, Vermont, the Virgin Islands, West Virginia, and Wyoming. In the jurisdictions listed above, the amount required for non-competing continuations equals the State's total allotment. See the Table of Allocations by State and the accompanying narrative (part I, section F, "Available Funds for Basic Centers") for an explanation.

DATES: The deadline or closing date for receipt of all applications under this announcement is: May 7, 1990.

ADDRESSES: Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., room 341-F.2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS-90-ACYF/RHYP/Basic Centers.

FOR FURTHER INFORMATION CONTACT: Dr. Preston Bruce, Administration for Children, Youth, and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, Telephone: (202) 245-0904.

SUPPLEMENTARY INFORMATION:

Part I. Background Considerations

A. Scope of This Program Announcement

This program announcement solicits applications and describes the application process for Basic Center grants under the Runaway and Homeless Youth Program. These grants will be competitively awarded during the third and fourth quarters of FY 1990. Project periods for grants will be three years.

B. Legislative Authority

Grants under this program are authorized by part A of the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5701 *et seq.* The Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415), and amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95-115), the Juvenile Justice Amendments of 1980 (Pub. L. 96-509), the Juvenile Justice Amendments of 1984 (Pub. L. 98-473), the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690), and the Domestic Volunteer Service Amendments of 1988 (Pub. L. 101-204).

C. Outline of Program Announcement

This program announcement consists of five parts and appendices. Part I provides background information for potential applicants to apply for Basic Center grants. Part II describes the application process for the Basic Center grants. Part III outlines the responsibilities of the Basic Center grantees. Part IV provides the criteria to be used in evaluating the applications. Part V provides instructions for assembling and submitting applications for Basic Center grants. Following part V are the appendices to be consulted and the forms to be used in the preparation of the applications.

D. Program Purpose

The purpose of part A of the Act and of the Runaway and Homeless Youth Grant Program is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (e.g., outreach, temporary shelter, counseling, and aftercare services) of runaway and homeless youth and their families

The term "runaway youth" means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian (45 CFR 1351.1(k)).

Under part A of the Act, the term "homeless youth" means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care (45 CFR 1351.1(f)).

Programs receiving Runaway and Homeless Youth Act funding under this announcement are required to adhere to the Program Performance Standards which are included in appendix C of this announcement.

E. Program Goals and Objectives

The program goals and objectives of part A of the Act are to assist runaway and homeless youth centers to: (1) Alleviate the problems of runaway and homeless youth, (2) reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services, (3) strengthen family relationships and encourage stable living conditions for youth, and (4) help youth decide upon constructive courses of action.

F. Available Funds for Basic Centers

In FY 1990, the Administration for Children, Youth and Families expects to award $25,906,525 in Basic Center grants. This total will be divided among the States in proportion to their respective populations under the age of 18, with the condition that the amount allotted to each State (including the District of Columbia and Puerto Rico) will be at least $75,000; the amounts allotted to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands, respectively, will be at least $30,000 each.

Of the total amount available for Basic Center grants, $17,646,548 will be awarded in the form of non-competing continuation grants to current Basic Center grantees having one or two years remaining in their project periods. Grantees in this category will receive instructions from their respective OHDS Regional Offices on the procedures for applying for these continuation grants. These grantees, which are listed in appendix G with project expiration dates of 1991 or 1992, should not apply for funds under this **Federal Register** announcement.

Approximately $8,259,977 will be awarded under this announcement in the form of new competitive grants according to the procedures outlined in this announcement.

Approximately 115 new competitive Basic Center grants are expected to be awarded. Recipients of these awards may include current grantees having project periods ending by September 30, 1990, and new applicants.

New Basic Center grant awards will be made during the third and fourth quarters of fiscal year 1990.

All grant applicants should request three-year project periods (Standard Form 424A (Rev. 4-88), Budget Information, section E). While the project periods for new grants will be

for three years, the initial awards of grant funds will cover budget periods of only one year. Awards of funds for subsequent budget periods will depend upon satisfactory performance by the grantee (including timely submission of required reports) and on the availability of appropriated funds.

Funding recommendations for the new competitive Basic Center applications will be based primarily on the scores assigned to the applications by the non-Federal reviewers who will evaluate each application according to the criteria presented in part IV, below, and on recommendations from staff of the Administration for Children, Youth and Families (ACYF). Final decisions will be made by the Commissioner of ACYF.

The number of new Basic Center grants awarded within each State will depend upon the amount available for such grants (i.e., the State's total allotment less the amount required to fund non-competing continuations in that State) as well as on the number of acceptable applications. Thus, where the amount required for non-competing continuations in any State equals the State's total allotment, no new starts will be awarded. All applicants under this announcement will compete with other applicants in the State in which their services will be provided. In the event that an insufficient number of acceptable applications is approved for funding from any State or jurisdiction, the Commissioner, ACYF, may reallocate any unused funds.

Section 362(a) of the Act requires that grantees provide a non-Federal match that equals at least 10 percent of the Federal funds requested under this announcement (for details see section H below: "Grantee Share of the Project").

Section 366(a)(2) of the Runaway and Homeless Youth Act requires that not less than 90 percent of the funds appropriated for a fiscal year shall be available for support of local runaway and homeless youth centers. The following Table, which reflects this requirement, indicates the FY 1990 allocations for each State. In this Table, the amount shown in the column labeled "New Awards" is the amount available for competition in each State in FY 1990.

RUNAWAY AND HOMELESS YOUTH CENTERS TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdictions—Fiscal Year 1990]

Regions/States	Continuations	New awards	Total allotments
Region I:			
Connecticut	$208,091	$91,261	$299,352
Maine	119,504	0	119,504
Massachusetts	303,622	222,118	525,740
New Hampshire	81,219	27,242	108,461
Rhode Island	90,713	0	90,713
Vermont	75,000	0	75,000
Region II:			
New Jersey	584,975	137,573	722,548
New York	1,205,520	512,503	1,718,023
Puerto Rico	68,978	426,788	495,766
Virgin Islands	30,000	0	30,000
Region III:			
Delaware	75,000	0	75,000
District of Columbia	75,000	0	75,000
Maryland	385,144	66,843	451,987
Pennsylvania	844,954	278,308	1,123,262
Virginia	404,647	175,127	579,774
West Virginia	188,525	0	188,525
Region IV:			
Alabama	326,664	113,096	439,760
Florida	816,107	285,857	1,101,964
Georgia	450,000	250,461	700,461
Kentucky	386,910	0	386,910
Mississippi	0	307,635	307,635
North Carolina	388,712	256,927	645,639
South Carolina	0	373,895	373,895
Tennessee	150,000	343,794	493,794
Region V:			
Illinois	1,074,950	109,839	1,184,789
Indiana	315,450	260,774	576,224
Michigan	390,234	577,239	967,473
Minnesota	235,040	206,692	441,732
Ohio	789,467	323,935	1,113,402
Wisconsin	453,764	48,312	502,076
Region VI:			
Arkansas	256,362	0	256,362
Louisiana	208,447	303,095	511,542
New Mexico	115,079	62,008	177,087
Oklahoma	268,681	79,578	348,259
Texas	1,332,588	633,909	1,966,497
Region VII:			
Iowa	168,027	113,577	281,604
Kansas	149,817	107,729	257,546
Missouri	381,330	136,128	517,458
Nebraska	71,774	95,059	166,833
Region VIII:			
Colorado	229,145	113,592	342,737
Montana	87,163	0	87,163
North Dakota	75,000	0	75,000
South Dakota	58,827	18,476	77,303
Utah	0	248,474	248,474

RUNAWAY AND HOMELESS YOUTH CENTERS TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdictions—Fiscal Year 1990]

Regions/States	Continuations	New awards	Total allotments
Wyoming	75,000	0	75,000
Region IX:			
Arizona	356,018	19,454	375,472
California	2,270,204	685,064	2,955,268
Hawaii	112,799	0	112,799
Nevada	104,911	0	104,911
American Samoa	0	30,000	30,000
Guam	0	30,000	30,000
Northern Marianas	0	30,000	30,000
Trust Territory (Palau)	0	30,000	30,000
Region X:			
Alaska	75,000	0	75,000
Idaho	119,899	0	119,899
Oregon	219,278	51,283	270,561
Washington	301,453	167,888	469,341
Totals	$17,646,548	$8,259,977	$25,906,525

G. Eligible Applicants

States, Territories, localities, private for-profit and private non-profit agencies, and coordinated networks of such agencies are eligible to apply for Runaway and Homeless Youth Program Basic Center grants under this announcement unless they are part of the law enforcement structure or the juvenile justice system. Federally recognized Indian Tribes are eligible to apply for grants as local units of government. Non-federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private agencies.

H. Grantee Share of the Project

The Act requires the grantee to provide a non-Federal match that equals at least 10 percent of the Federal funds awarded. For example, if the applicant requests $100,000 in Federal funds (line 15a of Standard Form 424), then the non-Federal share (the sum of lines 15b, 15c, 15d, and 15e) must equal or exceed $10,000. For a project requesting $49,000 in Federal funds, the non-Federal share must equal or exceed $4,900.

The non-Federal portion may be cash, in-kind contributions or grantee incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles provided in 45 CFR parts 74 and 92, the Department's regulations on the administration of grants. For-profit applicants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant (45 CFR 74.705).

Part II. Application Process

A. Assistance to Prospective Grantees

Potential grantees can receive informational assistance in developing applications from the appropriate ACYF Regional Youth Contacts listed in appendix E or from the Family and Youth Services Bureau in Washington, DC (see address at the beginning of this announcement). Organizations may also receive information and technical assistance in writing applications from the appropriate Coordinated Network grantee listed in appendix F.

B. Application Requirements

To be considered for a Runaway and Homeless Youth Basic Center grant, each application must be submitted on the forms provided at the end of this announcement (see section E below) and in accordance with the guidance provided herein. The application must be signed by an individual authorized both to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications by OMB.

D. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seven jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Therefore, the comment period for State processes will end on Thursday, July 5, 1990 to allow time for HDS to review, consider and attempt to accommodate SPOC input. The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official

State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue SW., room 341-F.2, Hubert H. Humphrey Building, Washington, DC 20201, Attn: William J. McCarron, HDS-90-ACYF/RHYP/Basic Centers.

A list of the Single Points of Contact for each State and Territory is included as Appendix D of this announcement.

E. Availability of Forms and Other Materials

A copy of each form required to be submitted as part of an application for a Basic Center grant under the Act, and instructions for completing the application, are provided in appendices A and B. The Program Performance Standards and a description of the National Runaway Switchboard are presented in appendix C. Addresses of the State Single Points of Contact (SPOCs) to which applicants should submit review copies of their proposals are listed in appendix D.

The Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*) and the Code of Federal Regulations (CFR) title 45, part 1351, Runaway Youth Program, may be found in major public libraries and at the HDS Regional Offices listed in appendix E at the end of this announcement.

Additional copies of this announcement may be obtained from the HDS Regional Offices or from the information contact person listed at the beginning of this announcement. Further general information may be obtained from the Coordinated Networks listed in appendix F. A listing of all current Basic Center grantees is presented in appendix G.

F. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined below. This review will be conducted in Washington, DC, by teams of non-Federal experts knowledgeable in the areas of youth development and/or human service programs. These experts will review the applications to determine whether the grantee responsibilities listed in part III of this announcement will be carried out. They will apply the criteria presented in part IV and assign a score to each application. To avoid conflicts of interest, the non-Federal reviewers will be from States other than the one from which applications are being reviewed. The results of the competitive review will be analyzed by Federal staff and will be the primary factor taken into consideration by the Associate Commissioner of the Family and Youth Services Bureau who, in consultation with OHDS Regional officials, will recommend to the Commissioner, ACYF, the projects to be funded.

The Commissioner will make the final selection of the applicants to be funded. In the interest of effective geographic distribution of the basic center grants, the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner also may elect not to fund any applicants having known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. Organizations whose applications have been disapproved will be notified of that decision in writing by the Commissioner of the Administration for Children, Youth and Families.

Part III. Responsibilities of Basic Center Grantees

To ensure that agencies with the greatest capacity for providing quality services participate in this program, potential grantees who apply for funding under this announcement must demonstrate in the program narrative section of their applications that they are able to meet the requirements of the Act, the Program Performance Standards, and other applicable Federal policies and procedures.

The program narrative statement should be prepared in response to the requirements enumerated below and to the review criteria, presented in Part IV, which will be used to evaluate the submissions. To assist applicants in preparing the narrative statements of their grant submissions, the relevant requirements, standards, and applicable policies and procedures have been arranged according to the five review criteria.

The program narrative should be clear and concise, and should not exceed 30 single-spaced pages exclusive of such necessary attachments as organization charts, resumes, and letters of agreement or support. Applications with narratives exceeding 30 single-spaced pages will not be considered for funding.

A. Objectives and Need for Assistance

Applicants should include a discussion of:

1. The purpose or objectives of the services to be provided by the center. The Act requires that, to be eligible for assistance, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway and homeless youth center (a locally controlled community-based facility) providing temporary shelter and counseling services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles (42 U.S.C. 5711(a)).

Basic Center grants may be awarded to agencies which will operate a central shelter facility, or to agencies which will provide emergency shelter through a series of host homes, or to agencies which will employ a combination of shelter facility(ies) and host homes. (Host homes are facilities providing short-term shelter, usually the home of a family, under contract to accept runaway and homeless youth assigned by the Basic Center grantee, usually for a nominal fee, and licensed according to State or local laws.)

2. The incidence of runaway and homeless youth in the area(s) to be served. The Act requires that each center shall be located in an area which is demonstrably frequented or easily reachable by runaway youth (42 U.S.C. 5712(b)).

3. Other relevant social, psychological, educational, institutional, health, or other demographic data on the youth to be served.

4. The immediate service needs of runaway and homeless youth and their families, and how the applicant will address these needs in a manner outside the law enforcement structure and the juvenile justice system (42 U.S.C. 5712(a)).

5. The adequacy of existing services, by identifying other youth agencies now providing services in the target area(s), and by describing how the proposed activities will relate to these agencies and services.

B. Results or Benefits Expected

Applicants should identify the results and benefits to be derived from the project, and should quantify these through a statement of the numbers of clients to be served and a description of the types and quantities of services to be provided.

C. Approach

Applicants should discuss how they will carry out each of the 14 Program Performance Standards established by the Department. The Standards are presented in full in appendix C of this announcement. A summary of each Standard is presented below along with associated grantee responsibilities.

1. Outreach

The project shall conduct outreach efforts directed towards community agencies, youth, and parents.

The applicant shall assure that major outreach efforts will be aimed at street youth or other actual or potential runaway and homeless youth not already under care of Government agencies such as child protective services, foster care, or the courts.

2. Individual Intake Process

The project shall conduct an individual intake process with each youth seeking services from the project.

The applicant shall assure that each youth will enter the center voluntarily and will be free to leave at will, and that Federal funds received under this Act will not be used for services to youth already under care of Government agencies such as child protective services, foster care, or the courts; and shall also assure that it will adhere to State and local laws relating to runaway and homeless youth (such as parent contact provisions, detention of runaways and status offenders, judicial and administrative processes regarding runaways, and licensing requirements).

3. Temporary Shelter

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

The applicant shall assure that each facility is in compliance with State and local licensing requirements, and shall accommodate no more than 20 youth at any given time.

4. Individual and Group Counseling

The project shall provide individual and/or group counseling to each youth admitted into the project.

The applicant shall assure that the counseling program will include drug abuse prevention.

5. Family Counseling

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

The applicant shall assure that a major aim of family counseling will be family reunification.

6. Service Linkages

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

The applicant shall assure that linkages have been or will be established with the National Runaway Switchboard, locally based hotlines, State and regional youth service networks, as well as with other related public and private agencies such as health, law enforcement and education systems.

The applicant shall assure that linkages have been or will be established and maintained with appropriate drug abuse prevention agencies.

7. Aftercare Services

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program

The project shall provide a recreational/leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

10. Staffing and Staff Development

Each center is required to develop and maintain a plan for staffing and staff development.

If applicable, the applicant shall describe the recruitment, training, and use of volunteers.

11. Youth Participation

The center shall actively involve youth in the design and delivery of the services provided by the project.

The applicant shall assure the participation of young people in the operation of the program in capacities such as advising or serving on governing boards, providing direct services such as peer counseling and outreach, and related activities.

12. Individual Client Files

The project shall maintain an individual file on each youth admitted into the project.

Section 312(b) of the Act requires that each grantee shall keep adequate statistical records profiling the children and family members which it serves, shall maintain the confidentiality of these records, and shall submit annual reports detailing how the center has been able to meet the goals of its plans and reporting summaries of the required statistics.

The applicant shall describe the statistical records and evaluative data to be collected (such as numbers of runaway and homeless youth and their families served and the types and quantities of services provided) and the procedures for gathering and analyzing the data to determine the extent to which the project is achieving the results and benefits expected.

The applicant shall describe procedures for preparing and submitting to the Department of Health and Human Services the annual reports required by the Act.

13. Ongoing Center Planning

The center shall develop a written plan at least annually.

14. Board of Directors/Advisory Body

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

If applicable, the applicant shall identify and describe the Board of Directors/Advisory Body.

D. Staff Background and Organizational Experience

Applicants should provide biographical sketches of the project director and other proposed key personnel, indicating their qualifying experiences for the project. (Applicants may refer to one-page résumés included in the supplementary documentation.)

Section 311(b)(4) of the Act, 42 U.S.C. 5711(b), requires that, in selecting among applicants for grants under this part, priority shall be given to private entities that have experience in providing services to runaway and homeless youth and their families. (Applicants may refer to the Organizational Capability Statement included in the submission.)

E. Budget Appropriateness

Section 312(b) of the Act, 42 U.S.C. 4712(b), requires that each applicant shall submit a budget estimate with respect to its planned activities. Applicants should be aware of the following requirements of the law and

regulations in preparing this portion of the program narrative:

(1) The Act requires that priority be given to grants smaller than $150,000 (Sec. 313 of the Act, 42 U.S.C. 5712);

(2) A Runaway and Homeless Youth grant may not cover the cost of constructing new facilities (45 CFR 1351.16); and

(3) Costs for the renovation of existing structures may not normally exceed 15 percent of the grant award. The Department of Health and Human Services may waive this limitation upon written request under special circumstances based on demonstrated need (45 CFR 1351.15).

Applicants should demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants should refer to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and should relate this information to the results or benefits expected (Criterion 2) by detailing the numbers of youth, beds, meals and other services that will be supported with Federal funds. Applicants should also indicate non-Federal sources of support.)

Part IV. Review Criteria

The five criteria below provide further guidance to be used in developing the program narrative. The point values following each criterion heading indicate the numerical weight each section will be accorded in the review process.

Criterion 1. *Objectives and Need for Assistance (10 Points).* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant may refer to part I, sections D and E of this announcement.)

Information provided in response to part III, section A, numbers 1, 2, 3, 4, and 5 of this announcement will be used to review and evaluate applicants on the above criterion.

Criterion 2. *Results or Benefits Expected (12 Points).* Identify the results and benefits to be derived from the project. State the numbers of clients to be served and describe the types and quantities of services to be provided.

Information provided in response to part III, section B of this announcement will be used to review and evaluate applicants on the above criterion.

Criterion 3. *Approach (56 Points).* Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvements, e.g., how the project will be maintained after termination of Federal support. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Information provided in response to part III, section C, numbers 1 through 14 of this announcement will be used to review and evaluate applicants on the above criterion.

Criterion 4. *Staff Background and Organizational Experience (15 Points).* List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization. Demonstrate the ability to effectively manage the project and to coordinate activities with other agencies. (Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.)

Information provided in response to part III, section D of this announcement will be used to review and evaluate applicants on the above criterion.

Criterion 5. *Budget Appropriateness (7 Points).* Demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants may refer to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and to the results or benefits expected as identified under Criterion 2.)

Information provided in response to part III, section E of this announcement will be used to review and evaluate applicants on the above criterion.

Part V. Application Assembly and Submission

A. *Contents of Application.* Each copy of the application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, Rev 4–88) (page i).
2. Budget Information (Standard Form 424A, Rev 4–88) (pages ii–iii).
3. Budget Justification (Type on standard size plain white paper) (pages iv–v).
4. Organizational Capability Statement (pages vi–viii).
5. Assurances—Non-Construction Programs (Standard Form 424B, Rev 4–88) (pages ix–x).
6. Certification Regarding Drug-Free Workplace (page xi).
7. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (page xii).
8. Certification Regarding Lobbying (page xiii).
9. Program Narrative Statement (pages 1 and following; 30 pages maximum, single-spaced).

Special Note: Applications with narrative statements exceeding 30 single-spaced pages will not be considered for funding.

10. Supporting Documents (pages SD–1 and following; 10 pages maximum, exclusive of letters of support or agreement).

B. Instructions for Preparing Application Components

1. *Standard Forms 424 and 424A:* Follow the instructions in appendix B.

2. *Budget Justification:* Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, used for runaway and homeless youth.

3. *Organizational Capability Statement:* Applicants should provide a brief (no more than three pages, single-spaced) description of how the applicant agency is organized and the types, quantities and costs of services it provides, including services to clients other than runaway and homeless youth. For the prior year, list all contracts with or funds received from probation and/or welfare agencies. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide the direct services to runaway and homeless youth, and summarize the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites. If the agency is a recipient of youth drug abuse prevention funds or youth gang drug prevention funds, show how the

services supported by these funds are or will be integrated with the runaway and homeless youth services. Discuss the experience of the applicant organization in providing services to runaway and homeless youth.

4. *Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, and Certification Regarding Lobbying: Self-explanatory.*

5. *Program Narrative Statement:* Follow the guidance of part III, "Responsibilities of Basic Center Grantees," and of part IV, "Review Criteria."

6. *Supporting Documentation:* Self-explanatory.

7. *Duplication of Applications:* Each application will be duplicated by the government in order to provide the total of six copies needed for review panels and filing. To make copying as trouble-free and accurate as possible, the following requirements must be followed:

a. Applicants may attach only photocopies (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies which would give further support to the application. Resumes must be limited to one page.

b. The absolute maximum for supporting documentation is 10 pages, exclusive of letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers. Applicants may include as many letters of support or agreement as are appropriate.

c. Note: Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate subsections of the application, including supporting documentation.

C. Application Submission

To be considered for a grant, an applicant must submit one signed original and two copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in black ink. Each copy should be stapled (back and front) in the upper left corner. All copies of a single application should be submitted in a single package.

The *Catalog of Federal Domestic Assistance* Number (13.623) and title (Runaway and Homeless Youth Program) must be clearly identified on the application (SF 424, box 10).

1. Closing Date for the Receipt of Applications

The closing date for receipt of applications under this announcement is: [May 7, 1990.] Applications must be mailed or hand delivered to: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., room 341-F.2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS-90-ACYF/RHYP/Basic Centers.

2. Deadline for Submission of Applications

a. *Deadline.* Hand delivered applications will be accepted during the normal working hours of 9 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

i. Received on or before the deadline date at the above address, or

ii. Sent on or before the deadline date and received by the granting agency in time to be considered during the competitive review and evaluation process under chapter I-62 of the Health and Human Services Grants Administration Manual.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Late applications.* Applications which do not meet the criteria in paragraph "a" of this section are considered late applications. The Office of Human Development Services (HDS) will notify each late applicant that its application will not be considered in the current competition.

c. *Extension of deadline.* The Office of Human Development Services may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Checklist for a Complete Application.

_____One original application signed in black ink and dated plus two copies;

_____A completed SPOC certification with the date of SPOC contact entered in item 16 on page 1 of SF 424;

The original and both copies of the application include the following:

_____SF 424 (The original application should have the word "ORIGINAL" hand printed in bold block letters at the top of its SF 424);

_____SF 424A;

_____Budget Justification;

_____Organizational Capability Statement;

_____SF 424B;

_____Certification Regarding Drug-Free Workplace;

_____Certification Regarding Debarment;

_____Certification Regarding Lobbying;

_____Program Narrative Statement with maximum of 30 single-spaced pages;

_____Supporting Documents.

(Catalog of Federal Domestic Assistance Number 13.623, Runaway and Homeless Youth Program)

Dated February 21, 1990.

Wade F. Horn, Ph.D.,

Commissioner, Administration for Children, Youth and Families.

Approved: February 28, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

BILLING CODE 4130-01-M

APPENDIX A: FORMS AND ASSURANCES

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address *(give city, county, state, and zip code)*	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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BILLING CODE 4130-01-C

U.S. Department of Health and Human Services Certification Regarding Drug-free Workplace Requirements Grantees Other than Individuals

By submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, State, Zip Code):

_____

_____

_____

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative

agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue, SW., Washington, DC 20201-0001.

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1-4, Columns (a) and (b).

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year.)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5. Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the

total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–1. Show the totals of Lines 6a to 6h in each column.

Line 6j. Show the amount of indirect cost.

Line 6k. Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11. Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12. Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13. Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14. Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15. Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19. Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20. Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21. Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23. Provide any other explanations or comments deemed necessary.

Appendix C: Program Performance Standards and National Runaway Switchboard Description

I. Program Performance Standards

A. Overview

The program performance standards established by the Family and Youth Services Bureau for its funded centers relate to the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served. The program performance standards, and the related criteria and indicators, as initially published in March 1977, were developed by the Bureau through a functional analysis of the service and administrative components of the runaway youth projects, and were revised based upon the contents and feedback provided by the FY 1975 funded projects; they have subsequently been further revised, based upon the experience of the Bureau and its funded centers in their implementation. The standards relate to the basic program components enumerated in Section 312 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act.

The program performance standards are the general principles against which a judgment can be made to determine whether a service or an administrative component of a basic center has achieved a particular level of attainment.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the regional ACYF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards (and the Program Performance Standards Self-Assessment Instrument) are designed to serve as a developmental tool, and are to be employed by both the project staff and the regional ACYF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

B. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach

The project shall conduct outreach efforts directed towards community agencies, youth, and parents.

2. Individual Intake Process

The project shall conduct an individual intake process with each

youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling

The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program

The project shall provide a recreational/leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian(s), and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian(s), project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development

Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation

The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files

The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth shall, at a minimum, include an intake form which minimally contains the basic background information

required by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian(s) except to project staff, to the funding agency(ies) and its(their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

13. Ongoing Center Planning

The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a) and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (optional)

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under 13.

II. National Runaway Switchboard

The National Runaway Switchboard/National Communication System is a confidential telephone information, referral and crisis counseling service to runaway and otherwise homeless youth and their families in the United States, including Alaska and Hawaii. It is also a technical resource to assist youth-serving agencies in delivering more effective services by facilitating communication among service providers about specific cases. In essence, the National Communications System is designed to provide a neutral and available channel of communication between runaway and homeless youth and their families and to refer runaway and otherwise homeless youth and their families to the appropriate agency for assistance with their immediate crisis as well as working toward resolving their long-term problems. The National Runaway Switchboard (NRS) has become a major conduit for the reunification of runaway youth and their families. Also for over the past three years, the NRS has served as the National Youth Suicide Hotline, providing crisis intervention counseling and referral services to youth and their families.

The significant reasons for the development of the NRS are: (1) The interstate nature of the runaway and homeless youth problem, and (2) the increased vulnerability of youth to various forms of exploitation when they are away from home and/or in unfamiliar environments.

Approximately 2.81 million youth have been served by NRS from 1975 to the present. The current grant to operate NRS is held by Metro Help, Inc., 3080 N. Lincoln, Chicago, Illinois 60614; Lora Thomas, Executive Director; telephone: (312) 880-9860.

Appendix D: Executive Order 12372—State Single Points of Contact

Alabama
Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Tel. (205) 284-8905

Alaska
None

Arizona
Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 542-5004

Arkansas
Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-1074

California
Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95314, Tel. (916) 323-7480.

Colorado
State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156

Connecticut
Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Tel. (203) 566-3410

Delaware
Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736-3326

District of Columbia
Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, Tel. (202) 727-9111

Florida
George H. Meier, Director of Intergovernmental Coordination, Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Tel. (916) 445-0613

Georgia
Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656-3855

Hawaii
Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548-3016 or 548-3085

Idaho
None

Illinois
Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639

Indiana
Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5610

Iowa
Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281-3725

Kansas
None

Kentucky
Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower,

Frankfort, Kentucky 40601, Tel. (502) 564-2382

Louisiana

Robin Hote, Division of Administration, Office of State Clearinghouse, P.O. Box 94095, Baton Rouge, LA 70804-9095, (504) 342-7006

Maine

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3261

Maryland

Mary Abrams, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 225-4490

Massachusetts

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202, Tel. (617) 727-3253

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48903, Tel. (517) 375-1838

Note: Please direct correspondence to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, Michigan 48911 Tel. (517) 334-6190.

Minnesota

None

Mississippi

Cathy Mallette, Governor's Office of Federal State Programs, Department of Planning and Policy, 421 West Pascagoula Street, Jackson, Mississippi 39206, Tel. (601) 960-4282

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, Montana 59620, Tel. (406) 444-5522

Nebraska

None

Nevada

Ms. Jean Ford, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885-4420

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885-4420.

New Hampshire

Robert W. Varney, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

New Jersey

Mr. Barry Skokowski, Director, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613.

Note: Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025.

New Mexico

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827-3885

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Tel. (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, P.O. Box 26980, Oklahoma City, Oklahoma 73126, Tel. (405) 843-9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373-1998

Pennsylvania

Laine A. Heltebridle, Spec. Asst., Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2656.

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734-0435

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741-1676

Texas

Thomas C. Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463-1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533-5245

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

Virginia

None

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504-4151, Tel. (206) 753-4978

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Tel. (608) 266-1741.

Note: Please direct correspondence and question to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

American Samoa

None

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Tel. (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning

Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Tel. (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Tel. (809) 774-0750.

Appendix E: Regional Youth Contacts

Region I: Sue Rosen, Office of Human Development Services, John F. Kennedy Federal Building, room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565-1144

Region II: Dennis Coughlin, Office of Human Development Services, 26 Federal Plaza, room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264-2974

Region III: David Lett, Office of Human Development Services, 3535 Market Street, Post Office Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596-1224

Region IV: Viola Brown, Office of Human Development Services, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 221-2128

Region V: William Sullivan, Office of Human Development Services, 105 West Adams, 21st Floor, Chicago, IL 60603 (IL, IN, MI, MN, OH, WI), (312) 353-4241

Region VI: Eddie Falcon, Office of Human Development Services, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767-6596

Region VII: Steve Nash, Office of Human Development Services, Federal Office Building, room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426-5401

Region VIII: Juan Cordova, Office of Human Development Services, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844-3106

Region IX: Al Brown, Office of Human Development Services, 50 United Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 556-6178

Region X: Steve Ice, Office of Human Development Services, 2201 Sixth Avenue, Mail Stop RX 32, Seattle, WA 98121 (AK, ID, OR, WA), (206) 442-0482

Appendix F: Coordinated Networks

Region I: Nancy Jackson, Massachusetts Committee for Children and Youth, 14 Beacon Street, suite 706, Boston, MA 02108, (617) 742-8555

Region II: Margo Hirsch, Empire State Coalition, 666 Broadway, Suite 800, New York, NY 10012, (212) 777-8140

Region III: Nancy Johnson, Mid-Atlantic Network of Youth and Family Services, Inc., 1168 Prince Andrew Court, Pittsburgh, PA 15237, (412) 366-4979

Region IV: Gail L. Kurtz, Southeastern Network of Youth and Family Services, 337 South Milledge Ave., suite 209, Athens, GA 30605, (404) 354-4568

Region V: Barbara Rachelson, Michigan Network of Runaway and Youth Services, 115 West Allegany, Suite 310, Lansing, MI 48933, (517) 484-5262

Region VI: Theresa Andreas-Tod, Southwest Network of Youth Services, Inc., 404 West 40th Street, Austin TX 78751, (512) 459-1455

Region VII: Jack McClure, M.I.N.K.: A Network for Runaway and Homeless Youth, P.O. Box 12181, Parkview, MO 64152, (816) 741-1477

Region VIII: Linda Wood, Mountain Plains Youth Network, 311 North Washington, Bismarck, ND 58501, (701) 255-7229

Region IX: Nancy Sefcik, Western States Youth Services, 221 Petaluma Blvd. So., suite B Sacramento, CA 95814, (707) 763-2213

Region X: Ginger Baggett, Northwest Network of Runaway and Youth Services, 94 Third Street, Ashland, OR 97501, (503) 482-8890

Appendix G: Runaway and Homeless Youth Basic Center Grantees—FY 1989

Region I

Connecticut

Educational Resources, 90 North Main Street, West Hartford, CT 06107, Wayne Starkey, (203) 521-8035, 1990

The Youth Shelter, 105 Prospect Street, Greenwich, CT 06830, Shari Shapiro, (203) 661-2599

Youth Continuum of TRI-RYC, 844 Grand Avenue, New Haven, CT 06521, Michael Rowe, (203) 562-3396, 1991

Waterbury Youth Service System, 95 North Main Street, Waterbury, CT 06702, Tom Donaldson, (203) 754-2181, 1991

Council of Churches, 126 Washington Avenue, Bridgeport, CT 06604, John Cottrell, (203) 334-1121, 1992

Quinebaug Valley, Youth Services Bureau, P.O. Box 812, North Grosvenordale, CT 06255, Tracey Halstead-Graham, (203) 923-9526, 1992

Maine

New Beginnings, 491 Maine Street, Lewiston, ME 04240, Robert Row, (207) 946-7272, 1991

Youth and Family Services, P.O. Box 502, Skowhegan, ME 04976, Ronald Herbert, (207) 474-8311, 1992

Youth Alternatives of S. Maine, 175 Lancaster Street, Portland, ME 04101, Mike Tarpinian, (207) 874-1175, 1992

Massachusetts

Project RAP, 3 Broadway, Beverly, MA 01915, Nancy Pia, (617) 927-4506, 1990

Franklin/Hampshire Mental Health Center, 17 New South Street, Northampton, MA 01060, Deborah Ekstrom, (617) 732-3121, 1990

The Key Program, 484 West Street, Pittsfield, MA 01201, Randy Brewer, (413) 442-1503, 1990

North Suffolk Mental Health, 5301 Broadway, Chelsea, MA 92150, Virginia Doocy, (617) 889-4860, 1990

Springfield YWCA, 137 Chestnut Street, Springfield, MA 01103, Mary Reardon Johnson, (617) 732-3121, 1990

The Bridge, 47 West Street, Boston, MA 02111, Sister Barbara Whelan, (617) 423-9575, 1991

Wayside Community Programs, 4 Thurber Street, Framingham, MA 01701, Eric Masi, (617) 872-5611, 1991

Brookline Community Mental Health Center, 43 Garrison Road, Brookline, MA 02146, Joan Sokoloff, (617) 277-8107, 1991

Newton-Wellesley-Weston-Needham, 1301 Centre Street, Newton, MA 02159, Jon Dunn, (617) 244-4802, 1992

Marathon of Rhode Island, 1303 Washington Street, Walpole, MA 02081, Roy Ross, (401) 331-4250, 1992

New Hampshire

Community Youth Advocates, 36 Tremont Square, Claremont, NH 03743, Holly Johnson, (603) 543-0427, 1990

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Reed Carver, (603) 668-1920, 1992

Rhode Island

Stopover Shelters, 3380 East Main Road, Portsmouth, RI 02871, Peter Marshall, (401) 683-1824, 1991

Vermont

Washington County Youth Service Bureau, P.O. Box 627, Montpelier, VT 05601, Tom Howard, (802) 229-9151, 1992

Region II

New Jersey

Department of Social Services, 101 So. Shore Road, Northfield, NJ 08225, Holly Azchowski, (609) 645-7700, 1990

Tri-County Youth Services, 435 Main Street, Paterson, NJ 07501, Gail Manning, (201) 881-0280, 1990

Together, 7 State Street, Glassboro, NJ 08028, Susan Sasser, (609) 881-6100, 1991

Tri-County Youth Services, 435 Main Street, Paterson, NJ 07501, Gail Manning, (201) 881-0280, 1991

Youth Coordinating Council, 306 Brookline Avenue, Cherry Hill, NJ 08002, Eleanor Stofman, (609) 667-6525, 1991

Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807, Jeffrey Fetzko, (201) 526-6605, 1991

Ocean's Harbor House, 2445 Windsor Avenue, Toms River, NJ 08754, Albert Borris, (201) 929-0660, 1991

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396-8329, 1992

Crossroads, P.O. Box 321, Lumberton, NJ 08048, Mary Lou Bendit, (609) 261-5400, 1992

Group Homes of Camden County, 35 S. 29th Street, Camden, NJ 08105, Sandra Mengestu, (609) 541-9283, 1992

New York

St. Agatha Home, 135 Convent Road, Nanuet, NY 10954, Mary Ellen Holtzman, (914) 623-3461, 1990

Educational Alliance, 197 East Broadway, New York, NY 10002, Marion Lazer, (212) 475-6200, 1990

Urban Strategies, 1542 East New York Avenue, Brooklyn, NY 11212, Glenda Taylor, (718) 346-7074, 1990

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Arlene Fey, (315) 339-5640, 1990

Enter, 252 East 112th Street, New York, NY 10029, Rudy Marchi, (212) 860-2460, 1990

Family and Community Services, 41 West Main Street, Cobleskill, NY 12043, Andy Davidson, (518) 234-3581, 1990

Dutchess County, 22 Market Street, Poughkeepsie, NY 12601, Folomi Gray, (914) 431-2021, 1991

Center for Youth Services, 258 Alexander Street, Rochester, NY 14607, Roger Palma, (716) 473-2464, 1991

Society for Seamen's Children, 26 Bay Street, New York, NY, Ann Deinhardt, (718) 447-7740, 1991

Hillside Children's Center, 1183 Monroe Avenue, Rochester, NY 14620, Harry Lang, (716) 473-5150, 1991

Project Safe, 5 Catherine Street, Schenectady, NY 12307, Rev. Phillip Grigsby, (518) 374-2683, 1991

Project Equinox, 214 Lark Street, Albany, NY, Donna McIntosh, (518) 465-9524, 1992

Compass House, 370 Linwood Avenue, Buffalo, NY 14209, Janell Wilson, (716) 886-1351, 1992

Town of Huntington, Youth Bureau, 100 Main Street, Huntington, NY 11743, Paul Lowery, (516) 351-3061, 1992

YWCA of Binghamton, Broome County, 80 Hawley Street, Binghamton, NY 13901, Cindy Bowen, (607) 772-0340, 1992

Covenant House (Under 21), 460 West 41st Street, New York, NY 10029, Mary Sgammato, (212) 613-0300, 1992

Flowers With Care, 23-30 Astoria Boulevard, Astoria, NY 11102, Rev. James Harvey, (718) 726-9790, 1992

Family of Woodstock, U.P.O. Box 3516, Kingston, NY 12401, Joan Mayer, (914) 679-9240, 1992

Nassau County Youth Board, 1 West Street, Mineola, NY 11501, Ann Irvin, (516) 535-5893, 1992

The Idyllic Foundation, Town and Country Plaza, Cazenovia, NY 13035-0455, Brian Burns, (315) 655-2704, 1992

Puerto Rico

Dispensario San Antonio, Box 213, Playa Station, Ponce, PR 00734, Sister Rosita Bauza, (809) 843-1910, 1990

Pueblo Del Nini, P.O. Box 788, Rio Grande, PR 00765, Elba Nazario, (809) 887-2225, 1990

Office of Human Development, King's Court and Loiza Street, Santurce, PR 00914, Jesus Joel Perez, (809) 728-7474, 1990

The Salvation Army, 1327 Americo Miranda Avenue, Caparra Terrace, PR 00519, Marjorie Yambo, (809) 781-6883, 1990

Department of Social Services, Box 11398, Santurce, PR 00910, Carmen Sonia Zayas, (809) 722-7400, 1991

Virgin Islands

Department of Human Services, Barbel Plaza South, Charlotte Amalie, VI 00801, Catherine Hills, (809) 774-4393, 1991

Region III

Delaware

Aid in Dover, 32 Lookerman Square, Dover, DE 19501, Beverly Williams, (302) 734-7610, 1991

Child, Inc., 11th and Washington Streets, Wilmington, DE 19801, Joseph Dell'Olio, (302) 655-3311, 1992

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, NE., Washington, DC 20002, Deborah Shore, (202) 546-6807, 1991

American Youth Work Center, 1751 N Street, NW., Washington, DC 20036, Bill Treanor, (202) 785-0764, 1992

Maryland

Southern Area Youth Services, P.O. Box 44408, Friendly, MD 20744, Thomas Merrick, (301) 292-3825, 1991

Youth Resources Center, 7300 New Hampshire Avenue, Takoma Park, MD 20912, Ellen Freeman, (301) 779-1257, 1991

Fellowship of Lights, Inc., 1300 North Calvert Street, Baltimore, MD 21202, Ross Pologe, (301) 837-8155, 1991

Boys & Girls Home of Montgomery County, 9601 Colesville Road, Silver Spring, MD, Quanah Parker, (301) 589-8444, 1991

Pennsylvania

Youth in Action, 7th and Morton Avenue, Chester, PA 19013, Tommie Lee Jones, (215) 874-1407, 1990

Youth Emergency Service, 410 North 34th Street, Philadelphia, PA 19104, Theodore Levine, (215) 222-3262, 1990

Council of Three Rivers Indian Center, 200 Charles Street, Pittsburgh, PA 15238, Mimi Wagner, (412) 782-4457, 1990

Centre County Youth Service, 205 East Beaver Avenue, State College, PA 16801, Norma Keller, (814) 237-5731, 1991

Valley Youth House Committee, 539 Eighth Avenue, Bethlehem, PA 18019, David Gilgoff, (215) 691-1200, 1991

Whale's Tale, 5100 Centre Avenue, Pittsburgh, PA 15232, Christopher Smith, (412) 621-8407, 1991

Tabor Children's Services, 601 New Britain Road, Doylestown, PA 18901, William Haussmann, (215) 348-4071, 1991

Voyage House, 1431 Lombard Street, Philadelphia, PA 19146, Francis Stoffa, (215) 545-2910, 1992

Catholic Charities, P.O. Box 3551, Harrisburg, PA, Very Rev. Francis Kumontis, (717) 652-3934, 1992

Catholic Social Services, 15 South Franklin Street, Wilkes-Barre, PA 18702, Thomas Cherry, (717) 824-5766, 1992

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, Ruth Richardson, (412) 766-2215, 1992

Alternatives Corporation, 360 King Street, Pottstown, PA 19464, Ronald Harris, (215) 327-1601, 1992

Virginia

Mother Seton House, Inc., 642 North Lynnhaven Road, Virginia Beach, VA 23452, Susan Jones, (804) 498-4673, 1990

Central Virginia Child Development Association, 310 East Market, Charlottesville, VA 22902, Betty Goodman, (804) 977-4260, 1990

Alexandria Community Y, 418 South Washington Street, Alexandria, VA 22314, Craig Hutton, (703) 549-1111, 1991

Alternative House, P.O. Box 637, McLean, VA, Mark Hirschfeld, (703) 356-8355, 1991

Family & Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard Lung, (804) 282-4255, 1992

Volunteer Emergency, Foster Care, 2317 Westwood Avenue, Richmond, VA 23230, William Christian, (804) 353-4698, 1992

City of Roanoke, 836 Campbell Avenue, Roanoke, VA 24016, A. Krochalis, (703) 981-2776, 1992

West Virginia

Daymark, 1583 Lee Street, East, Charleston, WV 25311, Amy Buckingham, (304) 344-3527, 1992

Southwestern Community Council, 540 Fifth Street, Huntington, WV 25701, Joan Ross, (304) 525-5151, 1992

Region IV

Alabama

Group Homes for Children, 880 South Lawrence, Montgomery, AL 36104, George Holy, (205) 834-5512, 1990

Shelby Youth Services, P.O. Box 1261, Alabaster, AL 35007, Susan Johnston, (205) 663-6301, 1991

American Red Cross, 405 South First Street, Gadsden, AL 35901, Pat Page, (205) 547-9505, 1992

Mobile Mental Health Center, 2400 Gordon Smith Drive, Mobile, AL 36617, T. Edmund Lakeman, (205) 473-4423, 1992

Florida

Youth Services Center, P.O. Box 625, Merritt Island, FL 32952, Susan Jennings, (305) 452-0801, 1990

Youth Shelter of Southwest Florida, 2240 Broadway, Ft. Myers, FL 33901, Vernon Langford, (813) 337-1313, 1990

Lutheran Ministries of Florida, 4015 S. Westshore Boulevard, Tampa, FL 33624, Josie Bianco, (305) 467-0103, 1990

Alternative Human Services, P.O. Box 13087, St. Petersburg, FL 33733, Roy Miller, (813) 526-1123, 1990

Corner Drugstore, 1300 Northwest 6th Street, Gainesville, FL 32601, Karen Crapo, (904) 377-2976, 1991

Someplace Else, 1315 Linda Ann Drive, Tallahassee, FL 32301, Diane Alexander, (904) 877-7993, 1991

Switchboard of Miami, 35 S.W. 8th Street, Miami, FL 33130, Shirley Aron, (305) 358-1640, 1991

Miami Bridge, 1149 N.W. 11th Street, Miami, FL 33136, Maxine Thurston, (305) 324-8953, 1991

Anchorage Children's Home, 707 North Cove Boulevard, Panama City, FL 32401, Barbara Cloud, (904) 7673-7102, 1991

Orange County Board of Commissioners, 1718 East Michigan Avenue, Orlando, FL 32806, Larry Jones, (305) 420-3620, 1991

Alternative Human Services, P.O. Box 13087, St. Petersburg, FL 33733, Roy Miller, (813) 526-1123, 1992

Youth Crisis Center, P.O. Box 16567, Jacksonville, FL 32245, Tom Patania, (904) 725-6662, 1992

Youth and Family Alternatives, P.O. Box 1073, New Port Richey, FL 34291, Richard Hess, (813) 842-8060, 1992

Florida Keys Children's Shelter, 73 High Point Road, Plantation Key, FL 33070, E. Bricker, (305) 852-4246, 1992

Georgia

The Alcove, 507 East Church Street, Monroe, GA 30655, Gail Bayes, (404) 267-4571, 1990

The Bridge, 75 Peachtree Place, N.W., Atlanta, GA 30309, Ann Starr, (404) 881-8344, 1992

The Marshlands Foundation, 11 West Park Avenue, Savannah, GA 30401, Pat Peshoff, (404) 234-4048, 1992

Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601, Martha Mendenhall, (404) 548-5893, 1992

Kentucky

Lexington-Fayette County Government, 536 West Third Street, Lexington, KY 40508, Claudia Andrews, (606) 254-2501, 1991

YMCA of Greater Louisville, 1410 South First Street, Louisville, KY 40208, Elizabeth Triplett, (502) 637-6480, 1991

Brighton Center, P.O. Box 325, Newport, KY 41072, Robert Brewster, (606) 581-1111, 1992

Mississippi

Catholic Charities, P.O. Box 2248, Jackson, MS 39205, Gayle Watts, (601) 355-9639, 1990

Mississippi Children's Home, 1801 N. West Street, Jackson, MS 39205, Christopher Cherney, (701) 255-7229, 1990

North Carolina.

Cape Fear Substance Abuse/ Crisis Line, 801 Princess Street, Wilmington, NC 28401, Margaret Welles, (919) 343-0145, 1990

Surry County Friends of Youth, P.O. Box 1626, Mount Airy, NC 27030, J. C. Murray, (919) 789-9064, 1990

Youth Care, 211 S. Edgeworth Street, Greensboro, NC 27401, Charles Hodierne, (919) 378-9109, 1990

Haven House, 401 E. Whitaker Mill Road, Raleigh, NC 27608, Michael Rieder, (919) 755-6368, 1991

Catholic Social Services, 10 Cascade Avenue, Winston Salem, NC 27101, Rosemary Martin, (919) 727-0705, 1991

The Relatives, 1000 East Boulevard, Charlotte, NC 28203, Jo Ann Greyer, (704) 377-060, 1992.

Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723, Elizabeth Chambers, (704) 586-8958, 1992

Tuscarora Tribe, P.O. Box 1455, Pembroke, NC 28372, Chief Young Bear, (919) 521-8682, 1992

South Carolina

Department of Youth Services (Crossroads), 1122 Lady Street, Columbia, SC 29202, Trudi Trotti, (803) 758-0262, 1990

Department of Youth Services (Hope House), 1122 Lady Street, Columbia, SC 29202, Trudi Trotti, (803) 758-0262, 1990

Department of Youth Services (Greenhouse), 1122 Lady Street, Columbia, SC 29202, Trudi Trotti, (803) 758-0262, 1990

Tennessee

The Family Link, 1207 Peabody, Memphis, TN 38174, Marion Carruth, (901) 725-6911, 1990

Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37197, Mark Wolfe, (615) 524-2689, 1990

Family and Child Services, 317 Oak Street, Chattanooga, TN 37403, Tommy Perkins, (615) 757-2692, 1990

Oasis Center, P.O. Box 120655, Nashville, TN 37212, Mary Jane Dewey, (615) 329-8036, 1992

Region V

Illinois

Naperville Community Outreach, 113 E. Van Buren, Naperville, IL 60540, John Prior, (312) 961-2992, 1990

Aunt Martha's, 224 Blackhawk, Park Forest, IL 60466, Steven McCabe, (708) 747-2701, 1991

Children's Home and Aid Society, 1819 South Neil, Champaign, IL 61820, Sharon Pierce, (217) 359-8815, 1991

Youth Network Council, 506 South Wabash Avenue, Chicago, IL 60605, Denis Murstein, (312) 226-1000, 1991

LaSalle County Youth Service Bureau, 827 Columbus Street, Ottowa, IL 61350, Dave McClure, (815) 433-3953, 1991

Teen Living Programs, 3179 N. Broadway, Chicago, IL 60657, Patricia Berg, (312) 883-0025, 1991

Travelers and Immigrants Aid, 327 S. LaSalle, Chicago, IL 60604, Laura Friedman, (312) 435-4500, 1991

McHenry County Youth Service, 101 South Jefferson Street, Woodstock, IL 60098, Susan Krause, (815) 338-7360, 1992

Hoyleton Youth and Family Services, 36 Loisel Village, East St. Louis, IL 62203, Conrad Steinhof, (618) 398-0900, 1992

Central Illinois Youth Service Bureau, 832 South Fourth Street, Springfield, IL 62703, Kaywin Davis, (217) 753-8300, 1992

Youth Attention Center, P.O. Box 606, Jacksonville, IL 62651, Jerome Noble, (217) 245-6000, 1992

Mental Health Services, 902 West Main Street, West Frankfort, IL 62896, William Young, (618) 937-6483, 1992

Northside Ecumenical Night Ministry, 835 West Addison, Chicago, IL 60613, Thomas Behrens, (312) 935-3366, 1992

Omni Youth Services, 222 East Dundee Road, Wheeling, IL 60090, Dennis Depcik, (312) 541-0109, 1992

Youth Services Network, 4402 North Main Street, Rockford, IL 61105, Arlene Jackson, (708) 877-1312

Indiana

Youth Service Bureau, 222 Lincolnway West, South Bend, IN 46628, Bonnie Strycker, (219) 284-9231, 1990

Park Center, 909 E. State Boulevard, Fort Wayne, IN 46805, John Garner, (219) 424-7478, 1990

Stopover, 445 N. Penn Street, Indianapolis, IN 46204, Carol D'Amora, (317) 635-9301, 1990

Clark County Youth Shelter, 118 East Chestnut Street, Jeffersonville, IN 47130, Sherry Zachariah, (812) 284-5229, 1990

Crisis Center, Inc., 215 N. Grand Boulevard, Gary, IN 46403, Shirley Caylor, (219) 980-4207, 1991

Monroe County Youth Service Bureau, 1310 East Atwater Avenue, Bloomington, IN 47401, Roberta Wysong, (812) 333-3506, 1991

Indiana Juvenile Justice Task Force, 3050 North Meridian, Indianapolis, IN 46208, James Miller, (317) 926-6100, 1992

Children's Bureau of Indianapolis, 615 N. Alabama Street, Indianapolis, IN 46204, Kenneth Phelps, (317) 634-6481, 1992

Michigan

Comprehensive Youth Services (Harbor), Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Schietaert, (313) 463-7079, 1990

Catholic Family Services, 1819 Gull Road, Kalamazoo, MI 49001, John Hemmer, (616) 381-9800, 1990

Cory Place, 812 N. Jefferson, Bay City, MI 48708, Mary Jo Tompkins, (517) 895-5563, 1990

Saginaw County Youth Council, 1110 Howard, Saginaw, MI, Ron Spess, (517) 752-5175, 1990

Northeast Michigan Community Service Agency, 2373 Gordon Road, Alpena, MI 49707, Ron Spess, (517) 356-3474, 1990

League of Catholic Women (Off The Streets), 120 Parsons Street, Detroit, MI 48201, David Suttner, (313) 831-1000, 1990

Advisory Centers (The Bridge), 1115 Ball N.E., Grand Rapids, MI 49505, Douglas Ellis, (616) 458-7434, 1990

Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Lisa Wolf, (313) 662-2265, 1990

Every Woman's Place, 1706 Peck Street, Muskegon, MI 49442, Judith Hayner, (616) 726-4493, 1990

The Sanctuary, 1222 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547-2260, 1991

Equal Ground, 398 Park Lane, Lansing, MI 48823, James Gorman, (517) 351 4000, 1991

Comprehensive Youth Services (Macomb), Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Schietaert, (313) 463-7079, 1992

Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Polly Learned, (616) 983-6351, 1992

Bethany Christian Services, 6995 West 48th, Fremont, MI 49412, Dale Painter, (616) 924-3390, 1992

Youth Living Centers, 715 S. Inkster, Inkster, MI 48141, Barry Manning, (313) 536-5005, 1992

Listening Ear Crisis Center, 107 E. Illinois Avenue, Mt. Pleasant, MI 48858, Don Schuster, (517) 772-2919, 1992

Minnesota

Evergreen House, 921 Minnesota Avenue, Bemidji, MN 56601, Julie Portesan, (218) 751-4332, 1990

Red School House, 1089 Portland Avenue, St. Paul, MN 55104, John Whitecloud, (612) 227-4184, 1990

Lutheran Social Services, 600 Ordean Building, Duluth, MN 55802, John Moline, (218) 626-2726, 1990

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405, Thomas Sawyer, (612) 377-8800, 1992

St. Paul Youth Service Bureau, 1619 Dayton Avenue, St. Paul, MN 55104, Raeone Buckman-Ellis, (612) 647-0411, 1992

Ohio

Children's and Family Service, 21 Indiana Avenue, Youngstown, OH 44505, Gerald Janosik, (216) 782-5664, 1990

Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331, Shirley Hathaway, (513) 548-8002, 1990

Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035, John Ollerton, (216) 324-6113, 1990

New Life Youth Services, 6128 Madison Road, Cincinnati, OH 45227, Debbie Latter, (513) 561-0100, 1991

Free Medical Clinic, 12201 Euclid Avenue, Cleveland, OH 44106, Rebecca Devenanzio, (216) 421-2000, 1991

Clermont County Community Services, 2291 Bauer Road, Batavia, OH 45103, Martha Undercoffer, (513) 732-7182, 1991

Connecting Point, 3301 Collingwood Boulevard, Toledo, OH 43610, Carole Smith, (419) 243-6326, 1991

Daybreak, 819 Wayne Avenue, Dayton, OH 45410, David Nehring, (513) 461-1000, 1991

Huckleberry House, 1421 Hamlet Street, Columbus, OH 43201, Douglas McCoard, (614) 294-8097, 1992

Safe Landing Youth Shelter, 680 E. Market Street, Akron, OH 44303, David Fair, (216) 376-4200, 1992

Wisconsin

Walker's Point Youth Center, 732 S. 21st Street, Milwaukee, WI 53204, Andre Olton, (414) 647-8200, 1991

Innovative Youth Services, 1030 Washington Avenue, Racine, WI 53403, Jane Karas, (414) 637-9557, 1991

Wisconsin Association for Runaway Services, 2318 E. Dayton Street, Madison, WI 53704, Patricia Balke, (608) 241-2649, 1991

Briarpatch, 512 E. Washington Avenue, Madison WI 53703, Steve Sperling, (608) 251-1126, 1992

Counseling Center of Milwaukee, 1428 North Farwell Avenue, Milwaukee, WI 53202 David Cobb, (414) 271-2565, 1992

Region VI

Arkansas

Stepping Stone, Inc., 6501 W. 12th Street, Little Rock, AR 72204, Judy Kane, (501) 562-1809, 1991

Consolidated Youth Services, 4220 Stadium Boulevard, Jonesboro, AR 72401, Bonnie Stevens, (501) 972-1110, 1991

Youth Bridge, P.O. Box 668, Fayetteville, AR 72702, Michael Lee, (501) 632-4618, 1992

Comprehensive Juvenile Services, 1606 South J, Fort Smith, AR 72901, Jerry Robertson, (501) 785-4031, 1992

Louisiana

Tangipahoa Youth Service Bureau, 1826 River Road, Hammond, LA 70401, Jeanne Voorhees, (504) 345-1171, 1990

Education Treatment Council, 146 Hodges Street, Lake Charles, LA 70601, Giles Gilliam, (318) 433-1062, 1990

Mt. Zion First Baptist Church, P.O. Box 102, Baton Rouge, LA 70802, Lil Veal, 1991

Community Recreational Home, 7997 Bayou Rapids Road, Alexandria, LA 71306, Robert Tillie, (318) 473-0530, 1992

New Mexico

Youth Development, 1710 Centro Familiar S.W., Albuquerque, NM 87105, Augustine C. Baca, (505) 873-1604, 1990

Jemez House, P.O. Box 178, Alcalde, NM 87511, David Reinbolt, (505) 852-4264, 1990

Eight Northern Indian Council, P.O. Box 969, San Juan Pueblo, NM 87566, Afredo Montoya, (505) 852-4265, 1991

Youth Shelters and Family Services, P.O. Box 8135, Santa Fe, NM 87504, Betty Rangel, (505) 473-0240, 1991

New Day, 1817 Sigma Chi N.E., Albuquerque, NM 87106, Jeff Burrows, (505) 247-9559, 1992

Oklahoma

Youth Services for Oklahoma County, 600 North Harvey, Oklahoma City, OK 73106, Susan Baumberger, (405) 235-7537, 1990

Ft. Sill Apache Tribe, Rt. 2, Box 121, Apache, OK 73502, Beverly Hicks, (405) 588-2298, 1990

Bryan County Youth Services, 3700 University, Durant, OK 74702, Bryant Jones, (405) 924-6263, 1990

Cherokee Nation Youth Shelter, P.O. Box 948, Tahlequah, OK, Gwen Grayson, (918) 456-0671, 1992

Northern Oklahoma Youth, Services Center, 415 W. Grand, Ponca City, OK 74601, Richard Mauldin, (405) 762-8341, 1992

Youth Services of Tulsa County, 1415 E. 8th Street, Tulsa, OK 74120, Janis Walker, (918) 582-0061, 1992

Youth and Family Services of Canadian County, 2404 Sunset Drive, El Reno, OK 73036, Warren Wells, (405) 262-6555, 1992

Northwest Family Services, 326 7th Street, Alva, OK 73717, John Jones, (405) 327-2900 1992

Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534, John Herdt, (405) 255-8800, 1992

Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Darla Fore, (405) 233-7220, 1992

Payne County Youth Services*, 2224 W. 12th, Stillwater, OK 74076, Jim Lunsford, (405) 377-3380, 1992

Texas

Grayson County Juvenile Alternatives, 207 West Cherry, Sherman, TX 75090, J. L. Radford-Williard, (214) 893-4717, 1990

El Paso Center for Children, 3700 Altura, El Paso, TX 79930, Sandy Rioux, (915) 565-8361, 1990

Association of Mexican Americans, 204 Clifton, Houston, TX 77011, Gloria Guardiola, (713) 926-9491, 1990

The Children's Center, 2127 Avenue M, Galveston, TX, (Vacant), (409) 765-5212, 1990

YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201, Kathy Hamilton, (214) 954-0655, 1990

Stop Child Abuse and Neglect, 7002 McPherson Street, Suite 11, Laredo, TX 78041, Pat Davila, (512) 724-3177, 1990

Central Texas Youth Services Bureau, 703 Parmer Street, Killeen, TX 76540, Conley Thompson, (817) 634-2085, 1990

Harris County Children's Services, 6425 Chimney Rock, Houston, TX 77081, Ann Hibbert, (713) 526-5701, 1990

Montgomery County Youth Services, P.O. Box 1316, Conroe, TX 77305, Gretchen Faulkner, (409) 756-8682, 1990

Middle Earth Unlimited, 3708-B South Second Street, Austin, TX 78704, Mitch Weynand, (512) 482-8322, 1991

Lovers Lane, 9200 Inwood Road, Dallas, TX 75220, Charles Green, (214) 691-4721, 1991

Sand Dollar, P.O. Box 840569, Houston, TX 77019, Happy Spillar, (713) 529-3053, 1991

Sabine Valley MHMR Center, P.O. Box 6800, Longview, TX 75608, Ron Cookston, (214) 297-2191, 1991

Catholic Family Services, P.O. Box 15127, Amarillo, TX 79105, Al Bednorz, (806) 376-4571, 1991

Carrollton Youth Advocacy Council, 3945 North Josey Lane, Carrollton, TX 75007, Peter Gaupp, (817) 273-2084, 1991

Collin Intervention to Youth, 1111 Avenue H, Plano, TX 75074, Janet Lawler, (214) 881-8010, 1991

The Bridge Association, 115 West Broadway, Fort Worth, TX 76104, Jan Viles, (817) 877-1121, 1991

East Texas Open Door, 414 West Burleson Street, Marshall, TX 75670, Therrel Brown, (214) 938-1211, 1991

Comal County Juvenile Resident, 1414 W. San Antonio Street, New Braunfels, TX 78130, Nancy Ney, (512) 629-4329, 1992

Houston Metropolitan Ministries, 2001 Huldy, Houston, TX 77006, Bruce Theunissen, (713) 527-8218, 1992

The Bridge Association (Spruce), 115 West Broadway, Fort Worth, TX 76104, Jan Viles, (817) 926-9184, 1992

Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Roy Maas, (512) 340-8077, 1992

Youth Alternatives (Stepping Stone), 3103 West Avenue, San Antonio, TX 78213, Roy Maas, (512) 340-8077, 1992

Tropical Texas Center, P.O. Drawer 1108, Edinburg, TX 78540, Polly Adams, (512) 383-0121, 1992

Depelchin Children's Center, 100 Sandman, Houston, TX 77007, Lloyd Lenarz, (713) 861-8136, 1992

Greater San Marcos Youth Shelter, P.O. Box 1455, San Marcos, TX 78667, Jim Grouchy, (512) 754-0500, 1992

Region VII

Iowa

United Action for Youth, 311 N. Linn Street, Iowa City, IA 52240, Jim Swaim, (319) 338-7518, 1990

Foundation II, 1251 Third Avenue, S.E., Cedar Rapids, IA 52403, Steve Meyer, (319) 362-2176, 1990

Valley Shelter Homes, 942 Marquette Street, Davenport, IA 52804, John McBride, (319) 323-8094, 1990

Christian Home Association, North 6th and Avenue E, Council Bluffs, IA 51502, Andrew Ross, (712) 325-1910, 1991

Youth and Shelter Services, 217 Eighth Street, Ames, IA 50010, George Belitsos, (515) 233-3141, 1992

Kansas

OASIS I, Shelter and More Runaway and Homeless Youth, 900 W. Broadway, Newton, KS 67114, Shirley Dwyer, (316) 283-1950, 1990

Wichita Children's Home, 810 N. Holyokes, Wichita, KS 67208, Sarah Robinson, (316) 684-6581, 1990

Wyandotte House, 632 Tauromee, Kansas City, KS 66101, Wayne Sims, (913) 342-9332, 1992

Missouri

Synergy House, P.O. Box 12181, Parkville, MO 64152, Jack McClure, (816) 741-8700, 1990

Youth Emergency Service, 6816 Washington Avenue, University City, MO 63130, Janet Gilpin, (314) 862-1334, 1991

Comprehensive Human Services, 707 North Eighth Street, Columbia, MO 65201, Charles Servey, (314) 874-8686, 1991

Youth in Need, 529 Jefferson, St. Charles, MO 63301, James Braun, (314) 724-7171, 1991

Asylum of St. Louis (Marian Hall), 325 N. Newstead, St. Louis, MO 63108, JoAnn Fuchs, (314) 531-0511 1992

Nebraska

Youth Emergency Services, 1908 Hancock Street, Omaha, NE 68005, Robert Knott, (308) 635-3089, 1990

Panhandle Community Services, 3350 North 10th Street, Gering, NE 69341, Ruth Vance, (308) 635-3089, 1990

Father Flanagan's Boy's Home, Boys Town Center, Boys Town, NE 68502, Roger Peterson, (402) 475-3040, 1991

Youth Service System, 2202 South 11th Street, Lincoln, NE 68502, Mary Fran Flood, (402) 475-3040, 1992

Region VIII

Colorado

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297-0408, 1990

Pueblo Youth Service Bureau, 612 West 10th Street, Pueblo, CO 81003, Molly Melendez, (303) 542-5161, 1990

Mesa County Department of Social Services, Horizon House, 559 North 23rd Street, Grand Junction, CO 81502, Mark Neujahr, (303) 245-7962, 1990

Ute Mountain Ute Nation, Sunrise Youth Shelter, General Delivery, Towaoc, CO 81334, Rita Arnett, (303) 565-3751, ext. 213, 1990

Let's Work It Out, 902 Taughenbaugh, #303 Rifle, CO 81650, Patti Phelps, (303) 625-3141, 1991

Attention, Inc., P.O. Box 907, Boulder, CO 80306, Brie Timms, (303) 447-1206, 1991

Gemini House (Family Tree), 3805 Marshall Street, Wheatridge, CO 80033, Gail Penney, (303) 235-0630, 1991

Denver Alternative Youth Services, 1240 W. Bayaud Avenue, Denver, CO 80223, Rhonda Cannon, (303) 698-2300, 1991

Human Services, Inc., 838 Grant Street, Denver, CO 80203, Sally Butler, (303) 429-4440, 1991

Comitis Crisis Center, 9840 E. 17th Street, Aurora, CO 80040, Richard Barnhill, (303) 341-9160, 1991

Larimer County Shelter Care, 4432 Poco Drive, Fort Collins, CO 80525, Eri Busch, (303) 226-6984, 1991

Young Life (Dale House), 821 N. Cascade Avenue, Colorado Springs, CO 80903, George Sheffer III, (303) 471-0642, 1992

Capital Hill United, 1290 Williams Street, Denver, CO 80218, Gary Sanford, (303) 388-2716, 1992

Montana

Mountain Plains Youth Services, 709 East Third, Anaconda, MT 59711, Linda Wood, (701) 255-7229, 1992

Blackfeet Tribal Council, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338-5871, 1992

North Dakota

Mountain Plains Youth Services, 311 North Washington, Bismarck, ND 58501, Linda Wood, (701) 255-7229, 1992

South Dakota, Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570, Marilyn Gangone, (605) 747-2381, 1990

Mountain Plains Youth Services, 1206 North Third Street, Aberdeen, SD 57401, Linda Wood, (701) 255-7229, 1992

Utah

Department of Social Services, 120 North 200 West, Salt Lake City, UT 84110, Jean Nielson, (801) 538-4100, 1990

Wyoming

Mountain Plains Youth Services, 20 W. Works, Sheridan, WY 82801, Linda Wood, (701) 255-7220, 1992

Attention Home, 1810 Van Lennen Avenue, Cheyenne, WY 82001, Jim Cosgrove, (307) 832-4740, 1992

Region IX

Arizona

Yuma Child Abuse and Neglect, 257 South Third Avenue, Yuma, AZ 85364, Charlene Hicks, (602) 783-2427, 1990

Center for Youth Resources, 915 N. Fifth Street, Phoenix, AZ 85004, Michael Garvey, (602) 271-9849, 1991

Open-Inn, 4810 E. Broadway, Tucson, AZ 85711, Darlene Dankowski, (602) 323-0200, 1991

The Navajo Nation, P.O. Box 1599, Window Rock, AZ 86515, Irving Toddy, (602) 871-6744, 1991

Our Town Family Center, P.O. Box 26504, Tucson, AZ 85726, Dennis Noonan, (602) 323-1708, 1992

California

Children's Home Society, 3200 Telegraph Avenue, Oakland, CA 94609, Pat Reynolds, (415) 655-7406, 1990

Community Human Services, P.O. Box 3076, Monterey, CA 93942, Jo Kenny, (408) 373-3641, 1990

Hollywood Community Services, 1754 Taft Avenue, Hollywood, CA 90028, Dan Gumbleton, (213) 467-1932, 1990

South County Alternatives, 7751 Monterey Street, Gilroy, CA 95020, Albert Balencia, (408) 842-3118, 1990

Shasta County YMCA, 1752 Tehema Street, Redding, CA 96001, Phil Paulson, (916) 244-6226, 1990

Sequoia YMCA, 609 Pierce Avenue, Redwood, CA 94063, Richard Gordon, (415) 366-8408, 1990

Turning Point, 12922 Seventh Street, Garden Grove, CA 92640, Edward Armstrong, (714) 638-8310, 1990

Department of Social Services, 4455 E. Kings Canyon Road, Fresno, CA 93750, Robert Whittaker, (209) 453-6406, 1990

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 526-1440, 1990

Individuals Now, 1303 College Avenue, Santa Rosa, CA 95404, Adam Jacobs, (707) 544-3299, 1991

C.S.P. South County Youth Shelter, 980 Catalina, Laguna Beach, CA 92651, Karen Cervenka, (714) 494-4311, 1991

Butte County Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926, Alex Collins-Thomas, (916) 534-4211, 1991

Travelers Aid Society, 646 S. Los Angeles Street, Los Angeles, CA 90014, Wayne Hinrichs, (213) 625-2501, 1991

Redwood Community Action Agency, 904 G Street, Eureka, CA 95501, Peter LaVallee, (707) 443-8322, 1991

Santa Clara Social Advocates, 509 View Street, Mountain View, CA 94041, Paul Schutz, (408) 253-3540, 1991

Los Angeles Youth Network, 6760 Franklin Place, Los Angeles, CA 90028, Gayle Sherman, (213) 466-6200, 1991

Central City Hospitality House, 146 Leavenworth Street, San Francisco, CA 94102, Ann O'Halloran, (415) 776-2101, 1991

Catholic Charities, 1400 W. 9th Street, Los Angeles, CA 90015, Bill White, (213) 251-3496, 1991

San Diego Youth and Community Services, 3878 Old Town Avenue, San Diego, CA 92110, Liz Shear, (619) 297-9310, 1991

Interface Community, 1305 Del Norte Road, Camarillo, CA 93010, Charles Watson, (805) 485-6114, 1991

Youth Advocates (Nine Grove Lane), 285-12th Avenue, San Francisco, CA 94118, Bruce Fisher, (415) 668-2622, 1991

Youth Advocates (Huckleberry House), 285-12th Avenue, San Francisco, CA 94118, Bruce Fisher, (415) 668-2622, 1991

Western Youth Services, 204 E. Amerige Avenue, Fullerton, CA 92632, Jeff Harris, (714) 525-5838, 1992

Ocean Park (Stepping Stone), 1833-18th Street, Santa Monica, CA 90404, Amy Somers, (213) 450-7839, 1992

Santa Cruz Community Center, 117 Union Street, Santa Cruz, CA 95060, Mary Sims, (408) 425-0771, 1992

Tahoe Human Services, P.O. Box 848, South Lake Tahoe, CA 95705, David Hampton, (916) 541-2445, 1992

Klein Bottle, 1235-B Veronica Springs Road, Santa Barbara, CA 93105, David Edelman, (805) 682-8494, 1992

Diogenes Youth Services (Yolo), 2555 Third Street, Sacramento, CA 95818, Lyn Cottingham, (916) 363-9943, 1992

YMCA of San Diego County, 7510 Clairemont Mesa Boulevard, San Diego, CA, Beverly Digregorio, (619) 234-1871, 1992

San Diego Youth Involvement, 626 South 28th Street, San Diego, CA 92113, Sandra Sandoal, (619) 234-1871, 1992

Bill Wilson Counseling Center, 1000 Market Street, Santa Clara, CA 95050, Sparky Harlan, (408) 984-5955, 1992

South Bay Community Services, 429 Third Avenue, Chula Vista, CA 92010, Kathryn Skchroeder, (619) 420-3620, 1992

Mendocino County Schools, 518 Low Gap Road, Ukiah, CA 95482, Jim Levine, (707) 463-4915, 1992

Casa de Bienvenidos, P.O. Box 216, Los Alamitos, CA 90720, Darwin Wagner, (213) 594-6825, 1992

Diogenes Youth Services (Sacramento), 2555 Third Street, Sacramento, CA 95814, Lyn Cottingham, (916) 363-9943, 1992

1736 Family Crisis Center, 1736 Monterey Boulevard, Hermosa Beach, CA 90254, Carol Adelkoff, (213) 372-4674, 1992

Larkin Street Services, 1044 Larkin Street, San Francisco, CA 94109, Diane Flannery, (415) 673-0911, 1992

National Center for Immigrant Rights, 256 S. Occidental Boulevard, Los Angeles, CA 90057, Cameryn Schmidt, (213) 388-8693, 1992

Klein Bottle, 412 East Tunnell Street, Santa Maria, CA 93454, David Edelman, (805) 922-0468, 1992

Hawaii

Hawaii Youth Shelter Network, 2146 Damon Street, Honolulu, HI 96822, Sam Cox, (808) 946-3635, 1991

Nevada

Community Runaway and Youth Service, 1135 Terminal Way, Reno, NV 89502, Carol Holliday, (702) 323-6296, 1991

Western Counseling Association, 401 S. Highland Drive, Las Vegas, NV 89106, Richard Steinberg, (702) 385-2020, 1991

Palau

Palau Community Action Agency, P.O. Box 3000, Koror, Republic of Palau 96940, Doroteo Nagata, 1990

Guam

Sanctuary, P.O. Box 21020—GMF, Guam, MI 96921, Tony Champaco, (671) 734-2661, 1990

CNMI

Commonwealth of the Marianas, Department of Community Cultural Affairs, Saipan, CM 96950, Margarita Olopai-Taitano, (670) 322-9366, 1990

Region X

Alaska

Juneau Youth Services, P.O. Box 32839, Juneau, AK 99803, Betty Jo Engelman, (907) 789-7610, 1991

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274-6541, 1992

Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701, Banarsi Lal, (907) 452-6201, 1992

Idaho

Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234-2244, 1992

Hays Shelter Home*, 1122 Wild Phlox Way, Boise, ID 83709, Tracy Everson, (208) 322-6744, 1992

Oregon

Northwest Human Services, 555—13th Street, Salem, OR 97301, Mary Beth Thompson, (503) 588-5828, 1990

Janis Youth Programs, 738 N.E. Davis, Portland, OR 97232, Dennis Morrow, (503) 233-6090, 1991

Looking Glass, 44 West Broadway, Eugene, OR 97401, Galen Phipps, (503) 689-3111, 1991

Youthworks, 1307 W. Main Street, Medford, OR 97501, Maureen Koopman, (503) 779-2393, 1992

Washington Community Youth Services, 824 Fifth Avenue, SE, Olympia, WA 98501, Barbara Branstetter, (206) 943-0780, 1990

Auburn Youth Resources, 816 F Street, SE, Auburn, WA 98002, Richard Brugger, (206) 939-2202, 1990

Pierce County Alliance, 1201 S. 11th Street, Tacoma, WA 98405, Terree Schmidt-Whelan, (206) 572-4750, 1990

Friends of Youth, 2500 Lake Washingon Blvd. N., Renton, WA 98056, J. Howard Finck, (206) 228-5775, 1991

Northwest Youth Services, P.O. Box 1449, Bellingham, WA 98227, Michael Tyers, (206) 734-9862, 1991

Youth Help Association, West 1101 College #360, Spokane, WA 99201, Bernadette Spalla, (509) 326-9553, 1991

Seattle Youth and Community Services, 1545-12th Avenue South, Seattle, WA 98144, Victoria Wagner, (206) 322-7927, 1992

[FR Doc. 90-4961 Filed 3-5-90; 8:45 am]

BILLING CODE 4130-01-M

federal register

Tuesday
March 6, 1990

Part VIII

The President

Executive Order 12705—Extending the President's Commission on Aviation Security and Terrorism

Federal Register
Vol. 55, No. 44
Tuesday, March 6, 1990

Presidential Documents

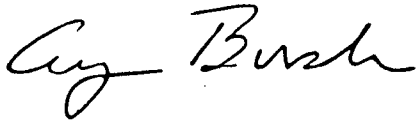
Title 3—

The President

Executive Order 12705 of March 3, 1990

Extending the President's Commission on Aviation Security and Terrorism

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to extend the President's Commission on Aviation Security and Terrorism, it is hereby ordered that the first sentence of section 2(b) of Executive Order No. 12686 is amended to read as follows: "No later than May 15, 1990, the Commission shall submit a report to the President, which shall be classified if necessary, containing findings and recommendations."



THE WHITE HOUSE,
March 3, 1990.

[FR Doc. 90-5312
Filed 3-5-90; 10:44 am]
Billing code 3195-01-M

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